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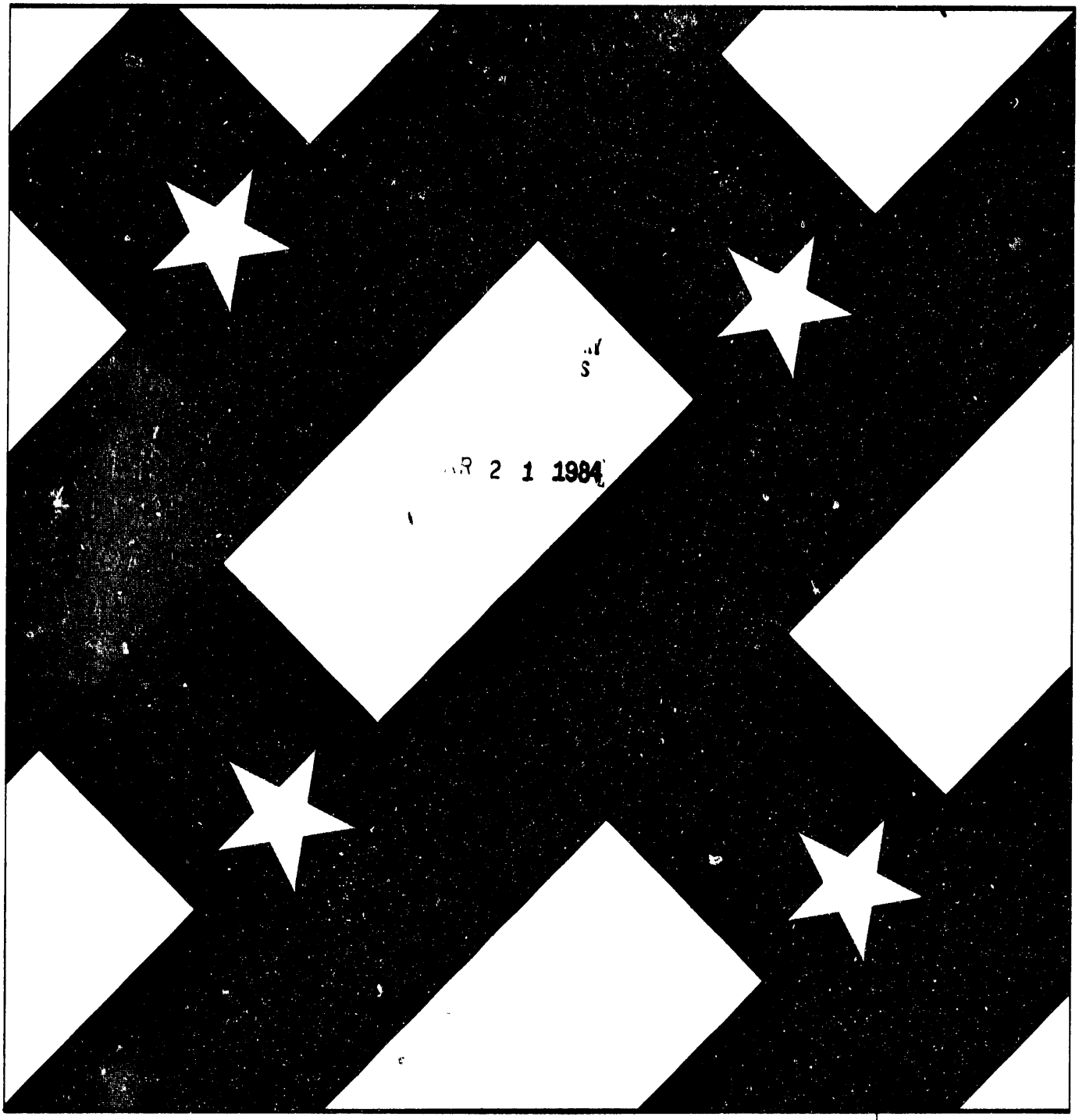

Highlights

How To Use the Texas Register

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice a week at least 100 times a year Issues will be published on every Tuesday and Friday in 1984 with the exception of January 28, July 10, November 27, and December 28, by the Office of the Secretary of State, 201 East 14th Street, P O Box 13824, Austin, Texas 78711-3824, (512) 475-7886

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

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- In Addition—miscellaneous information required to be published by statute or provided as a public service

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

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

In order that readers may cite material more easily, page numbers are now written as citations Example on page 2, in the lower left-hand corner of the page, would be written "9 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 9 TexReg 3 "

How To Research: The public is invited to research rules and information of interest between 8 a m and 5 p m weekdays at the *Texas Register* office, 503E Sam Houston Building, Austin Material can be found by using *Register* indexes, the *Texas Administrative Code* (explained below), rule number, or TRD number

Texas Administrative Code

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

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

1 indicates the title under which the agency appears in the *Texas Administrative Code* (a listing of all the titles appears below),

TAC stands for the *Texas Administrative Code*,

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

Latest Texas Code Reporter
(Master Transmittal Sheet) No 10, December 1982

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In Addition

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Register* publishes executive orders issued by the Governor of Texas. Appointments made and proclamations issued by the governor are also published. Appointments are published in chronological order.

Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 475-3021.

The Governor

Executive Orders
MW-18

Joining the Southern Growth Policies Board.

WHEREAS, Texas shares many geographical, economic, and social similarities with other southern states; and

WHEREAS, Texas has been invited to join with other southern states for joint study, analysis, and planning of policies, programs, and activities of common interest; and

WHEREAS, such cooperative planning for the development, conservation, and utilization of our human and natural resources on a regional basis offers an economically sound and sensible method of expanding the capabilities of the State of Texas without duplication of the efforts of the other southern states through the Southern Growth Policies Board;

NOW, THEREFORE, I, Mark White, governor of Texas, under the authority vested in me, hereby order that:

(1) the State of Texas shall be a participant in and adhere to the Southern Growth Policies Agreement;

(2) in accordance with the Agreement, I shall designate one citizen of the State of Texas as my alternate on the Southern Growth Policies Board and, in addition, four additional citizens of the State of Texas to serve on such board, one of whom shall be a member of the Texas Senate and one of whom shall be a member of the Texas House of Representatives. These members shall serve without compensation but shall receive reimbursement for expenses while attending meetings of the board at the rates of travel and per diem provided in the Appropriations Act for state employees;

(3) Such staff support as may be required for Texas' participation in the Southern Growth Policies Agreement shall be provided by the governor's office staff;

(4) Unless earlier rescinded or modified by me, or unless legislation shall earlier be enacted to supersede this order, this executive order shall remain in effect until September 1, 1985, to give the next regular session of the Texas Legislature the opportunity to consider whether it wishes to continue Texas' participation in the agreement and, if so, to enact appropriate legislation to make Texas a party thereto.

Issued in Austin, Texas, on February 24, 1984.

TRD-842751

Mark White
Governor of Texas

MW-19

Establishing the Governor's Task Force on Hazardous Waste Management.

WHEREAS, the protection of public health and safety and the enhancement of environmental quality are basic responsibilities of state and local governments in Texas;

WHEREAS, the production and use of chemicals and other products in Texas constitute a substantial economic factor for the state, and this production generates hazardous waste byproducts which must be properly managed;

WHEREAS, the quality of life in Texas is dependent upon the convenience afforded by the production and use of chemicals;

WHEREAS, the Congress of the United States is currently considering legislation which likely would broaden the responsibilities of states under the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act, yet decrease financial resources to the states for administration;

WHEREAS, a viable and efficient hazardous waste program serves as inducement for new industrial capacity, as well as for the maintenance of jobs of current Texas industries;

NOW, THEREFORE, I, Mark White, governor of Texas, under the authority vested in me, do hereby create and establish the Governor's Task Force on Hazardous Waste Management, hereinafter referred to as the "task force."

The task force will consist of representatives of major affected groups or interests, who shall be appointed by the governor and shall serve at the pleasure of the governor. The governor shall designate a chair and vice-chair from the membership who shall serve in those positions at the pleasure of the governor.

The task force is charged with the following responsibilities:

(a) to examine policy alternatives for public and private sector roles in hazardous waste management in Texas, focusing specifically on the issues of siting, financial responsibility, waste reduction and management strategies, and enforcement;

(b) to develop recommendations for an integrated comprehensive hazardous waste management policy to include possible legislation, agency actions, and/or industry initiatives, for presentation to the governor on or about September 1, 1984; and

(c) to develop strategies by which these recommendations can be implemented successfully.

The task force shall meet regularly at the call of the chair. A majority of the membership shall constitute a quorum. The chair shall, in consultation with the Office of the Governor, establish the agenda for the task force meetings.

The task force shall coordinate and work closely with the 68th Texas Legislature's Joint Committee on Hazardous Waste Disposal.

Members of the task force shall serve without compensation. Expenses of task force members will normally be expected to be paid by the firm or organization represented by each member. However, citizen members or members of nonprofit groups may be reimbursed for actual travel expenses in accordance with the prevailing state travel allowance.

Staff will be provided by the governor's office and the Texas Department of Water Resources, with technical assistance from the Texas Air Control Board, the Texas Department of Health, the Railroad Commission of Texas, and the Texas Department of Agriculture.

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

Issued in Austin, Texas, on February 29, 1984.

TRD-842752

Mark White
Governor of Texas

Under provisions set out in the Texas Constitution, Texas Civil Statutes (Article 4399), and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure.

Requests for opinions, opinions, and open record decisions are summarized for publication in the *Register*.

Questions on particular submissions, or requests for copies of opinion requests should be addressed to Susan L. Garrison, Opinion Committee chairwoman, Office of the Attorney General, Supreme Court Building, Austin, Texas 78711, (512) 475-5445. Published opinions and open records decisions may be obtained by addressing a letter to the file room, fourth floor, P.O. Box 12548, Austin, Texas 78711-2548, or by telephoning (512) 475-3744. A single opinion is free; additional opinions are $1.00 a copy.

The Attorney General

Opinions

JM-127 (RQ-288). Request from Jim Boyle, public counsel, Office of Public Utility Counsel, Austin, concerning whether a bonding date for a Southwestern Bell rate request before the Public Utility Commission of Texas is governed by an amendment effective September 1, 1983, or prior law

Summary of Opinion. The Public Utility Regulatory Act (PURA), §43(a), dictates what constitutes a valid statement of intent. Bell's filing of June 24, 1983, was materially deficient and therefore invalid Bell's filing was not substantially complete until October 19, 1983, and the version of the PURA in effect on that date controls the bonding date.

TRD-842742

JM-128 (RQ-145). Request from William R Moore, Tom Green County attorney, San Angelo, concerning construction of Texas Civil Statutes, Article 1269m.

Summary of Opinion. A fireman who has not completed two years' continuous service with the fire department employing him is not eligible for promotion in the department or to take a promotion examination pursuant to Texas Civil Statutes, Article 1269m, §14. The two-year prior service provision of §14 is mandatory.

TRD-842743

JM-129 (RQ-219). Request from Kenneth H. Ashworth, commissioner, Coordinating Board, Texas College and University System, Austin, concerning whether a member of a board of trustees of a community college may serve simultaneously as a county commissioner

Summary of Opinion. The common law doctrine of incompatibility prevents a trustee of Dallas County Community College from simultaneously serving as a Dallas County commissioner.

TRD-842744

JM-130 (RQ-207). Request from Harrison Stafford, president, Lavaca-Navidad River Authority, Edna, concerning the meaning of "commission" for purposes of a permit issued to the Lavaca-Navidad River Authority.

Summary of Opinion. The 1977 reorganization has not stripped the Texas Water Commission of the authority to determine what release of water, if any, is necessary for the maintenance of the Lavaca-Matagorda Bay and Estuary System.

TRD-842745

JM-131 (RQ-215). Request from David A. Ivie, executive director, Structural Pest Control Board, Austin, concerning use of electrical or ultrasonic devices to kill or repel termites.

Summary of Opinion. An electrical apparatus that directs an electric current across wood for the purpose of killing termites and other pests is a "device" within the meaning of Texas Civil Statutes, Article 135b-6, and a person who commercially uses an electrical or ultrasonic apparatus to kill or repel termites or other pests is "engaged in the business of structural pest control" within the meaning of that statute.

TRD-842746

JM-132 (RQ-275). Request from Patrick J. Ridley, Bell County Attorney, Belton, concerning automatic resignation of a county commissioner from office by filing for candidacy for another office.

Summary of Opinion. A county commissioner who files an application to place his name on the ballot in an election for the directorship of a water district automatically vacates his office if more than one year remains in his term, even though he is ineligible for the office of water district director.

TRD-842747

JM-133 (RQ-293). Request from Lloyd Criss, chairman, Committee on Labor and Employment Relations, Texas House of Representatives, Austin, concerning whether an individual may serve simultaneously as county auditor and city councilman of a city located in that county.

Summary of Opinion. The common law doctrine of incompatibility prohibits a Galveston city council member from simultaneously serving as Galveston county auditor.

TRD-842802

Open Records Decisions

ORD-406 (RQ-202). Request from Tony Korioth, attorney, Austin, concerning whether the Texas Municipal League Workers' Compensation Joint Insurance Fund is subject to the Open Records Act.

Summary of Decision. The Texas Municipal League Worker's Compensation Joint Insurance Fund is subject to the Open Records Act.

TRD-842748

ORD-407 (RQ-226). Request from John C. Ross, Jr., Lubbock city attorney, concerning whether information regarding an outbreak of hepatitis A is excepted from disclosure under the Open Records Act.

Summary of Decision. Information regarding an outbreak of hepatitis A in a city is excepted from disclosure to the extent that it is within Texas Civil Statutes, Article 44196-1, §3.06; the remainder is available to the public.

TRD-842749

ORD-408 (RQ-242). Request from Gregg Norris, Fort Worth assistant city attorney, concerning whether information in a criminal file is excepted from disclosure when the file is in "suspended" status.

Summary of Decision. Information in a criminal file which is in "suspended" status should be treated in the same manner as such information in a file which is under active investigation

TRD-842750

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. A public hearing on the proposal may also be granted if such a procedure is requested by a governmental subdivision or agency, or by an association consisting of at least 25 members.

The proposal, as published in the *Register*, must include a brief explanation of the proposed action, a fiscal statement indicating effect on state or local government, a statement explaining anticipated public benefits and possible economic costs to individuals required to comply with the rule; a request for public comments, a statement of statutory authority under which the proposed rule is to be adopted (and the agency's interpretation of the statutory authority), the text of the proposed action; and a certification statement. The certification information, which includes legal authority, the proposed date of adoption or the earliest possible date that the agency may file notice to adopt the proposal, and a telephone number to call for further information, follows each submission.

Symbology in amended 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.

Proposed Rules

TITLE 22. EXAMINING BOARDS
Part XIII. Texas Board of Licensure for Nursing Home Administrators

The following proposals submitted by the Texas Board of Licensure for Nursing Home Administrators will be serialized beginning in the March 20, 1984, issue of the *Texas Register*. Earliest possible date of adoption for the documents is April 16, 1984.

Chapter 241 Administrative Authority
§§241.1-241.5
(repeal)
§§241.1-241.3
(new)

Chapter 243 Application
§§243.1-243.5
(repeal)
§§243.1-243.4
(new)

Chapter 245 Examination
§§245.1-245.3
(repeal)
§§245.1-245.3
(new)

Chapter 247 Education
§§247.1-247.4
(repeal)
§§247.1-247.4
(new)

Chapter 249 License Certificates
§§249.1-249.3
(repeal)
§§249.1-249.4
(new)

Chapter 251 Inactive Status
§251.1
(repeal)

Chapter 251 Disciplinary
§§251.1-251.5
(new)

Chapter 253 Complaint Procedures
§§253.1-253.4
(repeal)

Chapter 255 Disciplinary Action
§§255.1-255.4
(repeal)

Chapter 257 Hearing Procedures
§§257.1-257.10
(repeal)

Chapter 259 Reciprocity
§259.1
(repeal)

TITLE 25. HEALTH SERVICES
Part VIII. Interagency Council on Early Childhood Intervention
Chapter 621. Early Childhood Intervention Program
Complaints
25 TAC §621.41

The Interagency Council on Early Childhood Intervention proposes new §621 41, concerning a procedure for review of individual complaints about the Early Childhood Intervention Program (ECI).

Stephen Seale, chief accountant III, has determined that there will be no fiscal implications to state or local governments or small businesses as a result of enforcing or administering the rule.

Mr. Seale has also determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be insurance of quality services to the children of Texas being served by programs receiving funding from the Interagency Council on Early Childhood Intervention. A memorandum or procedure for review of individual complaints about ECI will help to insure quality services There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Cecil Chandler, Chairman, Interagency Council on Early Childhood Intervention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be received for 30 days from the date of publication of the proposed new rule in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 4413(43a), §3(a)(5), which provide the Interagency Council on Early Childhood Intervention with the authority to adopt a procedure for review of individual complaints about the Early Childhood Intervention Program.

§621.41 A Written Complaint System. Programs receiving Early Childhood Intervention Program funding will adopt a written complaint system as outlined in paragraphs (1)-(3) of this section

(1) Programs affiliated with the Texas Department of Mental Health and Mental Retardation (state schools, state centers, community service centers) shall adopt written procedures providing for orderly hearings and appeals of aggrieved parties as outlined by the Texas Department of Mental Health and Mental Retardation in §§403.441-403.454 of this title (relating to Public Responsibility Committees)

(2) Programs affiliated with the Texas Education Agency (local independent school districts, education service centers) shall adopt written procedures for orderly hearings and appeals of aggrieved parties as outlined in the existing Texas Education Agency complaint procedures in 19 TAC §§61 231, 61.251-61.254, and 157.1-157.121 (relating to Procedure, Appeal Procedural Requirements, and Hearings and Appeals Generally).

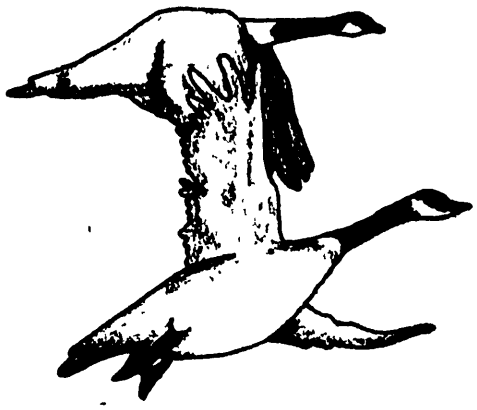
(3) Private agencies shall follow the complaint procedures of their assigned monitoring agency.

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

Issued in Austin, Texas, on March 8, 1984

TRD-842794 Cecil Chandler
Chairman
Interagency Council on Early Childhood Intervention

Earliest possible date of adoption.
April 16, 1984
For further information, please call (512) 465-2671.



TITLE 31. NATURAL RESOURCES AND CONSERVATION
Part X. Texas Water Development Board
Chapter 335. Industrial Solid Waste
Subchapter V. Standards for Owners and Operators of Hazardous Waste Storage, Processing, and Disposal Facilities
31 TAC §335.452

The Texas Department of Water Resources proposes amendments to §335.452, concerning permitting standards for owners and operators of hazardous waste storage, processing, or disposal facilities.

The proposal would amend §335.452(1) to delete 40 Code of Federal Regulati ns §264.18(b) from those provisions of Part 264 of Title 40 which are incorporated by reference into §335.452 as general facility standards. 40 Code of Federal Regulations §264.18(b) would, however, be retained as a floodplain standard for hazardous waste management facilities which would not be subject to the requirements of proposed §§335.501-335.505. The purpose of this proposed amendment is to establish consistency of §335.452 with proposed new §§335.501-335.505.

Mike Hodges, Fiscal Services Section chief, has determined that for the first five-year period the rule 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 rule.

Mr. Hodges also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is elimination of confusion which will arise as a result of the simultaneous reading of two rules which would ostensibly pertain to the same subject matter.

Comments on the proposal may be submitted to Jim Haley, Staff Attorney, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711

To facilitate public participation in the rule-making process, two public hearings have been scheduled. The first hearing will be held at 9 a m. on Thursday, April 5, 1984, in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin The second hearing will be held at 9:30 a.m on Friday, April 6, 1984, in the City of Houston Health Department Auditorium, 1115 North MacGregor, Houston

These amendments are proposed under the authority of the Texas Water Code, §5 131 and §5 132, which provide the Texas Water Development Board with the authority to make any rules necessary to carry out the powers and duties under the provisions of the Code and other laws of the state and to establish and approve all general policy of the Texas Department of Water Resources These amendments are further proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the department to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of industrial solid waste (The requirement of §4(c) that the department consult with the State Soil and Water Conservation Board and the Bureau of Economic Geology of the University of Texas at Austin has been fulfilled.) Under the Solid Waste Disposal Act, §3(b), the Texas Department of Water Resources is designated as the state solid waste agency with respect to the management of industrial solid waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste management by all practical and economically feasible methods consistent with the powers and duties given it under the Act and other existing legislation. Section 3(b) grants to the department the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§335.452 Standards.

(a) Except as otherwise provided in §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), and §335.15 of this title (relating to Record Keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), and in §335.453 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator), §335.454 of this title (relating to Reporting Requirements for Owners and Operators), and §335.455 of this title (relating to Waste Report), and to the extent consistent with the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and the rules of the Texas Water Development Board, the following provisions of Part 264 of Title 40 are adopted by reference:

(1) Subpart B—General Facility Standards (as amended in 47 FedReg 32274 (July 26, 1982)), **except 40 Code of Federal Regulations §264.18(b);**

(2)-(12) (No change.)

(13) Subpart O—Incinerators (as amended in 47 FedReg 27520 (June 24, 1982). [Note: Where there is reference in the sections to "regional administrator," the reference is more properly made, for purposes of state law, to the "executive director" of the Texas Department of Water Resources or the "commission," consistent with the organization of the department as set out in the Texas Water Code, Chapter 5, Subchapter B.]

(b) To the extent consistent with the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and the rules of the Texas Water Development Board, 40 Code of Federal Regulations §264.18(b) is hereby adopted by reference for application to hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.501-335.505 of this title (relating to Location Standards for Hazardous Waste Storage, Processing, or Disposal). A copy of 40 Code of Federal Regulations §264.18(b) is available for inspection at the law library of the Texas Department of Water Resources, located on the sixth floor of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Note: Where there is reference in the sections to "regional administrator," the reference is more properly made, for purposes of state law, to the "executive director" of the Texas Department of Water Resources or the "commission," consistent with the organization of the department as set out in the Texas Water Code, Chapter 5, Subchapter B.

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

Issued in Austin, Texas, on March 8, 1984.

TRD-842793 Susan Plettman
General Counsel
Texas Department of Water Resources

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 475-7841.

Subchapter W. Location Standards for Hazardous Waste Storage, Processing, or Disposal

31 TAC §§335.501-335.505

The Texas Department of Water Resources proposes new §§335.501-335.505, concerning location standards for hazardous waste storage, processing, or disposal.

The Texas Department of Water Resources (TDWR) administers the Industrial Hazardous Waste Management Program under the authority of the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7. This program provides regulatory control for the generation, handling, transportation, storage, and disposal of hazardous waste from "cradle to grave." In 1981 and 1982, the TDWR adopted permitting standards for the design, construction, operation, and maintenance of hazardous waste management facilities. The department has been authorized by the U.S. Environmental Protection Agency (EPA) to implement its hazardous waste program in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), as amended, 42 United States Code §6501, *et seq*. Pursuant to this authority, the department has begun the task of permitting existing and new hazardous waste management facilities.

All federal site selection standards promulgated by the EPA pursuant to the RCRA have previously been adopted by the department. In 1983, the Texas Legislature passed House Bill 487, which amended the Texas Solid Waste Disposal Act to require the state to establish its own minimum standards for the location of facilities used for the storage, processing, and disposal of hazardous waste. These rules were written pursuant to that authority, and they apply to permit applications for new hazardous waste management facilities and areal expansions of existing hazardous waste management facilities.

A new hazardous waste management facility is defined in proposed new §335.502 as any facility to be used for the storage, processing, or disposal of hazardous waste and which is not an existing hazardous waste management facility. Thus, the key for determining the applicability of these sections is understanding the definition of existing hazardous waste management facility, which is also found in proposed new §335.502.

Existing hazardous waste management facilities fall into one of three distinct categories. The first of these categories includes facilities already authorized by a solid waste permit.

The second category of hazardous waste management facilities to be considered existing, for the purpose of these rules, includes those facilities with applications pending with the Texas Department of Water Resources, which were submitted pursuant to §335.2(c) and §335.43(b), including any revisions made in accordance with §341.185. This means that any facility which had commenced on-site storage, processing, or disposal of a hazardous waste on or before November 19, 1980, and for which a hazardous waste permit application had been filed with the department on or before November 19, 1980, in accordance with the rules and regulations of the department, and which application has not been denied by the Texas Water Commission, is considered to be an existing facility for the purpose of these sections.

The third category of hazardous waste management facilities to be considered existing, for the purpose of these sections, includes those facilities for which there are applications pending with the Texas Department of Water Resources which were submitted pursuant to §335.2(a) and in accordance with 31 TAC Chapter 341, relating to consolidated permits, which have been declared to be administratively complete pursuant to §357.3, relating to permit applications, prior to the effective date of these sections.

These sections are also applicable to areal expansions of existing hazardous waste management facilities. An areal expansion of an existing facility is defined in proposed §335.502 as the enlargement of a land surface area of an existing hazardous waste management facility from that described in a solid waste permit authorizing the facility. Thus, these sections will not apply to existing on-site facility components which expand in area until after a permit has been issued for the facility.

Any hazardous waste management facility not considered to be existing under these guidelines is subject to the requirements of these proposed new sections. It should be remembered that existing facility components are presently, and will continue to be, subject to review for site suitability pursuant to §335 479 While these proposed sections do not apply to the review of existing facility site suitability, they will, by virtue of their specificity, clarify to some degree the areas of concern which must be considered under §335.479

The purpose of these new sections is to condition issuance of a permit for a new facility or the areal expansion of an existing facility on selection of a site which reasonably minimizes possible contamination of surface water and groundwater (proposed new §335.503); to define the characteristics that make an area unsuitable for a hazardous waste management facility (proposed new §335.504), and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable, unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics (proposed new §335.505).

The objective of the department in this rule making is to clarify and formalize the existing review process for site suitability, and to establish uniform standards for what are considered to be unsuitable locations for hazardous waste management activities This approach recognizes that certain generic locations are unsuitable due to the difficulty of isolating wastes and protecting groundwater and surface water at these sites. Additionally, it recognizes that the variety and complexity of hydrogeologic and climatic conditions in Texas require a case-by-case review of sites in the permitting process

Proposed new §335.503 stipulates the factors to be considered by the Texas Water Commission in making its decision about whether the proposed facility reasonably minimizes possible contamination of surface water and groundwater: active geologic processes, groundwater conditions, soil conditions, and climatological conditions. These factors are to be evaluated

in light of the proposed design, construction, and operational features of the facility.

Proposed new §335.504 identifies location characteristics which the department believes would make a site unsuitable for storage or processing facilities, land treatment facilities, waste piles, surface storage impoundments, and landfills. These types of facility components are separately listed in the rule, along with the specific location characteristics which would make a proposed site unsuitable for each type of facility component. The identification of these characteristics is based on hydrologic, hydrogeologic, and geotechnical considerations. The §335.504 standards identify only those locations which are clearly unsuitable. A determination that a site does not evidence characteristics which would disqualify it from permitting under §335.504 is not sufficient to support the conclusion that the site should be permitted. The commission must also consider the factors in §335.503 when making its decision on the permit application. For example, demonstration of conformance to the aquifer protection and permeability standards in §335.504 will not alone satisfy the requirement expressed in §335.503 that groundwater and soil conditions must be considered. The applicant is required to make this kind of demonstration of suitability based on a site specific analysis. In addition, some proposed locations may be considered inadequate because conditions exist which are not addressed in §335.504, but which are required to be considered by §335 503.

Existing rules in Chapter 335, Subchapter V, prescribe performance standards for the design, construction, operation, and maintenance of hazardous waste management facilities. Based upon these requirements, primary barriers to contaminant migration are established for a facility component and must be described in the applications. Such barriers are labeled primary since they function first in order of time to prevent or minimize the migration of contaminants. For example, primary barriers to waste migration for a landfill consist of a liner or liner system, a leachate collection system, and a cover system. The primary barrier for a tank consists of the walls and floor of the tank. For each type of waste management unit, specific types of primary barriers are required by Chapter 335, Subchapter V.

The proposed new sections would require secondary barriers for certain locations and certain types of facility components. A secondary barrier is any physical condition which prevents or minimizes the migration to surface water or groundwater of waste which penetrates the primary barrier. Secondary barriers, thus, act later in order of time than do primary barriers. The hydrogeologic, geomorphic, and soil conditions of facility location are important factors to consider in determining the degree of containment to be provided by secondary barriers.

The location criteria are based upon the type of waste management activity proposed. The major consideration is whether hazardous wastes will remain in the unit after the facility is closed. For those units where wastes will be removed at the time of closure, stringent facility design features can generally provide adequate assurance of waste containment and thereby prevent adverse effects from unsuitable site characteristics. For this reason, the proposed rules allow an applicant to meet facility design specifications which are more stringent than the requirements of Subchapter V, as an alternative to demonstrating conformance to the regional aquifer and soil condition standards of these proposed rules. For example, the operator of a storage or processing facility may construct secondary containment structures (e.g., a hard-surfaced curbed or diked area surrounding a tank) as one means of demonstrating conformance with these rules. Likewise, the operator of a storage surface impoundment may construct a double-lined facility with an intervening leak detection system as one means of demonstrating conformance with these sections of the rules.

For units where hazardous waste will remain after closure (e.g., landfills and surface impoundments to be closed as landfills), facility design features alone without appropriate containment conditions at the site (i.e., secondary barriers) may not provide adequate assurance of waste isolation. Primary containment structures such as liner systems can be designed and installed to contain wastes for a certain design life; however, given sufficient time, the barrier may be penetrated. Therefore the rules define in proposed new §335.504, locations with such poor secondary barrier conditions that they are unsuitable for facilities where hazardous wastes will remain after closure. For example, §335.504(e)(4) specifies, except for areas of the state where evaporation greatly exceeds precipitation, the minimum thickness of low permeability soil material which must separate the base of a landfill's liner system from an underlying regional aquifer. Design of a landfill with more stringent liner and leachate collection system (primary barrier) standards than those required by Chapter 335, Subchapter V, does not provide sufficient assurance of long-term waste containment to obviate the need for secondary barrier. However, for facilities where the natural geologic conditions do not provide the secondary barrier required by §335.504, a man-made secondary barrier, designed and constructed in accordance with accepted engineering standards, may be used in addition to the primary barrier required by Chapter 335, Subchapter V, to satisfy the requirement

Aquifer protection: These proposed new sections provide special protection to regional aquifers and sole-source aquifers as identified by the department and the EPA, respectively The department is also concerned with aquifers which may not be identified by the agencies. In accordance with existing rules and proposed §335.503, the department will continue to examine the hydrogeologic setting underlying every proposed disposal facility to assure protection of groundwater resources.

Active geologic processes: The department has considered the inclusion in §335 504 of standards to address unsuitable locations with respect to active geologic processes (i.e., faulting, subsidence, submer-

gence, and erosion). The consensus of the department staff and reviewers at the University of Texas Bureau of Economic Geology is that active geologic processes must be considered on a site specific basis. There are too many uncertainties in the measurement of these processes to formulate specific performance standards. Existing quantitative data related to geologic processes that might adversely affect a site preclude the formulation of quantitative rules. For that reason, specific active geologic process location standards have not been included in §335.504. However, case-by-case review of the manner in which active geologic processes affect a particular facility location is required by §335.503.

The 100-year floodplain: Proposed new §335.504 of this title provides additional restrictions to the existing flood protection standard which requires that all hazardous waste facilities be located, designed, constructed, and maintained to prevent washout of any hazardous waste by a 100-year flood. In the past, hazardous waste management facilities located in the 100-year floodplain have been required to protect against the 100-year flood by the construction of dikes or levees around the facility.

The department believes that dikes or other flood protection measures can protect against flood hazards during the active life of a hazardous waste storage, processing, or disposal facility. However, those areas of the floodplain which are subject to significant flood velocities or flood depths from either river flooding or hurricane storm surge tides are unsuitable for long-term waste containment due to the potential for significant erosion caused by wave energy and currents. In accordance with proposed new §335.504(e)(1) of this title, those disposal facilities where hazardous wastes remain after closure (landfills and surface impoundments to be closed as landfills) will be prohibited from such areas within the 100-year floodplain. Such facility components shall not be located in that portion of the 100-year floodplain where high flood elevations (three feet or greater) and significant flood velocities (three feet/second or greater) occur. In addition, those portions of the 100-year floodplain where shallow or sheet flooding occurs due to poor drainage features would be acceptable only if the facility is protected by dikes or other flood protection measures.

Permeability standards: For each type of waste management facility component, §335.504 includes two permeability standards for soils underlying and surrounding a facility. These standards are complementary but are designed to achieve different goals. The first type of standard requires materials with a minimum thickness of 10 feet and a hydraulic conductivity less than or equal to 10^{-7} centimeters/second to separate the facility from a regional aquifer. In most cases, the hydraulic conductivity values of interest will be in the vertical direction to allow assessment of secondary barrier conditions which will protect a regional aquifer underlying a facility. Notice that these standards do not require that a single low permeability barrier be 10 or more feet thick. The aggregate thickness of separate clay beds or other low permeability units may be used to meet these standards. These standards can be viewed as aquifer resource protection standards.

The second type of standard requires that soil units within five feet of the facility shall have a hydraulic conductivity less than or equal to 10^{-5} centimeters/second unless a more stingent facility design modification is allowed or it is demonstrated that the soils do not provide a significant pathway for pollutant migration. The purpose of these standards is to assure that any leachate which may penetrate the facility's primary barrier will not come into direct contact with permeable soil materials. These standards serve to help isolate the waste within the immediate area of the facility and to help assure that there will not be appreciable lateral or downward migration of pollutants. As a result, to document conformance to this requirement, a hydraulic conductivity testing program should be performed to determine the degree to which the surrounding soils will retard leachate migration from the facility. This may include determinations from both vertical and horizontal (and at some other orientation if necessary) laboratory testing or field hydraulic conductivity measurements. These standards specifying permeability conditions of surrounding soils can be viewed as leachate containment standards. The department plans to develop further guidance for applicants in the area of site investigation. Such guidance will delineate acceptable test methods and procedures for measuring the hydraulic conductivity of soils.

Use of existing technical guidelines and other data: In developing these proposed new sections, the department has attempted to use existing published reports, maps, and guidelines. These resources include the federal flood insurance rate maps, TDWR technical reports on groundwater resources (e.g., Report 238) and evaporation and rainfall maps available from the department.

Additionally, the department has developed technical guidelines for landfills and land treatment facilities to assist applicants in site selection and design. These guidelines include recommendations to assist in selecting a site which will satisfy the considerations listed in §335.503. The department will continue to encourage applicants to use these guidelines when seeking environmentally sound locations for hazardous waste management facilities. It is important to note that, whereas the department's technical guidelines are designed to help applicants find the best possible site for a hazardous waste management facility, these proposed rules are intended to establish criteria to prevent the use of sites which are clearly unsuitable for that purpose. Subsequent to the adoption of these rules, the department intends to review its existing technical guidelines and make any modifications necessary to achieve a consistent policy, as reflected in rules and guidelines, relating to the siting of hazardous waste management facilities.

Mike Hodges, Fiscal Services Section chief, has determined that for the first five-year period the rules 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 rules.

Mr. Hodges also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is the improvement of the state's ability to assure protection of human health and the environment, including ground and surface water resources, from contamination by hazardous waste. An additional public benefit that should result from enforcing these rules as proposed is to facilitate the initial stage of the permitting process. The establishment of minimum standards for the location of facilities used for the storage, processing, and disposal of hazardous waste gives prospective owners and operators of hazardous waste management facilities and other participants in the hearing process a clear understanding of issues relevant to the requirements of §335.479. The rules should facilitate the task of preparing a permit application that is administratively complete and should reduce the loss of time that might otherwise result from the return to an applicant of an application that requires more information to be considered complete. This would result in greater efficiency and more effective use of resources not only by permit applicants, but also by department employees who review permit applications There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Jim Haley, Staff Attorney, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711.

To facilitate public participation in the rule-making process, two public hearings have been scheduled. The first hearing will be held at 9 a.m. on Thursday, April 5, 1984, in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. The second hearing will be held at 9:30 a.m. on Friday, April 6, 1984, in the City of Houston Health Department Auditorium, 1115 North MacGregor, Houston.

These new sections are proposed under the Texas Water Code, §5.131 and §5.132, which provides the Texas Water Development Board with the authority to make any rules necessary to carry out the powers and duties under the provisions of the Code and other laws of the state and to establish and approve all general policy of the Texas Department of Water Resources. These new sections are further proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the department to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of industrial solid waste. (The requirement of §4(c) that the department consult with the State Soil and Water Conservation Board and the Bureau of Economic Geology of the University of Texas at Austin has been fulfilled.) Under the Solid Waste Disposal Act, §3(b), the TDWR is designated as the state solid waste agency with respect to the management of industrial solid waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste management by all practical and economically feasible methods consistent with the powers and duties given it under the Act and other existing legislation. Section 3(b) grants to the department the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§335.501. Purpose, Scope, and Applicability.

(a) This subchapter establishes minimum standards for the location of facilities used for the storage, processing, and disposal of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste. These rules apply to permit applications for new hazardous waste management facilities and areal expansions of existing hazardous waste management facilities, filed on or after the effective date of these rules. These rules do not apply to the following:

(1) permit applications submitted pursuant to §335.2(c) of this title (relating to Permit Required) and §335.43(b) of this title (relating to Permit Required), including any revision submitted pursuant to §341.185 of this title (relating to Revision of Application for Hazardous Waste Permits); and

(2) permit applications filed pursuant to §335.2(a) of this title (relating to Permit Required) which have been submitted in accordance with Chapter 341 and which have been declared to be administratively complete pursuant to §357.3 of this title (relating to Initial Review) prior to the effective date of these rules.

(b) The purpose of these rules is to condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a site that reasonably minimizes possible contamination of surface water and groundwater; to define the characteristics that make an area unsuitable for a hazardous waste management facility; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable, unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics. Nothing herein is intended to restrict or abrogate the department's general authority under the Solid Waste Disposal Act to review site suitability for all facilities which manage industrial solid waste.

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

Aquifer—A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Portions of formations, such as clay beds, which are not capable of yielding a significant amount of groundwater to wells or springs are not aquifers.

Areal expansion of an existing facility—The enlargement of a land surface area of an existing hazardous waste management facility from that described in a solid waste permit authorizing the facility.

Existing hazardous waste management facility—Any facility used or proposed to be used for the storage, processing, or disposal of hazardous waste and which is authorized by a solid waste permit. Facilities identified in the following pending applications will also be considered existing hazardous waste management facilities pending final action on the application by the commission:

(A) an application submitted pursuant to §335.2(c) of this title (relating to Permit Required) and §335.43(b) of this title (relating to Permit Required), including any revisions made in accordance with §341.185 of this title (relating to Revision of Application for Hazardous Waste Permits); or

(B) an application filed pursuant to §335.2(a) of this title (relating to Permit Required) which has been submitted in accordance with Chapter 341 and which has been declared to be administratively complete pursuant to §357.3 of this title (relating to Initial Review) prior to the effective date of these rules.

New hazardous waste management facility—Any facility to be used for the storage, processing, or disposal of hazardous waste and which is not an existing hazardous waste management facility.

One-hundred-year floodplain—Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

Regional aquifer—An aquifer which has been identified by the Texas Department of Water Resources as a major or minor aquifer. Major aquifers yield large quantities of water in large areas of the state. Minor aquifers yield large quantities of water in small areas of the state or small quantities of water in large areas of the state. (These aquifers are identified in Appendix B of the Texas Department of Water Resources Report 238).

Sole-source aquifer—An aquifer designated pursuant to the Safe Drinking Water Act of 1974, §1424(e), which solely or principally supplies drinking water to an area, and which, if contaminated, would create a significant hazard to public health Note. The Edwards Aquifer has been designated a sole-source aquifer by the U.S. Environmental Protection Agency The Edwards Aquifer Recharge Zone is specifically that area delineated on maps in the offices of the executive director.

Storage surface impoundment—A surface impoundment from which all wastes and waste-contaminated soils are removed at the time of closure of the impoundment.

Wetlands—Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions Wetlands generally include swamps, marshes, bogs, and similar areas.

§335.503. Site Selection to Protect Groundwater or Surface Water. The commission may not issue a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility unless it finds that the proposed site, when evaluated in light of proposed design, construction, and operational features, reasonably minimizes possible contamination of surface water and groundwater. In making this determination, the commission shall consider the following factors:

(1) active geologic processes such as flooding, erosion, subsidence, submergence, and faulting;

(2) groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge, and aquifer recharge or discharge conditions;

(3) soil conditions such as stratigraphic profile and complexity, hydraulic conductivity of strata, and separation distance from the facility to the aquifer, and points of discharge to surface water; and

(4) climatological conditions.

§335.504. Unsuitable Site Characteristics.

(a) Storage or processing facilities (excluding storage surface impoundments).

(1) A storage or processing facility (excluding storage surface impoundments) may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A storage or processing facility (excluding storage surface impoundments) may not be located in wetlands.

(3) A storage or processing facility (excluding storage surface impoundments) may not be located on the recharge zone of a sole-source aquifer unless secondary containment is provided to preclude migration to groundwater from spills, leaks, or discharges

(4) A storage or processing facility (excluding storage surface impoundments) may not be located in areas overlying regional aquifers unless

(A) the regional aquifer is separated from the facility by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} centimeters/second (cm/sec.), or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration, or

(B) secondary containment is provided to preclude migration to groundwater from spills, leaks, or discharges

(5) A storage or processing facility (excluding storage surface impoundments) may not be located in areas where soil units(s) within five feet of the containment structure have a unified soil classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec. unless:

(A) secondary containment is provided to preclude migration to groundwater or surface water from spills, leaks, or discharges; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration

(b) Land treatment facilities.

(1) A land treatment facility may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A land treatment facility may not be located in wetlands.

(3) A land treatment facility may not be located in the recharge zone of a sole-source aquifer.

(4) A land treatment facility may not be located in areas overlying regional aquifers unless:

(A) it is an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate of the facility by more than 40 inches and the depth to the regional aquifer is greater than 100 feet from the base of the treatment zone; or

(B) the regional aquifer is separated from the base of the treatment zone by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec., or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A land treatment facility may not be located in areas where soil unit(s) within five feet of the treatment zone have a Unified Soil Classification of GW, GP, GM, GC, SW, SP or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec., unless:

(A) it is in an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate by more than 40 inches; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(c) Waste piles.

(1) A waste pile may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A waste pile may not be located in wetlands.

(3) A waste pile may not be located on the recharge zone of a sole-source aquifer.

(4) A waste pile may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec. or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) secondary containment is provided to preclude pollutant migration to groundwater from spills, leaks, or discharges.

(5) A waste pile may not be located in areas where soil units(s) within five feet of the containment structure have a unified soil classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec. unless:

(A) secondary containment is provided to preclude pollutant migration to groundwater or surface water from spills, leaks, or discharges; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(d) Surface storage impoundments.

(1) A storage surface impoundment may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A storage surface impoundment may not be located in wetlands.

(3) A storage surface impoundment may not be located on the recharge zone of a sole-source aquifer.

(4) A storage surface impoundment may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec. or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) the impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment.

(5) A storage surface impoundment may not be located in areas where the soil unit(s) within five feet of the containment structure have a unified soil classification of GW, GP, GM, GC, SW, SP, or SM, or a hyrdaulic conductivity greater than 10^{-5} cm/sec. unless:

(A) the impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(e) Landfills. Note: Any surface impoundment to be closed as a landfill (where wastes will remain after closure of the impoundment) is subject to the requirements for landfills.

(1) A landfill may not be located in the 100-year floodplain existing prior to site development except in areas with flood depths less than three feet and flood velocities less than three feet/second. Any landfill within the 100-year floodplain must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A landfill may not be located in wetlands.

(3) A landfill may not be located on the recharge zone of a sole-source aquifer.

(4) A landfill may not be located in areas overlying regional aquifers unless:

(A) it is in an area where the average annual evaporation exceeds average annual rainfall by more than 40 inches and the depth to the regional aquifer is greater than 100 feet from the base of the containment structure; or

(B) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec. or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A landfill may not be located in areas where soil units(s) within five feet of the containment structure have a unified soil classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec. unless:

(A) it is an area where the average annual evaporation exceeds average annual rainfall by more than 40 inches; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

§355.505. *Prohibition of Permit Issuance.* The commission shall not issue a permit for a new hazardous waste management facility or an areal expansion of an existing facility if the facility or expansion does not meet the requirements of §335.504 of this title (relating to Unsuitable Site Characteristics).

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

Issued in Austin, Texas, on March 8, 1984.

TRD-842768 Susan Plettman
General Counsel
Texas Department of Water Resources

Earliest possible date of adoption:
April 16, 1984
For further information, please call (512) 475-7841.

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. General Provisions

Child Care Standards

37 TAC §81.39

The Texas Youth Commission proposes amendments to §81.39, concerning the Security Program. The agency is increasing the due process requirements for holding students in the Security Program. The amendments will require a hearing if the student is to be confined beyond 24 hours and will require higher levels of administrative approval the longer the student is confined. In addition, the title "caseworker" has been changed to "dormitory director" to reflect a change in the caseworker's role.

Byron Griffin, assistant executive director for child care, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications to state or local governments or small businesses as a result of enforcing or administering the rule.

Mr. Griffin has also determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rules as proposed is greater assurance that the agency is not violating students' rights when confining them in the Security Program. There is no anticipated economic cost to individuals required to comply with the rule as proposed.

Comments on the proposal may be submitted to Martha K. McCann, Manuals System Coordinator, P.O. Box 9999, Austin, Texas 78766.

The amendments are proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the confinement of a delinquent child under the conditions it believes best designed for the child's welfare and the interests of the public.

§81.39. *Security Program.*

(a) (No change.)

(b) Program requirements.

(1) Institution security unit referrals. Written guidelines for referral to security are known by all staff. **(Person responsible: superintendent.)**

(2) Admissions.

(A) Criteria for admission is limited (Person responsible: Child Care Division):

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

(iv) to deter behavior that creates a substantial disruption of institution programs; **and**

***(v)* to respond to student self-request.**

(B) Admission is authorized by the student's **dormitory director** [caseworker] or an agency approved substitute. (Person responsible: director of security.)

(C) Admission requires completion of all necessary documentation. (Person responsible: **dormitory** director [of security] **or approved substitute.**)

[(D) Due process will be afforded each student at the time of admission. (Person responsible: caseworker.)]

(D)[(E)] Written conditions for release are established at the time of admission. (Person responsible: **dormitory director or approved substitute** [caseworker].)

(3) Confinement.

(A) Confinement beyond 24 hours is **the result of a due process hearing** [approved by the director of security]. (Person responsible: **dormitory** director [of security].)

(B) **Continued confinement requires approval of the superintendent each 24 hours up to 120 hours. (Person responsible: director of security.)** [Confinement beyond 72 hours is justified to the executive director. (Person responsible: superintendent.)]

(C) **Confinement beyond 120 hours requires verbal approval of the director of institutions each 24 hours up to 168 hours. (Person responsible: superintendent.)** [Confinement beyond six days is justified to the executive director. (Person responsible: superintendent.)]

(D) **Confinement beyond 168 hours requires written approval of the executive director each 24 hours until release. (Person responsible: director of institutions.)** [Confinement beyond 10 days requires approval of the executive director. (Person responsible: superintendent.)]

(4) **Isolation** [Solitary confinement].

(A) Written policy defines criteria for the use of **isolation** [solitary confinement]. (Person responsible: director of **institutions** [security].)

(B) Students in **isolation** [solitary confinement] are visually monitored every five minutes. (Person responsible: director of security.)

(C) (No change.)

(5) Daily activities.

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

(E) Individual counseling is provided daily. (Person responsible: **dormitory director,** [caseworker]

director of security, psychologist, [and/or] psychiatrist, **and/or medical psychiatric caseworker.**)

[(F) Group counseling occurs daily appropriate to the students' behavior. (Person responsible: group leader.)]

(F)[(G)] Parents and legal guardians may visit between 9 a.m. and 5 p.m. (Person responsible: director of security.)

(G)[(H)] Meals and snacks are provided similar to those offered in the regular treatment program. (Person responsible: director of security.)

(6) **Monitoring** [Security unit]. Written policy and procedure govern the supervision and monitoring of the security unit. (Person responsible: superintendent.)

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

Issued in Austin, Texas, on March 9, 1984.

TRD-842774 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption:
April 16, 1984
For further information, please call (512) 452-8111.

Practice and Procedure

37 TAC §§81.71-81.73

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Youth Commission, 8900 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Youth Commission proposes the repeal of §§81.71-81.73, concerning practice and procedure. The agency is reviewing and clarifying its rules and has determined that these rules are unnecessary.

Byron Griffin, assistant executive director for child care, has determined that there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Mr. Griffin also has determined that for each year of the first five years the repeal is in effect there is no apparent public benefit anticipated as a result of repealing the rule. There is no anticipated economic cost to individuals.

Comments may be submitted to Martha K. McCann, Manuals System Coordinator, P.O. Box 9999, Austin, Texas 78766.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to adopt all policies and make rules appropriate to the proper accomplishment of its functions.

§81.71. Provisions of System for Procedure.
§81.72. Board.
§81.73. Executive Director.

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

Issued in Austin, Texas, on March 9, 1984.

TRD-842798 Ron Jackson
Executive Director
Texas Youth Commission

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For further information, please call (512) 452-8111.

Admission to the Agency

37 TAC §81.102

The Texas Youth Commission (TYC) proposes new §81.102, concerning acceptance of federal offenders. The agency is restructuring some of its rules to improve the clarity and understanding of the TYC's child care system. This rule is currently published as §§81.251-81.259 which are simultaneously being proposed for repeal. There will be no change in the agency's practices as a result of this proposal.

Byron Griffin, assistant executive director for child care, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Griffin also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be increased understanding of the TYC's policies, procedures, and child care practices. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments may be submitted to Martha K. McCann, Manuals System Coordinator, P.O. Box 9999, Austin, Texas 78766

The new section is proposed under the Human Resources Code, §61.042, which provides the Texas Youth Commission with the authority to enter into agreements with the federal government to accept children from the federal court for an agreed compensation.

§81.102. Acceptance of Federal Offenders.

(a) Policy. The Texas Youth Commission (TYC) may accept custody of federal offenders per contract with the Bureau of Prisons. Contracts must be developed in accordance with provisions of 18 United States Code §§4002, 4082, 5013, and 5040. Acceptance of a federal offender is not mandatory.

(b) Procedure.

(1) Definition. A federal offender is a youth committed to the custody of the Attorney General of the United States by a federal court pursuant to 18 United States Code §§5031-5042 as a juvenile delinquent.

(2) Referral to the TYC. The respective federal court must send information about the youth, including the federal court order and a social history, to the Statewide Reception Center.

(3) Acceptance. The superintendent of the reception center has the authority to review the information, decide whether the TYC would have an appropriate program for the youth, and notify the court of his decision.

(4) Transportation to the TYC. If accepted, the youth must be transported to the Statewide Reception Center by the federal court.

(5) Diagnostic evaluation. Federal offenders receive the same diagnostic evaluation as delinquents committed to the TYC under the Texas Family Code, Title 3 (see 90.35 010 of the GOPP).

(6) Program assignment and transportation. The Reception Center assumes responsibility for making an appropriate program assignment to a TYC training school and transporting the youth to the assignment

(7) Services. Services to federal offenders must be in compliance with the contract terms. Generally, federal offenders receive the same services as other delinquents in TYC institutions Federal offenders, however, are not subject to the provisions of the Case Management System.

(8) Parole review. Release on federal parole is decided by federal parole personnel with input from TYC staff.

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

Issued in Austin, Texas, on March 9, 1984

TRD-842797 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 452-8111.

Case Management System for Delinquents

37 TAC §81.112

The Texas Youth Commission proposes amendments to §81.112, concerning definitions. The agency is further defining the classification of repeat offenders to exclude some students who have committed less serious offenses

Byron Griffin, assistant executive director for child care, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local governments or small businesses as a result of enforcing or administering the rule.

Mr. Griffin has also determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is more clarity in the agency's classification system. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Martha K. McCann, Manuals System Coordinator, P.O. Box 9999, Austin, Texas 78766.

The amendments are proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the confinement of a delinquent child under conditions it believes best designed for the child's welfare and the interests of the public.

§81.112. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

Nonviolent offenders—All students who are committed, recommitted, or revoked, with the exception of violators of CINS probation, violent offenders, **and repeat offenders**. A student who is adjudicated delinquent for a violent or nonviolent offense, placed on probation, or given a suspended commitment and subsequently has his probation or suspended commitment revoked for a CINS offense also shall be classified as a nonviolent offender.

Repeat offenders—All students except those recommitted or revoked **and reclassified** for violent offenses who are recommitted or have their parole status revoked **for criminal offenses. Repeat offenders do not include students revoked for criminal offenses where the hearings examiner has found mitigating circumstances or where the criminal offense is victimless.**

Violent offenders—Those students who have been committed, recommitted, reclassified, or revoked **and reclassified** for the commission or attempted commission of one or more of the following crimes against persons. **Offenses (A)-(R)** [subparagraphs (A)-(S)] listed in this definition are defined in the Texas Penal Code, Title 5 and Title 7:

(A)-(S) (No change.)

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

Issued in Austin, Texas, on March 8, 1984.

TRD-842775 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 452-8111.

37 TAC §81.120

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Youth Commission, 8900 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Youth Commission proposes the repeal of §81.120, concerning parole revocation. The agency is proposing to replace this rule with new §81.120 simultaneously proposed for adoption in this issue.

Byron Griffin, assistant executive director for child care, has determined that there will be no fiscal implications to state or local governments or small businesses as a result of the repeal.

Mr. Griffin has also determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of enforcing the repeal is increased and clearer information on how the agency makes decisions concerning the revocation of a student's parole status. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Martha K. McCann, Manuals System Coordinator, P.O. Box 9999, Austin, Texas 78766.

The repeal is proposed under the Human Resources Code, §61 075, which provides the Texas Youth Commission with the authority to order reconfinement or renewed release as often as conditions indicate to be desirable.

§81.120 Parole Revocation.

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

Issued in Austin, Texas, on March 8, 1984

TRD-842777 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 452-8111.

37 TAC §81.120

The Texas Youth Commission proposes new §81.120, concerning parole revocation, to replace the existing §81.120 simultaneously being proposed for repeal. The agency has rewritten this section to make it clearer and has added information on revocations of repeat offenders. In addition, the changes add information about the effect of offenses previously adjudicated during the parole period when making decisions on the student's placement.

Byron Griffin, assistant executive director for child care, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications to state or local governments or small businesses as a result of enforcing or administering the rule.

Mr. Griffin also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is increased information on how the agency makes decisions concerning the revocation of a student's parole status. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Martha K. McCann, Manuals System Coordinator, P.O. Box 9999, Austin, Texas 78766.

The new section is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order reconfinement or renewed release as often as conditions indicate to be desirable.

§81.120. Parole Revocation.

(a) Policy.

(1) The Texas Youth Commission (TYC) parole revocation process serves two purposes:

(A) to systematically examine alleged parolee violations of the Texas Penal Code or of specific conditions of parole through formal fact-finding in a procedure guaranteeing due process; and

(B) to determine whether or not to revoke parole and assign the parolee to a TYC training school based on the findings of fact.

(2) A parole revocation hearing may be held, and parole may be revoked, when a parolee commits any of the following types of violations as listed in GOPP 90.43.010 (§81.112 of this title (relating to Definitions)):

(A) violent offenses;

(B) nonviolent offenses;

(C) Children in Need of Supervision (CINS) offenses, victimless criminal offenses, parole rule violations, or repeated refusal to comply with the student's program as defined in the student's Individualized Program Plan.

(b) Hearing guidelines.

(1) Request a hearing only when the student's parole should be revoked and the student should be assigned to a TYC training school. (Person responsible: parole officer.)

(2) Contact the Legal Division of central office to initiate a hearing. (Person responsible: parole officer.)

(3) Conduct the hearing according to the procedures found in §§97.111-97.126 of this title (relating to Field Placement Revocation Procedure). (Person responsible: hearings examiner.)

(4) If no alleged violations are proven, dismiss the hearing and leave the student on parole. (Person responsible: hearings examiner.)

(c) Disposition. If the findings of fact substantiate the commission of one or more alleged violations, the following rules for disposition apply:

(1) Violent offenses.

(A) No mitigating circumstances. If there are no mitigating circumstances related to the student's commission of a violent offense, the student's parole is revoked, the student is classified as a violent offender, and is returned to a training school.

(B) Mitigating circumstances. If mitigating circumstances related to the student's commission of a violent offense are found, the offense is considered a nonviolent offense and disposition is governed by the criteria

for nonviolent offenders in paragraph (2) of this subsection.

(2) Nonviolent offenses.

(A) Threat to public safety If the student is a threat to the safety of persons or property, the student's parole is revoked and the student is returned to a training school.

(B) No threat to public safety If the student is found not to be a threat to the safety of persons or property, the student may be allowed to remain on parole.

(3) Repeat offenders.

(A) No mitigating circumstances. If the student has committed a criminal offense other than a victimless offense and if the hearings examiner's decision is to revoke parole, the student is designated a repeat offender unless there are mitigating circumstances related to the student's commission of the offense.

(B) Mitigating circumstances. If the student has committed a criminal offense other than a victimless offense and if the hearings examiner's decision is to revoke parole, the student is not designated a repeat offender if the hearings examiner finds that there are mitigating circumstances related to the student's commission of the offense. The hearings examiner designates the student as a nonviolent offender

(4) Other offenses (CINS, victimless offenses, parole rule violations, or IPP violations)

(A) Alternatives exhausted If the hearings examiner finds that the parole officer has exhausted all appropriate and available resources (e.g , TYC halfway houses, residential contract programs, or nonresidential services) and if the student is:

(i) a threat to public safety, the student's parole is revoked and the student is assigned to a training school; or

(ii) not a threat to public safety, the student may be allowed to remain on parole.

(B) Alternatives not exhausted If the hearings examiner finds that appropriate and available alternatives have not been exhausted, the student remains on parole.

(5) Previously adjudicated offenses All offenses which have been previously adjudicated during the parolee's current parole period (both at the present hearing and at any previous hearing during this parole period) are considered during the disposition phase.

(6) Training school placement.

(A) Student formerly in a training school If a student's parole is revoked, and if the student has previously been in a training school, the student is returned to the training school from which he was most recently released.

(B) Student not formerly in a training school. If a student's parole is revoked, and if the student has not previously been in a training school, the student is assigned to such training school as directed by the Department of Institutions.

(C) Former violent offenders If a student's parole is revoked for other than a violent offense, and if the student was last released from a training school for violent offenders, the student shall be assigned to a different training school as directed by the Department of Institutions.

(7) Offenses governing disposition. If more than one offense is proven in a parole revocation hearing, the most serious offense governs disposition.

(8) Out-of-state revocations.

(A) Student on parole from another state. If a student is on parole from another state and is being supervised by the TYC under agreement with the other state, parole revocation and return to the sending state is coordinated by the interstate compact administrator and general counsel.

(B) Texas parolees who commit offenses in another state. If a TYC parolee commits an offense in another state, the return of such student and parole revocation is coordinated by the interstate compact administrator and the general counsel

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

Issued in Austin, Texas, on March 8, 1984

TRD-842778 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption.
April 16, 1984
For further information, please call (512) 452-8111.

37 TAC §81.129

The Texas Youth Commission proposes new §81 129, concerning placement of students in homes of staff The agency proposes this rule to allow student placement with staff who meet agency standards for foster homes and are certified for the care of one to six students Staff members will not be paid for student care

Byron Griffin, assistant executive director for child care, has determined that there will be no fiscal implications to state or local governments or small businesses as a result of enforcing or administering the rule.

Mr Griffin has also determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is assurance that students are placed in the community in homes that meet standards for environmental health and child care. There is no anticipated economic cost to individuals required to comply with the rule.

Comments on the proposal may be submitted to Martha K. McCann, Manuals System Coordinator, P.O Box 9999, Austin, Texas 78766.

The new section is proposed under the Human Resources Code, §61.081(a), which provides the Texas Youth Commission with the authority to release delinquent children in its custody to any placements approved by the commission.

§81.129. Placement of Students in Homes of Staff.

(a) Policy. A Texas Youth Commission (TYC) student who requires an alternative parole placement may be placed in the home of the TYC staff member who has applied to provide a home for the student. Such placements are considered carefully and supervisors and parole officers counsel applying staff members about potential conflicts in their responsibilities.

(b) Criteria.

(1) Staff members must receive the approval of their local chief administrator to apply for approval of their homes for parole placements.

(2) Parole officers use residential contract program certification requirements in approving staff members' homes for placements.

(3) Under no circumstances are agency employees reimbursed by the agency for the care they provide to students placed in their 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 March 8, 1984.

TRD-842779 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 452-8111.

Records and Reports

37 TAC §81.222

(Editor's note. The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Youth Commission, 8900 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Youth Commission proposes the repeal of §81.222, concerning death of a student. The agency is simultaneously proposing a new rule on this subject which contains greater detail than the rule proposed for repeal.

Byron Griffin, assistant executive director for child care, has determined that there will be no fiscal implications for state or local goverment or small business as a result of the repeal.

Mr. Griffin also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal is the availability of more information on the agency's procedures and increased assurance of the agency's accountability. There is no anticipated cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Martha K. McCann, Manuals System Coordinator, P.O. Box 9999, Austin, Texas 78766.

The repeal is proposed under Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to adopt all policies and make rules appropriate to the proper accomplishment of its functions.

§81.222. Death of a Student.

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

Issued in Austin, Texas, on March 8, 1984.

TRD-842780 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption.
April 16, 1984
For further information, please call (512) 452-8111.

The Texas Youth Commission proposes new §81.222, concerning death of a student. The agency is proposing the repeal of its existing section because it lacks detail and clarity. The proposed new section contains more complete information on the procedures used in the event of a student death.

Byron Griffin, assistant executive director for child care, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications to state or local governments or small businesses as a result of enforcing or administering the rule.

Mr. Griffin also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is the availability of more information on the agency's procedures and increased assurance of the agency's accountability. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Martha K. McCann, Manuals System Coordinator, P.O. Box 9999, Austin, Texas 78766.

The new section is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to adopt all policies and make rules appropriate to the proper accomplishment of its functions.

§81.222. Death of a Student.

(a) Policy. The Texas Youth Commission immediately notifies law enforcement and the family of the death of a student. The agency cooperates fully with any external investigation and conducts an internal investigation into the circumstances of the death.

(b) Procedure.

(1) Notification.

(A) Immediately notify your parole supervisor (PS), group home coordinator (GHC), halfway house superintendent, or institution superintendent of the death of a student. (Person responsible: any staff member.)

(B) Immediately report the death to the local law enforcement officials if they do not know of it already. (Person responsible: PS, GHC, or superintendent.)

(C) Immediately notify the student's family if they do not already know of the death. Tell them in person if possible. (Person responsible: chaplain, caseworker, or parole officer.)

(D) Do not move the body unless it is obstructing traffic or will be damaged or lost if not moved. (Person responsible: any staff member.)

(E) Immediately call the administrator of the Parole/Residential Contract Program (RCP), administrator of the Halfway House Program, or director of institutions. If he is unavailable, call the assistant executive director for child care (AED), deputy director, or executive director. (Person responsible: PS, GHC, or superintendent.)

(F) Report as much as you know about the death. (Person responsible: PS, GHC, or superintendent.)

(G) Immediately call the director of community/special services. (Person responsible: administrator of parole/RCP or administrator of halfway houses.)

(H) Immediately call the assistant executive director for child care. (Person responsible: director of institutions or director of community/special services.)

(I) Immediately notify the executive director and the board liaison. (Person responsible: AED.)

(J) Contact the board members and apprise them of the death. (Person responsible: board liaison.)

(K) Forward information to board members as it becomes available. (Person responsible: board liaison.)

(L) Work with the medical examiner and the family as needed to arrange an autopsy. (Person responsible: PS, GHC, or superintendent.)

(M) Make a written request to the medical examiner for a copy of the autopsy. (Person responsible: PS, GHC, or superintendent.)

(N) Make sure a copy of the autopsy is sent to the chief of counseling. (Person responsible: PS, GHC, or superintendent.)

(2) Reports

(A) Investigate the circumstances of the death. (Person responsible: PS, GHC, or superintendent.)

(B) Complete the following Child Care System (CCS) forms using your Child Care Information Systems (CCIS) Manual for instructions. (Person responsible: PS, GHC, or superintendent.)

(i) CCS-047, Discharge Report. For cause of death, fill in the apparent cause if known at this time. Under "remarks," explain the circumstances of the death.

(ii) CCS-021 (institutions) or CCS-150 (halfway houses and parole), Incident Report.

(C) Send the forms and the student master file to your central office department head so it arrives in the central office the next working day. (Person responsible: PS, GHC, or superintendent.)

(D) Begin an Office of Youth Care Investigation (OYCI) if needed. See GOPP 90.45.020. (Person responsible: PS, GHC, or superintendent.)

(E) Review the student master file and send it to the AED the next working day. (Person responsible: director of institutions or director of community/special services.)

(F) Review the master file and send it to the chief of counseling for investigation. (Person responsible: AED.)

(G) Write a Student Death Summary Report. (Person responsible: chief of counseling.) Include:

(i) student identifying information;
(ii) circumstances of death;
(iii) committing offense;
(iv) previous referrals and offenses;
(v) previous placements and adjustments;
(vi) social history summary; and
(vii) conclusions.

(H) Send the Discharge Report, CCS-047 to data processing. (Person responsible: chief of counseling.)

(I) Ensure the automated discharge letter is not sent to the family. (Person responsible: data processing departmental clerk.)

(J) Send the report to the AED within two working days of receipt of the master file. (Person responsible: chief of counseling.)

(K) Send copies of the report to the executive director and board liaison. (Person responsible: AED.)

(L) Send condolences on behalf of the agency and the student's last placement program. (Person responsible: executive director.)

(M) Send copies of the Student Death Summary Report to the board members. (Person responsible: board liaison.)

(N) Send the autopsy results and police reports to the chief of counseling as soon as available. (Person responsible: PS, GHC, or superintendent.)

(O) Place the autopsy and police reports in the master file. (Person responsible: chief of counseling.)

(P) Update the CCS-047 for official cause of death and send it to data processing. (Person responsible: chief of counseling.)

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

Issued in Austin, Texas, on March 8, 1984.

TRD-842781 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption:
April 16, 1984
For further information, please call (512) 452-8111.

37 TAC §81.223

(Editor's note. The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Youth Commission, 8900 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Youth Commission proposes the repeal of §81 223, concerning access to student records. The agency is proposing to replace this rule with a more detailed version as simultaneously proposed, concerning access to student records

Byron Griffin, assistant executive director for child care, has determined that there will be no fiscal implications for state or local government or small businesses as a result of the repeal

Mr Griffin also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is clarity of the agency's rules about the confidentiality of student records. There is no anticipated economic cost to individuals as a result of the repeal

Comments on the proposal may be submitted to Martha K McCann, Manuals System Coordinator, P O Box 9999, Austin, Texas 78766

The repeal is proposed under the Human Resources Code, §61 034, which provides the Texas Youth Commission with the authority to make policies and adopt all rules appropriate to the proper accomplishment of its function.

§81.223 Student Records—Access

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

Issued in Austin, Texas, on March 8, 1984

TRD-842782 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 452-8111.

The Texas Youth Commission (TYC) proposes new §81.223, concerning access to student records. The agency is proposing more detailed sections on access to student records, including the information that the Texas Department of Corrections may now receive some information in accord with the Family Code, Texas Civil Statutes, §51 14(b) The new section replaces existing §81 223 simultaneously proposed for repeal

Byron Griffin, assistant executive director for child care, has determined that there will be fiscal implications as a result of enforcing or administering the rule. The estimated effect on state government is an additional cost of $1,400 in 1985, $1,470 in 1986, $1,550 in 1987, $1,628 in 1988, and $1,800 in 1989. There is no anticipated effect on local government or small businesses

Mr Griffin also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is ensured confidentiality of student records and increased information sharing with the Department of Corrections about former TYC students placed in their facilities. There is no anticipated economic cost to individuals required to comply with the rule

Comments on the proposal may be submitted to Martha K. McCann, Manuals System Coordinator, P O. Box 9999, Austin, Texas 78766.

The new rule is proposed under the Human Resources Code, §61 034, which provides the Texas Youth Commission with the authority to make policies and adopt all rules appropriate to the proper accomplishment of its function

§81 223 Access to Student Records.

(a) Policy In accord with the confidentiality rules of the Family Code, Title 3, and the Human Resources Code, §61 073, the Texas Youth Commission (TYC) limits access to all student records Student master files are marked "confidential" and kept in locked facilities.

(b) Procedure.

(1) Ensure that files or records on individual students are open to inspection only by: (Person responsible: all staff)

(A) the professional staff or consultants of the agency or the institution;

(B) the judge, probation officers, and professional staff or consultants of the juvenile court;

(C) an attorney for the child;

(D) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the work of the agency or institution; or

(E) the Texas Department of Corrections, for the purpose of maintaining statistical records of recidivism, and for diagnosis and classification (Family Code, Texas Civil Statutes, §51 14(b))

(2) Maintain a record in each file of people other than TYC staff who see information from a student master file Include what has been seen or copies by each, and a copy of the authorization for access (Person responsible clerical staff)

(3) Refer people who request information on discharged students to the records custodian in the central office. (Person responsible all staff)

(4) Respond to such requests in accordance with current laws and TYC policies regarding confidentiality of such records (Person responsible records custodian.)

(5) If the record has been sealed by court order, respond that TYC has no record of that student. (Person responsible records custodian)

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

Issued in Austin, Texas, on March 8, 1984

TRD-842783 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 452-8111.

Chapter 89. Institutional Services for Children Committed for Delinquent Behavior

Use of Telephone

37 TAC §89.231

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Youth Commission, 8900 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Youth Commission proposes the repeal of §89.231, concerning use of telephone. This rule is unnecessary because previously published §81.195, concerning student use of the telephone, applies to all TYC programs

Byron Griffin, assistant executive director for child care, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications to state or local government or small businesses as a result of the repeal.

Mr. Griffin also has determined that for each year of the first five years the repeal is in effect there is no apparent public benefit anticipated as a result of the repeal. There is no anticipated economic cost to individuals as a result of the repeal.

Comments may be submitted to Martha K. McCann, Manuals System Coordinator, P.O. Box 9999, Austin, Texas 78766

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to adopt all policies and make rules appropriate to the proper accomplishment of its functions.

§89.231. Policy.

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

Issued in Austin, Texas, on March 9, 1984.

TRD-842799 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption:
April 16, 1984
For further information, please call (512) 452-8111.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcoholism

Chapter 141. General Definitions

40 TAC §141.1

The Texas Commission on Alcoholism proposes an amendment to §141.1, concerning general definitions. The need for the commission to define what an approved program or facility is was necessitated by the passage of Senate Bill 1, 68th Legislature, 1983. The law, in particular, Code of Criminal Procedure, Article 42.12, §6b(2), as amended, requires that evaluations to determine a defendant's drug/alcohol dependence may be conducted by a program or facility approved by the Texas Commission on Alcoholism.

Larry Goodman, Fiscal and Administrative Services Division administrator, has determined that for the first five-year period the rule 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 rule.

Mr. Goodman also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is the definition of a Texas Commission on Alcoholism approved program or facility for the purposes of Senate Bill 1, which will provide a clearer understanding of which prorams or facilities are eligible to conduct alcohol/drug dependency evaluations. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Robby Duffield, Director, Intervention Department, Texas Commission on Alcoholism, 1705 Guadalupe Street, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 5561c, §8, which provide the Texas Commission on Alcoholism with the authority to make rules appropriate to the proper accomplishment of its functions under this Act.

§141.1. Defined Terms. The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise:

Approved program or facility—Programs or facilities approved by the Texas Commission on Alcoholism under the provisions of the Code of Criminal Procedure, Article 42.12, §6b(2), as amended, are those programs or facilities which utilize the Mortimer-Filkens court procedures for identifying problem drinkers screening instrument as part of their evaluation process.

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

Issued in Austin, Texas, on February 29, 1984

TRD-842732 Ross Newby
Executive Director
Texas Commission on Alcoholism

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 475-2577.

Part IV. State Commission for the Blind

Chapter 159. Administrative Rules and Procedures

40 TAC §159.21

The State Commission for the Blind proposes amendments to §159.21, concerning fair hearing procedures for the resolution of client dissatisfaction covering the appeals process, reviews, and hearings. The amendments will protect the rights of applicants or clients to due process in resolving any dissatisfaction with actions by, or inaction of, the State Commission for the Blind.

Pat Westbrook, finance and administrative services director, has determined that for the first five-year period the rule 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 rule

Mr. Westbrook also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of the rule as proposed is the protection of rights to appeals, administrative reviews, and fair hearings in the event the applicant or client is dissatisfied with action or decisions of the State Commission for the Blind There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to John C. Wilson, Executive Director, State Commission for the Blind, P.O Box 12866, Austin, Texas 78711.

The amendments are proposed under federal regulations (34 Code of Federal Regulations §361.84); Rehabilitation Act amendments of 1978 (29 United States Code §701 *et seq*); the Texas Human Resources Code, §91.Q58; and the Texas Administrative Procedures Act, Texas Civil Statutes, Article 6252-13a, which provide the State Commission for the Blind with the authority to adopt rules governing the appeals process to resolve dissatisfaction of applicants or clients of the State Commission for the Blind.

§159.21 Appeals Process, Reviews, and Hearings [Advisement of Rights].

(a) All applicants or recipients of **services** [service] shall be advised early in the casework process of their rights and that procedures are available to obtain an impartial resolution of differences in accordance with the Administrative Procedure and Texas Register Act, §13 and §14.

(b) An applicant or client who is dissatisfied with an action (or inaction) by the commission should notify the counselor/caseworker of the matter in contention.

(c) If the applicant or client wishes to appeal the decision of the counselor/caseworker, the immediate supervisor will review the case and either uphold or overrule the counselor's/caseworker's determination. A written copy of the decision will be sent to the applicant or client.

(d) If the applicant or client wishes to appeal the outcome of the supervisory review, the applicant or client must, within 10 days of the decision, request an informal administrative review, which will be conducted at a time and place convenient to the appellant and by a supervisory staff member who has no direct personal knowledge of the details involved in the matter and who has not participated in the decision being appealed.

(e) The appellant has a right to:

(1) be represented by an attorney, parent or guardian, or any other person, at his/her own expense;

(2) reader services or interpreter services, if three working days' notice is given;

(3) present evidence and provide witnesses in support of the case;

(4) question commission staff members; and

(5) receive a written report of the findings from the person conducting the administrative review within 10 days following the proceeding.

(f) If the applicant or client wishes to appeal the outcome of the administrative review, the applicant or client or a representative must, within 10 days of notification of outcome of the administrative review, file a written request to the commission's executive director for a formalized fair hearing. The fair hearing will be conducted at a time and place convenient to the appellant and by the commission's executive director or a designated hearing officer, pursuant to the Texas Administrative Procedures Act.

(g) The appellant has a right to:

(1) be notified in writing 10 days in advance as to the time and place of the hearing;

(2) be represented by an attorney, parent or guardian, or any other person, at his or her own expense;

(3) reader services or interpreter services, if three working days' notice is given;

(4) present evidence and cross-examine witnesses;

(5) receive a tape recording of the fair hearing; and

(6) receive a written report of the findings from the commission's executive director within 10 days following adjournment of the hearing.

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

Issued in Austin, Texas, on March 9, 1984.

TRD-842842 John C Wilson
Executive Director
State Commission for the Blind

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 475-6810.

Fair Hearing Procedures for Resolution of Client Dissatisfaction

40 TAC §159.22, §159.23

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the State Commission for the Blind, Room 400, Travis County Administration Building, 314 West 11th Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The State Commission for the Blind proposes the repeal of §159.22 and §159.23, concerning fair hearing procedures for the resolution of client dissatisfaction. A new expanded section on fair hearing procedures is being submitted for adoption.

Pat Westbrook, finance and administrative services director, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Mr. Westbrook also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is clarification of the procedures for the resolution of client/applicant dissatisfaction. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to John C. Wilson, Executive Director, State Commission for the Blind, P.O. Box 12866, Austin, Texas 78711

The repeal is proposed under federal regulations (34 Code of Federal Regulations §361 84); Rehabilitation Act amendments of 1978 (29 United States Code §701 *et seq*); the Texas Human Resources Code, §91.058; and the Texas Administrative Procedures Act, Texas Civil Statutes, Article 6252-13a, which provide the State Commission for the Blind with the authority to adopt rules governing the appeals process to resolve dissatisfaction of applicants or clients of the State Commission for the Blind.

§159.22. Areas of Possible Disagreement.
§159.23. Utilization of Procedures.

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

Issued in Austin, Texas, on March 9, 1984

TRD-842843 John C Wilson
Executive Director
State Commission for the Blind

Earliest possible date of adoption
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For further information, please call (512) 475-6810

Chapter 161. Scope of Services and General Clientele

40 TAC §161.3

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the State Commission for the Blind, Room 400, Travis County Administration Building, 314 West 11th Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The State Commission for the Blind proposes the repeal of §161.3, concerning prohibition of discrimination on the basis of race, color, or national origin in the provision of services to the blind and visually impaired This section is being repealed to adopt and publish a more clearly worded statement of discrimination prohibition The new statement is being proposed simultaneously with this proposed repeal.

Pat Westbrook, finance and administrative services director, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Mr. Westbrook also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is clarification, through more precise language, of the Commission for the Blind's intent to comply with the statutes governing nondiscrimination on the basis or race, color, or national origin There is no anticipated economic cost to individuals as a result of the repeal

Comments on the proposal may be submitted to John C. Wilson, Executive Director, State Commission for the Blind, P O. Box 12866, Austin, Texas 78711

The repeal is proposed under Title VI of the Civil Rights Act of 1964 (42 United States Code §2000d *et seq*)

and 45 Code of Federal Regulations Part 80, which provide the State Commission for the Blind with the authority to publish the commission's intent to comply with the provisions of the cited statutes.

§161.3. Discrimination Prohibited.

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

Issued in Austin, Texas, on March 9, 1984.

TRD-842844 John C Wilson
Executive Director
State Commission for the Blind

Earliest possible date of adoption:
April 16, 1984
For further information, please call (512) 475-6810.

The State Commission for the Blind proposes new §161.3, concerning prohibition of discrimination on the basis of race, color, or national origin in the provision of services to the blind and visually impaired.

Pat Westbrook, finance and administrative services director, has determined that for the first five-year period the rule 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 rule.

Mr. Westbrook also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of the rule as proposed is protection of client rights concerning discrimination on the basis or race, color, or national origin. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to John C. Wilson, Executive Director, State Commission for the Blind, P.O. Box 12866, Austin, Texas 78711.

The new section is proposed under Title VI of the Civil Rights Act of 1964 (42 United States Code §2000d *et seq*) and 45 Code of Federal Regulations Part 80, which provide the State Commission for the Blind with the authority to publish the commission's intent to comply with the provisions of the cited statutes.

§161.3. Discrimination Prohibited.

(a) The commission's programs are administered in such a manner that no person in Texas will be denied services on the basis of race, color, or national origin. This policy statement is in compliance with the Civil Rights Act of 1964, Title VI (42 United States Code §2000d *et seq*), and federal regulations (45 Code of Federal Regulations Part 80).

(b) The commission's programs are administered in such a manner that no person in Texas who is otherwise qualified will be denied services on the basis of handicap. This policy statement is in compliance with the Rehabilitation Act of 1973, §504 (29 United States Code §706), and federal regulations (45 Code of Federal Regulations Part 84).

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

Issued in Austin, Texas, on March 9, 1984

TRD-842845 John C. Wilson
Executive Director
State Commission for the Blind

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April 16, 1984
For further information, please call (512) 475-6810.

40 TAC §161.5

The State Commission for the Blind proposes new §161.5, concerning regulations applying to personal information regarding applicants or clients furnished to the State Commission for the Blind. The new section sets out ownership of information and procedures to be followed by commission employees in the handling of all personal information.

Pat Westbrook, finance and administrative services director, has determined that for the first five-year period the rule 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 rule.

Mr. Westbrook also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is the protection of applicants and clients through keeping personal information confidential. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to John C. Wilson, Executive Director, State Commission for the Blind, P.O. Box 12866, Austin, Texas 78711.

The new section is proposed under 34 Code of Federal Regulations §361.49 and the Texas Human Resources Code, §91.059, which provide the State Commission for the Blind with the authority to adopt rules governing the handling of personal and confidential information furnished to the State Commission for the Blind.

§161.5. Confidentiality of Records.

(a) All personal information regarding applicants or clients of vocational rehabilitation services furnished to the commission will be held confidential in accordance with federal regulations (34 Code of Federal Regulations §361.49) and the Texas Human Resources Code, §91.059.

(b) All client information is the property of the commission, and all vocational rehabilitation applicants, clients, providers of services, and interested persons will be informed as to the confidentiality of such information and the conditions for release of information

(c) Confidential information shall not be disclosed, either directly or indirectly, other than in the administration of the commission's VR or VHC programs, unless the informed consent of the client has been obtained in writing. Release of information to any individual, agency, or organization shall be conditioned upon satisfactory assurance that the information will be used only for the purpose for which it is provided, and that it will not be released to any other individual, agency, or organization.

(d) Upon written request, information shall be released to the client, or, as appropriate, to a parent, guardian, or other representative. For purposes in connection with any proceeding or action for benefits or damages, only information relevant to the needs of the client may be released.

(e) In the case of medical or psychological information, the following guidelines apply.

(1) If, in the opinion of the counselor/caseworker, release of such information would clearly not be harmful to the client, the information may be released directly to the client.

(2) If, in the opinion of the counselor/caseworker, release of such information may be harmful to the client, the information may be released to a parent, guardian, or other representative of the client; or to the client only by a physician or a psychologist licensed and certified in the State of Texas.

(f) Information will be released to an organization or individual engaged in research only if the following conditions are met:

(1) the purpose of the research is directly connected with the administration of the commission's VR or VHC programs;

(2) satisfactory assurance is given that the information will be used only for the purpose for which it is provided;

(3) the information will not be released to persons not connected with the study under consideration; and

(4) the final product of the research will not reveal any information that may serve to identify any client without written consent of the client and an authorized representative of the commission.

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

Issued in Austin, Texas, on March 9, 1984

TRD-842846 John C Wilson
Executive Director
State Commission for the Blind

Earliest possible date of adoption
April 16, 1984

For further information, please call (512) 475-6810.

Chapter 163. Vocational Rehabilitation Program

40 TAC §§163.4-163.31

The State Commission for the Blind proposes new §§163.4-163.31, concerning the provision of vocational rehabilitation services to blind and visually impaired individuals. These new sections delineate the services that will be provided, individuals who will be eligible for services, and regulations governing the provision of services.

Pat Westbrook, finance and administrative services director, has determined that for the first five-year period the rules 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 rules.

Mr Westbrook also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is increased awareness of the services available through the Vocational Rehabilitation Program, individuals eligible for services, and regulations governing the provision of those services. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to John C. Wilson, Executive Director, State Commission for the Blind, P.O Box 12866, Austin, Texas 78711.

The new sections are proposed under the Texas Human Resources Code, §91.054; the Rehabilitation Act of 1973 (29 United States Code 706), §504; and federal regulations (45 Code of Federal Regulations Part 84), which provide the State Commission for the Blind with the authority to adopt rules governing the provision of services to blind and visually impaired individuals.

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

Applicant—An individual for whom minimum basic information has been obtained, along with a document requesting vocational rehabilitation services signed by the applicant, the parent, or guardian.

Authorization—Written approval by the counselor to a service provider to authorize the service provider to perform or provide a particular service.

Client—An individual who has been determined to be eligible for services.

Commission—The State Commission for the Blind.

Counselor—An employee of the commission designated to provide services to a client.

Economic need criteria—The criteria by which the commission determines the applicant's or client's economic status and by which the counselor determines whether or not the commission may purchase the necessary services.

Eligibility for services—The determination that the applicant has met the criteria of the Vocational Rehabilitation Program and services may be provided under the rules set forth in this chapter.

Handicap too severe—The individual is too severely handicapped to benefit from vocational rehabilitation services in terms of employability.

Legal blindness—A visual acuity of 20/200 or less in the better eye with best correction, or a visual field no greater than 20 degrees in the better eye.

Referral—An individual who has been referred to the Vocational Rehabilitation Program for services.

Secondary disability—A disability which may be either associated with or unrelated to the visual condition, but is less significant than the visual condition.

Similar benefits (alternative resources)—Those resources which may be available to help meet the cost of services provided to an individual.

VR Program—The Vocational Rehabilitation Program of the commission.

Visual disability—The limiting, or possible future limiting, of the functional ability of an individual due to a significant visual loss, or a potentially significant visual loss due to an eye condition being progressive in nature as documented by medical evidence.

Vocational rehabilitation (VR) services—Services designed to assist the visually impaired individual to become employable.

§163.5. Eligibility for Vocational Rehabilitation Services.

(a) The primary purpose of determining eligibility is to identify those visually disabled persons who may be served with Vocational Rehabilitation (VR) Program funds. The intent is to provide such persons an opportunity to reach a level of independence which will promote employment potential consistent with each individual's capacity, interest, and ability.

(b) The VR counselor has the sole responsibility for determining an individual's eligibility for VR services or for extended evaluation services, or the individual's ineligibility for VR services.

(c) Eligibility for VR services is based on two criteria. There must be:

(1) the presence of a physical or mental disability (including a visual condition) which, for the individual, constitutes or results in a substantial handicap to employment; and

(2) a reasonable expectation that VR services will benefit the individual in terms of employability.

(d) Employability is defined as the ability to achieve a realistic vocational goal, or the determination that the provision of VR services is likely to enable an individual to enter, or retain, employment in:

(1) the competitive labor market;

(2) the practice of a profession;

(3) self-employment

(4) the Business Enterprises Program;

(5) homemaking;

(6) farm or family work (including work where payment is in kind);

(7) sheltered employment;

(8) homebound employment; or

(9) other employment.

(e) A visual disability is a handicap to employment if it is the direct cause of or related to interference with suitable employment.

(f) If a person is hospitalized at the time of referral and prior to making application for services, then the counselor may purchase medical records to determine eligibility, but may not purchase medical services. Upon hospital release of an eligible client, services may be provided in accordance with other criteria of the VR Program.

(g) The following are exceptions to the provision of services to any individual who resides in the state.

(1) Immigrant aliens. Individuals admitted for the purpose of permanent residence must possess a valid Alien Registration Card (I-151) issued by the United States Immigration and Naturalization Service before they may be accepted for VR services.

(2) Nonimmigrant aliens. Individuals admitted for a particular purpose and time period are expected to return to their home country upon completion of the particular purpose or time period, thus would not be eligible for VR services.

(3) Students. Individuals with student visas (such as F1 and J1) are admitted to the United States for the sole purpose of education, with no authority to work except in relation to their academic programs, and would not be eligible for VR services.

(4) Individuals with Temporary Registration Card I-94, or other evidence of status. The card will indicate whether work is permitted under conditions of the visa, and a decision on eligibility for VR services is made accordingly.

(5) Illegal aliens. Individuals present in the United States without legal status are not eligible for VR services.

(6) Institutionalized individuals. Any individual who resides in an institution such as a state school, state hospital, or prison, and who is not expected to be released within 30-90 days, will not be considered as having met the second eligibility criterion and cannot receive services until release is imminent.

§163.6. Eligibility for Extended Evaluation Services.

(a) There are two criteria for eligibility for extended evaluation services. They are:

(1) the presence of a visual disability which, for the individual, constitutes or results in a substantial handicap to employment; and

(2) an inability to make a determination that VR services might benefit the individual in terms of employability unless there is an extended evaluation to determine rehabilitation potential.

(b) Any or all rehabilitation services may be provided to an individual certified for extended evaluation services except:

(1) job placement;

(2) occupational tools and licenses;

(3) on-the-job training; and

(4) vocational training.

(c) The purpose of providing VR services in extended evaluation is to assess their effect on the individual in terms of employability.

(d) A review of the Individualized Written Rehabilitation Program (IWRP) must be completed at least every 90 days.

§163.7. Ineligibility. When an applicant for VR services has been determined, on the basis of the preliminary diagnostic study, to be ineligible because of a finding that he or she cannot be expected to achieve a vocational goal, the ineligiblity determination will be reviewed within 12 months. This review need not be conducted in situations where the individual has refused the review; the individual is no longer in the state; the individual's whereabouts are unknown; or the individual's medical condition is rapidly progressive or terminal.

§163.8. Economic Need.

(a) The purpose of applying economic need criteria is to determine the portion of service cost, if any, to be paid by the client. The economic need criteria are applied after the eligibility criteria and the order of selection for payment of services have been applied and approved. The individual will be informed of the commission's economic need criteria at the time he or she is in applicant status.

(b) Similar benefits are to be used prior to the expenditure of VR funds.

(c) The provision of services based on economic need will be determined by application of the following table of net monthly resources:

(1) Number of Persons Depending On Family Income — Net Monthly Resources

Number of Persons Depending On Family Income	Net Monthly Resources
1	$ 580
2	$ 900
3	$1,100
4	$1,300
5	$1,500
6	$1,700
7	$1,900
8	$2,100

(2) For additional family members, increase net monthly resources by $100 per family member.

(d) clients having a monthly income in excess of the amounts listed in the table are required to pay for all services that are based on the economic need criteria.

(e) The term "net monthly resources" is the net income or take-home pay of an individual after deductions for:

(1) income taxes;

(2) Social Security taxes;

(3) retirement programs; and/or

(4) health insurance premiums; but includes savings bonds and participation in any savings plan.

(f) The following is a list of financial resources which are considered income in the caluculation of net monthly resources:

(1) wage or salary;

(2) contributions from family, individuals, or interested organizations, on a regular basis;

(3) net rentals from property;

(4) scholarships/fellowships;

(5) public assistance payments (including SSI);

(6) assistance from private welfare agencies;

(7) income from stock dividends, bond interest, and/or child support payments;

(8) any available pension, compensation, or insurance benefits, including:

(A) SSDI;

(B) health/hospitalization insurance plan;

(C) workmen's compensation;

(D) veterans' benefits;

(E) Old Age and Survivors Insurance from the Social Security Administration; and

(F) labor union insurance and/or health and welfare benefits.

(g) It is not the policy of the commission to impose a financial hardship upon a client when the requirement for financial participation in the cost of services cannot be met because of unusual and extenuating circumstances. The amounts set fort in the net resources table may be increased in certain extreme hardship cases (defined in subsection (h) of this section), but only if it is to prevent total blindness.

(h) The only condition which may modify net monthly resources is when outstanding medical expenses are incurred as a result of a disability by either the client or the immediate family. The immediate family of the applicant or client is considered to be the applicant/client, his or her parents or legal guardian, and all individuals residing in the household for whom the client, parents, or legal guardian have legal and/or financial responsibility.

(i) Services based upon economic need are:

(1) physical restoration (includes hospitalization, surgery, and related services);

(2) prosthetic devices;

(3) maintenance (excludes maintenance for diagnostic services and Business Enterprises Program training);

(4) transportation (excludes transportation for diagnostic services and rehabilitation center training);

(5) occupational tools;

(6) initial stocks and supplies; and

(7) tuition for all clients not eligible for tuition exemption.

(j) Services not based upon economic need are:

(1) diagnostic and related services (includes maintenance and transportation for diagnostic services);

(2) counseling, guidance, and referral administered by commission staff;

(3) employment assistance services administered by commission staff;

(4) rehabilitation center training (includes transportation to and from the center);

(5) rehabilitation teacher services (includes consumable supplies);

(6) lighthouse facility services;

(7) orientation and mobility training;

(8) reader services;

(9) planned training fees (other than college tuition, fees, and books);

(10) programs at Criss Cole Rehabilitation Center and Sunrise; and

(11) other special projects as designated.

(k) The economic need criteria are applied to the family's income if the client:

(1) is under age 18 and is normally dependent upon parents, foster parents, or a legal guardian or conservator; or

(2) has been adjudged legally incompetent; or

(3) the client's major source of income is from the parents or guardian.

§163.9. Evaluation of Rehabilitation Potential. Each individual referred to the commission shall receive an evaluation of rehabilitation potential. As appropriate, the evaluation will include a preliminary diagnostic study to determine whether an individual is eligible for VR services, and a thorough diagnostic study to determine the nature and scope of needed services.

§163.10. Preliminary Diagnostic Study.

(a) The preliminary diagnostic study is conducted to help determine if an applicant is eligible for VR services or for extended evaluation services, or if the applicant is ineligible for services from the commission.

(b) A recent eye examination, done by an ophthalmologist or an optometrist, and a recent general physical examination, done by a licensed Doctor of Medicine or Doctor of Osteopathy, are minimum requirements for determining eligibility.

(c) In every case where the eye examination indicates legal or total blindness, a screening for potential hearing loss must be obtained.

§163.11 Thorough Diagnostic Study. The thorough diagnostic study is conducted to determine the nature and scope of services needed by the client, and is done only after the individual has been determined eligible for extended evaluation services or for VR services.

§163.12 Counseling, Guidance, and Referral Services.

(a) Counseling and guidance services are provided when an individual is consulted with, or advised, regarding any problem or situation impacting upon (or any facet of) the client's successful vocational functioning.

(b) Referral services are those which assist a client in obtaining a service from other agencies or resources, and are provided when it has been determined that such services are appropriate to the needs of the client.

§163.13 Physical and Mental Restoration Services.

(a) Physical and mental restoration services are planned medical treatment, surgical treatment, psychological or psychiatric treatment, and fitting of an appliance or aid

(b) Whenever practical and desirable, the client's choice of health professionals and appropriate facilities will be honored, as long as they meet the commission's standards for providing the required services.

§163.14 Transportation.

(a) Transportation is defined as necessary travel and related expenses in connection with transporting a handicapped individual for the purpose of providing VR services, and may be furnished at any time during the rehabilitation process.

(b) Transportation provided by a client must be authorized by the counselor prior to travel, and will be reimbursed as follows:

(1) actual expenses for necessary travel; and

(2) payment for food and lodging for actual expenses not to exceed the state per diem rate.

(c) The client must provide a statement noting starting point and destination and the number of miles traveled.

§163.15. Services to Family Members.

(a) Services to family members are provided to one or more of a client's family to increase the effectiveness of VR services to the client.

(b) For purposes of this section, "family members" include:

(1) the client's parent(s), and/or legal guardian(s); and

(2) those individuals living within the same household for whom the client, parent(s), and/or legal guardian(s) have legal and/or financial responsibility.

(c) Services to family members will be planned with the client and designated on the IWRP.

(d) Services to family members will be provided:

(1) if, without such services, the handicapped person would be unable to begin or to continue the rehabilitation program, and the program would be jeopardized or interfered with to the extent that employment would be delayed or could not be achieved;

(2) only after determination of eligibility for VR services or acceptance for extended evaluation;

(3) only to those family members meeting the definition of family as set out in subsection (b) of this section;

(4) only if the services make a material contribution to the client's vocational adjustment or rehabilitation.

§163.16. Orientation and Mobility Services. Orientation and mobility services (training) is the teaching of independent travel skills to a visually impaired individual, so that the individual is able to negotiate in his/her environment safely and efficiently.

§163.17. Reader Services.

(a) Reader services are defined as oral reading or other related services by one individual to a blind person. The material read is that which is otherwise inaccessible to the client, and may be used for academic training or vocational needs. It is the client's responsibility to utilize all other reading sources to the maximum degree possible prior to seeking reimbursement from the commission.

(b) Any legally or totally blind individual securing academic or vocational training is eligible for reader services.

(c) The maximum amounts the commission will allow per month for reader services are calculated according to the number of semester hours the student is taking, whether during a fall/spring or summer semester, and whether the student is an undergraduate or graduate student, as follows:

Number of Semester Hours	Spring/Fall Semester		Summer Semester	
	Undergraduate	Graduate	Undergraduate	Graduate
12+	$150	$150	$150	$150
11	$138	$150	$150	$150
10	$125	$150	$150	$150
9	$113	$150	$150	$150
8	0	$133	$150	$150
7	0	$117	$150	$150
6	0	$110	$150	$150
5	0	0	$125	$150
4	0	0	$100	$150
3	0	0	$ 75	$150
2	0	0	0	0
1	0	0	0	0

(d) The commission cannot pay for reader services rendered by a member of the client's family.

§163.18. Recruitment and Training Services. Recruitment and training services are defined as those services which provide the client with new employment opportunities in the fields of rehabilitation, health, welfare, public safety and law enforcement, and other appropriate public service employment.

§163.19. Occupational Licenses, Tools, Euqipment, and Initial Stocks and Supplies.

(a) Occupational licenses are any licenses, permits, fees for examinations for licenses, or other written authority required by the state, city, or other government unit which must be obtained in order to practice an occupation or enter a small business.

(b) State and municipal tax assessments on occupations are not included.

(c) Tools are limited to those items provided to the client when the IWRP involves entry into a training program or an occupation.

(d) Tools must be needed/required by the client to participate in his/her training program, or for entry into an employment situation. This includes only those tools normally provided visually disabled workers in the same or similar trade or profession.

(e) Initial stocks and supplies are defined as the initial inventory of merchandise or goods necessary for direct resale or for further preparation for direct, resale, either on a wholesale or retail basis, to consumers by a client entering into a self-employment enterprise. The amount of such merchandise is determined as the amount necessary to enable the client initially to open his/her place of business.

(f) The commission retains residual title to all tools, equipment, and unused supplies issued to a client during the rehabilitation process.

(g) The client is required to take reasonable care of the tools, equipment, and supplies and is liable for loss and damage resulting from wrongful act or neglect.

§163.20. Other Goods and Services. Other goods and services are defined as those goods and services identified by the counselor and/or client which can reasonably be expected to benefit the client in terms of employability, and which are not described elsewhere in this chapter.

§163.21. Placement. Placement is the planning and provision of services to prepare a client for work and to assist in obtaining suitable employment.

§163.22. Maintenance.

(a) Maintenance is a supportive VR service in the form of cash payments which can be made either to an individual client or a vendor for basic living expenses such as food, shelter, clothing, or other incidental needs in order for a client to participate in a specific service.

(b) Maintenance may be paid to allow for the client to participate in or recuperate from physical restoration services provided outside the home.

(c) Maintenance payments, not to exceed $25 per month, can be made for:

(1) personal hygiene items;
(2) clothing;
(3) shoes; or
(4) other incidental needs.

§163.23. Training.

(a) Training is a service rendered to clients who require initial or additional knowledge or skills to enter employment consistent with their interests, aptitudes, and abilities, and compatible with their physical and/or mental impairments.

(b) In the case of academic training, if the client is legally or totally blind and is not attending a tax-supported college/university, then tuition and fees will be paid by the commission regardless of economic need of the client. If the college/university has a published rate for training, then tuition and fees may not exceed that rate; if it does not have a published rate, then tuition and fees will be paid at rates in accordance with a written agreement between the college/university and the commission.

(c) The commission will assist a client in academic training for the purpose of reaching a specific goal. This training is limited to a course of study related to the individual's vocational objective and the attainment of a college degree required for entry level employment in that chosen field. This assistance is provided under the following guidelines.

(1) The commisison will assist with the established number of semester hours required for a bachelor's degree. Academic training beyond the first bachelor's degree may be provided only if it is necessary for entry level employment.

(2) Any individual wishing to obtain commission assistance for college training must be able to show a satisfactory record of prior academic achievement and a high level of proficiency in all areas of personal adjustment.

(3) Once admitted to college training, a client is required to maintain and complete a "full time" courseload unless the person is an incoming freshman (first two semesters/quarters), a returning adult (first academic year only), or is in summer school; and must maintain a cumulative "C" average within a given year.

(4) Beynd the freshman year, a "full time" courseload consists of at least 12 semester hours for undergraduate school or nine semester hours for graduate school unless completing work on a thesis or dissertation.

(5) If a client fails to complete a "full time" courseload with a cumulative "C" average, or is suspended by the college/university, then tuition exemption, reader services, and maintenance will be discountinued prior to the start of the next semester/quarter. If the client returns to the school after suspension, the client will be responsible for his or her own costs until a "C" average is sustained for a semester.

(6) Commission probation consists of written warning to the student and observation of the student's performance. Probationary terms must be addressed on the IWRP.

(7) If a client has been suspended, the tuition exemption or payment of fees, maintenance, and reader services may be reinstated once the client's performance improves to the level specified in paragraph (3) of this section. The commission will institute a probationary semester when a student returns to college after suspension. The student must meet the academic level of achievement, as prescribed by the college, to terminate probation. If a student does not meet these terms, academic training services in progress will be suspended. If there are extenuating circumstances that may have hindered the student, the merits of the circumstances may be considered by the counselor and the regional supervisor before suspending services.

(8) The maximum number of course withdrawals allowed a client is 10 per degree. Beyond 10 withdrawals, supervisory approval is required to continue academic services. A client must furnish the counselor with written evidence of completion of coursework originally noted as "incomplete," no later than 12 months following receipt of the grade slip showing the "incomplete," in order to continue to receive academic support Any withdrawal or "incomplete" which drops a student below the full time requirements will result in withdrawal of commission support in the next semester. Exceptions to this will be limited to medical causes for withdrawal or drop, and to circumstances affecting the client's immediate family

(9) The student will be available to meet with the counselor at least once each semester, will submit add or drop slips as changes occur, and will provide grade slips or transcripts to the counselor at the end of each semester.

(10) Academic training will normally be provided through public tax-supported colleges and universities. If a specific curriculum is not available at a public institution (e.g., seminary training), financial assistance by the commission may be provided only after written supervisory approval, up through the assistant director of field services level, has been obtained.

(11) Purchase of equipment for the student is based upon economic need. The equipment must be needed by the student to help maintain academic success so the vocational goal can be met.

(12) It is the client's responsibility to contact the financial aid officer at his/her college or university to determine what grants, loans, or scholarships may be available; to apply for SSI or SSDI; and to complete any necessary paperwork required to apply for such grants, loans, or scholarships. The PELL Grant, like any other similar benefit, must be applied to the educational process prior to the expenditure of commission funds. Services are not to be denied pending receipt of a PELL Grant, but are contingent upon making application if eligible.

(13) Tuition and fee exemption is an exemption from payment of tuition and/or required fees normally charged by a state-supported college or university. Required fees include student service, building use, health center and lab fees, and property deposits not reimbursable to the student. Required fees do not include optional fees such as:

(A) lodging and food costs;

(B) parking fees;

(C) recreation fees;

(D) optional publication fees;

(E) fees created by local bond issues for which the State of Texas does not contribute the cost of retirement;

(F) library penalties for lost, damaged, or overdue publications;

(G) property deposits reimbursable to the client;

(H) any other reimbursable fee or deposit; and

(I) fees for specialized courses or services not normally offered but developed as a result of negotiations between the commission and the educational institution.

(14) Individuals who are clients of the commission and are legally or totally blind or have a high risk of becoming blind due to a specific visual condition, and are recipients of a high school diploma or the equivalent, or have been accepted by the college/university without a high school diploma, are eligible for tuition and fee exemption at any state-supported college or university regardless of whether or not they meet economic need criteria (Texas Education Code, §54.205).

(15) Legally or totally blind students who are eligible for commission services but who do not meet the residency requirements of a particular institution and are not eligible for tuition exemption, will still receive tuition assistance from the commission regardless of economic need of the client; but such payments cannot exceed the tuition paid for a student who does meet the residency requirements.

§163.24. Criss Cole Rehabilitation Center.

(a) Criss Cole Rehabilitation Center (CCRC) is oeprated by the commission for the purpose of providing extensive personal and social adjustment services through short-term evaluation or long-term training.

(b) Long-term training is provided for a period of approximately three months, depending upon the individual needs of the client. Only legally blind clients are eligible for long-term training.

(c) The short-term evaluation program is intended for unusual and exceptional cases for which feasibility of long-term training is being determined. Short-term evaluation is designed to test potential trainees in personal skills, psychometry, psychiatry, low vision, and audiometry. Additional tests may be required depending upon the client's needs and CCRC's capability

(d) To qualify for admission to CCRC, a client must be:

(1) at least 18 years old (17 or high school graduate for the college emphasis program);

(2) able to toilet, dress, and eat without assistance;

(3) self-locomotive (includes wheelchair-bound clients);

(4) physically able to move form point A to point B within CCRC without assistance;

(5) able and willing to learn;

(6) self-controlled (not injurious to self or others, nondestructive of property);

(7) aware of safety hazards within the residential setting;

(8) able to learn safe evacuation routes; and

(9) psychologically and medically prepared for center training, i e , have stable health, be cooperative regarding dietary and medical needs and restrictions, exhibit preliminary adjustment to blindness and/or emotional stress, and have completed all diagnostics, including those requested by the diagnostic and evaluation unit and CCRC staff

§163.25 Sunrise Rehabilitation Program.

(a) The Sunrise Rehabilitaiton Program is operated by the commission to assist individuals who are both blind and mentally retarded to obtain employment and/or live less dependently

(b) Any client is eligible to be considered for services of the Sunrise Rehabilitation Program if he/she has a need for personal, social, and/or vocational training and

(1) at least 16 years of age,

(2) not injurious to self, others, or property;

(3) legally or totally blind or has a progressive visual disability expected to result in blindness; and

(4) medically stable

(c) To be eligible for admission, the client must

(1) meet all eligibility criteria;

(2) have been evaluated and recommended for admission by the commission's diagnostic and evaluation unit; and

(3) have completed all necessary preliminary diagnostics.

§163.26. Rehabilitation Teaching Services. Rehabilitation teaching services are those services rendered by VR teachers of the commission to provide the skills training necessary for a legally or totally blind individual to function as independently as possible at home and in the community, to function in a vocational setting, and to adjust to his/her disabilities.

§163.27. Postemployment Services.

(a) Postemployment services are those services provided after clients have been rehabilitated, to assist the client in maintaining employment. The goal of postemployment services is to help the client reach a level of self-sufficiency, to help with job retention, and to promote job stability.

(b) A client may be considered for postemployment services if he/she has been determined to be rehabilitated, is in need of help in maintaining employment, and has an employment-related problem which does not entail a complex rehabilitation effort or address a new and distinct vocational handicapping condition.

(c) Postemployment services must be incidental to the original handicapping condition, ancillary to the services provided through the client's IWRP, and related to the previously planned vocational goal.

§163.28. Extended Evaluation To Determine Rehabilitation Potential.

(a) Extended evaluation services are provided when there is the presence of a physical or mental disability which is a substantial handicap to employment, and the counselor is unable to make a determination that VR services may benefit the individual in terms of employability

(b) Extended evaluation services will not be provided for a period of more than 18 months.

§163.29. Individualized Written Rehabilitation Program (IWRP)

(a) An Individualized Written Rehabilitation Program is developed for each individual eligible for VR services and for each individual being served under extended evaluation to determine rehabilitation potential. The IWRP is developed jointly by the counselor and the client, and a copy of the program is provided to the client.

(b) The counselor will review the IWRP at least annually.

(c) The commission adopts by reference commission Form CB-8A and Form CB-8B. These forms are used for a written record of the IWRP to document all phases of the client's rehabilitation process as developed by the VR counselor and the client. The forms are available for viewing at any district office of the commission and the central office located at 314 West 11th Street in Austin.

§163.30. Order of Selection for Payment of Services.

(a) An order of selection is the priority assigned to categories of visual disability for payment of services, and is instituted during periods of limited funding to assure that the most severely visually handicapped persons receive all services, or as many as possible, toward accomplishment of their vocational goals.

(b) Eligibility for services must be determined before applying the order of selection.

(c) A service that can be paid for from alternative resources (similar benefits) will be provided to the client regardless of the order of selection.

(d) An expenditure level, based on the amount of funds available, will be established by the executive director.

(e) Expenditure categories by priority, from most restrictive to least restrictive, are:

(1) A—no expenditure of case service funds;

(2) B—expenditure of case service funds only for preliminary diagnostic studies;

(3) C—expenditure of case service funds only for thorough diagnostic studies;

(4) D—expenditure of case service funds authorized for any planned necessary VR service, according to specified sublevel by disability category with best corrected vision, as follows:

(A) the permanently totally and legally blind;

(B) those in imminent danger of becoming totally or legally blind;

(C) blind one eye, visually impaired other eye (between 20/70 and 20/200);

(D) visually impaired both eyes (between 20/70 and 20/200);

(E) blind one eye, other eye good (better than 20/70),

(F) both eyes good (better than 20/70).

(f) A public safety officer whose visually handicapping condition arises from a disability sustained in the line of duty will receive special consideration. Public safety officers who are eligible for services may have them purchased even though they are not permanently totally or legally blind or are not in imminent danger of permanent total or legal blindness.

§163.31. Maximum Affordable Payment

(a) The maximum affordable payment is the maximum amount the commission will pay for a medical or medically-related service, and interpreter services for deaf individuals.

(b) The maximum affordable payment is determined by the funding available to the commission in order that all eligible visually handicapped persons may receive necessary medical or medically-related services and interpreter services for deaf individuals.

(c) A current schedule of the maximum affordable payments is maintained for public view and inspection at the central office of the commission on working days between the hours of 8 a.m. and 5 p.m

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

Issued in Austin, Texas, on March 9, 1984

TRD-842847 John C Wilson
Executive Director
State Commission for the Blind

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 475-6810.

Chapter 169. Visually Handicapped Children's Program

40 TAC §§169.3-169.15

The State Commission for the Blind proposes new §§169.3-169.15, concerning the Visually Handicapped Children's Program of the commission, and the provision of sight-saving and sight-restoration services to visually handicapped children. The proposed new sections will govern the types of services to be provided, the individuals who will be eligible for the services, and methods of providing the services.

Pat Westbrook, finance and administrative services director, has determined that for the first five-year period the rules 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 rules.

Mr. Westbrook also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is increased awareness of the services available through the Visually Handicapped Children's Program, individuals eligible for the services, and regulations governing the provision of those services. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to John C. Wilson, Executive Director, State Commission for the Blind, P.O. Box 12866, Austin, Texas 78711.

The new sections are proposed under the Texas Human Resources Code, §91.028, which provides the State Commission for the Blind with the authority to adopt rules governing the provision of services to visually handicapped children.

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

Authorization—Written approval to authorize a service provider to perform or provide a certain service.

Caseworker—An employee of the commission designated to provide services to the referral or client.

Child/parent—Used interchangeably as child/family, client/parent, or client/family, or otherwise as applicable to the context; means that the child is considered a part of a whole family unit in considering certain eligibility requirements which are contingent upon the family.

Client—An individual who has been determined eligible for services.

Commission—The State Commission for the Blind in Texas.

Economic need criteria—The criteria by which the commission determines the client/family's economic status and by which the caseworker determines whether or not the commission may purchase the necessary services.

Eligibility for services—The determination that the referral has met the criteria of the commission and services may be provided under the rules set forth in this chapter.

Family of referral/client—The parents and/or legal guardian, and all individuals residing in the household for whom the parents and/or legal guardian have legal and/or financial responsibility.

Permanent severe visual loss—Visual acuity or functional loss of 20/70 or less in the better eye with best correction, or a field restriction of 20°.

Referral—An individual who has been referred to the Visually Handicapped Children's (VHC) Program for services.

Rehabilitation services—Services designed to assist the visually impaired child to develop potential for independent living; used interchangeably with habilitative services.

Transportation services—Travel, food, and lodging necessary to the provision of rehabilitation services.

VHC Program—The Visually Handicapped Children's Program of the State Commission for the Blind.

§169.4. Eligibility for Services. The commission is solely responsible for determination of eligibility of an individual for services. Criteria for eligibility are.

(1) Residence. The child and his or her parent(s) or guardian must be living in Texas

(2) Age.

(A) All new referrals must be between the ages of 0-15 years;

(B) referrals aged 16-21 must have a permanent severe visual loss or functional loss of 20/70 or less in the better eye with best correction, or a field restriction of at least 20°

(3) There must be a visual impairment.

§169.5. Services Not Requiring Application of Economic Need Criteria.

(a) Services that do not require that the family meet the economic need criteria are:

(1) substantial counseling and guidance; and

(2) educational support services.

(b) These services are provided only to a child with a permanent severe visual loss.

§169.6. Economic Need Criteria.

(a) The family of the referral or client must meet the economic need criteria of the VHC Program to be eligible for purchase of all services not listed in §169.5 of this title (relating to Services Not Requiring Application of Economic Need Criteria).

(B) Income is defined as:

(1) wages or salary, defined as the pay of an individual before deductions for:

(A) income tax;

(B) Social Security tax;

(C) retirement programs;

(D) health insurance premiums;

(E) union dues,

(F) savings bonds; and

(G) participation in any savings plan;

(2) contributions from family, individuals, or interested organizations on a regular basis;

(3) child support payments;

(4) net rentals from property;

(5) scholarships/fellowships;

(6) public assistance payments (including SSI and AFDC);

(7) assistance from private welfare agencies;

(8) income from stock dividends and bond interest; and

(9) any available pension, compensation, or insurance, including:

(A) SSDI;

(B) health/hospitalization insurance plans;

(C) workmen's compensation;

(D) veteran's benefits;

(E) Old Age and Survivors Insurance (OASI) from the Social Security Administration; and

(F) labor union insurance and/or health and welfare benefits.

(c) Income from self-employment is defined as gross receipts, minus expenses, from one's own business which results in income. Gross receipts include the value of all goods sold and services rendered. Expenses include:

(1) cost of goods purchased;

(2) rent;

(3) utilities;

(4) wages and salaries paid; and

(5) business taxes (not personal income taxes or self-employment Social Security taxes).

(d) The provision of services based on economic need will be determined by application of the monthly income set forth in the following table:

Number of Persons Depending on Family Income	Monthly Income
1	$ 470
2	$ 610
3	$ 750
4	$ 890
5	$1,030
6	$1,170

(e) For additional family members, increase the monthly income amount by $30 per family member.

(f) When an individual receives pay more frequently than once a month, monthly income is determined as follows:

(1) payment weekly—multiply weekly pay by 4.33;

(2) payment bi-monthly—divide by two, then multiply by 4.33.

(g) There are no hardship exceptions.

§169.7. Prior Authorization of Services. For services that are to be purchased by the commission, the caseworker must issue authorization on the appropriate form prior to the provision of the service. The commission will not pay for any service provided without prior authorization by the caseworker.

§169.8. Transportation Services. Transportation services are defined as necessary travel, food, and lodging expenses in connection with transporting a visually handicapped child for the purpose of providing rehabilitation services, and must be authorized by the caseworker prior to travel.

(1) Payment for travel is only for the child and a companion for actual expenses of travel.

(2) Payment for food and lodging is only for the child and a companion for actual expenses for food and lodging, and may not exceed the state per diem rate.

§169.9. Purchase of Nonmedical Diagnostic Evaluations. Diagnostic evaluations including audiological, psychological, low vision, and orientation and mobility may be purchased only for a child with a permanent severe visual loss.

§169.10. Eye Treatment Services.

(a) Eye treatment is provided for a child to eliminate or reduce limitations on the functioning of the child imposed by the disabling eye condition, based on the written recommendation of an ophthalmologist or optometrist.

(b) Eye treatment includes:

(1) surgery or treatment;

(2) hospitalization;

(3) anesthesia subordinate to surgery;

(4) drugs and supplies incidental to surgery and/or treatment; and

(5) prostheses.

(c) Eye treatment will not include glasses or lenses if the only eye problem is a refractive error in which the uncorrected visual acuity is 20/70 or better in both eyes.

§169.11. In-Patient Care. The commission will not pay for in-patient care (hospital and professional services) when the child is referred to the commission after the child has been hospitalized.

§169.12. Counseling, Guidance, and Follow-Up Services.

(a) Counseling, guidance, and follow-up services are provided when a child or parent is in need of consultation or advice regarding any problem or situation impacting upon the child's successful functioning. These services may be provided at any stage of the habilitation process. They are divided into two categories:

(1) routine counseling, guidance, and follow-up; and

(2) substantial counseling and guidance.

(b) Routine counseling, guidance, and follow-up refers to those ongoing services provided at any stage of the rehabilitation process for which eye treatment is the primary service. Examples are:

(1) counseling and guidance in relation to medical recommendations throughout the treatment program;

(2) identification, development, and utilization of resources;

(3) arranging and coordinating services;

(4) follow-up on eye medical treatment.

(c) Substantial counseling and guidance is provided for a child with a permanent severe visual loss and for the parent(s). The purpose of this counseling and guidance is to reduce the impact of the permanent severe visual loss upon the functioning of the child (i.e., socially, emotionally, physically, mentally, educationally). Examples are:

(1) assisting the child/family in understanding their capabilities, aptitudes, and interests throughout the rehabilitation process;

(2) helping the child/family understand their limitations, and health, personal, and social problems related to the child's permanent severe visual loss;

(3) assisting the child/family in understanding the services available from the commission and other resources, and how they can best be obtained and utilized, including resources especially for blind and visually impaired individuals.

§169.13. Skills Development Services. Skills development services may be purchased by the commission only for a child with a permanent severe visual loss, and only to a maximum of $500. These services are those noneducational services which will enhance the functioning of the child in the home environment and community.

§169.14. Educational Support Services. Educational support services are provided only for the child with a permanent severe visual loss.

§169.15. The Individualized Written Service Program (IWSP).

(a) An individualized schedule of services is developed for each child, addressing the particular needs of the child, in a personal contact between the caseworker and the child/parent.

(b) The commission adopts by reference Form CB-8 and Form CB-8-1, for a written record of the IWSP, to document all phases of the rehabilitation process as developed by the caseworker and child/parent.

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

Issued in Austin, Texas, on March 9, 1984

TRD-842848 John C Wilson
Executive Director
State Commission for the Blind

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 475-6810.

Chapter 171. Cooperative Activities

40 TAC §171.2

The State Commission for the Blind proposes amendments to §171.2, concerning alternative resources, to add "similar benefits" to the section title. This addition will clarify the title for those who frequently use or hear the term "similar benefits" to indicate alternative resources and to whom the term "alternative resources" is less familiar

Pat Westbrook, finance and administrative services director, has determined that for the first five-year period the rule as proposed 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 rule as proposed.

Mr. Westbrook also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of the rule as proposed is the use of terminology more familiar to employees and clients of the State Commission for the Blind, and reduction of confusion where "similar benefits" is used in the text of the section There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to John C. Wilson, Executive Director, State Commission for the Blind, P.O. Box 12866, Austin, Texas 78711.

The amendments are proposed under the Rehabilitation Act of 1973, as amended, (29 United States Code §701 *et seq*), which provides the State Commission for the Blind with the authority to consider similar benefits (alternative resources) in providing vocational rehabilitation services to blind and visually impaired individuals, and to adopt rules governing the use of similar benefits.

§171.2. *Alternative Resources (Similar Benefits).* To the extent that individuals eligible for services through the commission are also eligible for other goods or services through other organizations or programs, and to the extent that the goods and services are readily and effectively available through other organizations or programs, the resources of the commission will not be utilized until possibilities for obtaining goods and services for eligible clients through alternative sources **(similar benefits)** have been reasonably explored and diligently pursued by commission staff.

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

Issued in Austin, Texas, on March 9, 1984

TRD-842849 John C Wilson
Executive Director
State Commission for the Blind

Earliest possible date of adoption
April 16, 1984
For further information, please call (512) 475-6810.

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 generally effective immediately upon filing with the *Register*.

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* Notice of the withdrawal will appear in the next regularly scheduled issue of the *Register*. The effective date of the automatic withdrawal will appear immediately following the published notice.

No further action may be taken on a proposal which has been automatically withdrawn. However, this does not preclude a new proposal of an identical or similar rule following normal rulemaking procedures

Withdrawn Rules

TITLE 31. NATURAL RESOURCES AND CONSERVATION
Part III. Texas Air Control Board
Chapter 113. Toxic Materials
Subchapter B. Lead from Stationary Sources
Nonferrous Smelters in El Paso County

31 TAC §113.72

The Texas Air Control Board has withdrawn from consideration for permanent adoption proposed new §113.72, concerning toxic materials. The text of the new section as proposed appeared in the September 9, 1983, issue of the *Texas Register* (8 TexReg 3577).

Issued in Austin, Texas, on March 8, 1984

TRD-842789 Ramon Dasch
Director of Hearings
Texas Air Control Board

Filed March 8, 1984
For further information, please call (512) 451-5711, ext 354

Adopted Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *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.

The document, as published in the *Register*, must indicate whether the rule is adopted with or without changes to the proposal. The notice must also include paragraphs which: explain the legal justification for the rule; how the rule will function; contain comments received on the proposal; list parties submitting comments for and against the rule; explain why the agency disagreed with suggested changes; and contain the agency's interpretation of the statute under which the rule was adopted.

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. The text of the rule, as appropriate, will be published only if final action is taken with alterations to the proposal. The certification information, following the submission, contains the effective date of the final action, the proposal's publication date, and a telephone number to call for further information.

TITLE 13. CULTURAL RESOURCES

Part V. Texas Sesquicentennial Commission

Chapter 51. General Operating Policy

13 TAC §51.6

The Texas Sesquicentennial Commission adopts the repeal of §51 6, without changes to the proposal published in the December 9, 1983, issue of the *Texas Register* (8 TexReg 5082).

By repealing §51.6, the commission replaces the old system with a single committee system, thus providing a faster, more effective response to the requirements of the commission's existing program and statutory responsibilities

The commission replaces the old committee system with a more streamlined and workable single Executive Steering Committee, which will assume the responsibilities of five committees.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 6145-11, §9 and §10, which provide the Texas Sesquicentennial Commission with the authority to promulgate policy to perform its functions

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 February 9, 1984.

TRD-842769 Randy M Lee
Executive Director
Texas Sesquicentennial Commission

Effective date March 29, 1984
Proposal publication date December 9, 1983
For further information, please call (512) 475-1986.

The Texas Sesquicentennial Commission adopts new §51.6, without changes to the proposed text pub-

lished in the December 9, 1983, issue of the *Texas Register* (8 TexReg 5083).

The new section establishes a single committee of the commission which can provide a faster, more effective response to the requirements of the commission's existing program and statutory responsibilities.

A single committee of the commission is a more streamlined and workable single Executive Steering Committee, which will assume the responsibilities of five committees.

No comments were received regarding adoption of the new section

The new section is adopted under Texas Civil Statutes, Article 6145-11, §9 and §10, which provide the Texas Sesquicentennial Commission with the authority to promulgate policy to perform its functions

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 February 9, 1984

TRD-842770 Randy M Lee
Executive Director
Texas Sesquicentennial Commission

Effective date: March 29, 1984
Proposal publication date December 8, 1983
For further information, please call (512) 475-1986.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division Conservation Rules and Regulations

16 TAC §3.8

The Railroad Commission of Texas adopts amendments to §3 8, with changes to the proposed text published in the December 9, 1983, issue of the *Texas Register* (8 TexReg 5085), with a correction of error published in the December 23, 1983, issue of the *Texas Register* (8 TexReg 5440)

The amendments to §3 8 set out standards and permitting procedures for various oil and gas waste disposal practices in the State of Texas The majority of the amendments deal with regulation of pits used to store oil field fluids or to store or dispose of oil and gas wastes. The amendments are necessary to protect surface and subsurface water in the state from pollution and to comply with the requirements of House Bill 2005, 68th Legislature, 1983

The amendments to §3.8 require that all oil and gas waste disposal practices be authorized by the rule or permitted. The amendments authorize several disposal practices and the use of several types of pits. The authorized pits and practices deal mainly with the handling of water base drilling fluid. The amendments require permits for certain types of pits and set out procedures for obtaining a pit or waste disposal permit. The procedures include requirements concerning applications, notice, and hearings for protested applications. Also included are procedures for permit revocation. The amendments also set out procedures for repermitting certain pits previously permitted by the commission

Concerning comments received, one association commenting on the proposed amendments prepared a substitute rule and suggested that the commission adopt the substitute rule rather than the commission proposal A number of people expressed support for this substitute rule. Because of the length of the commission proposal and the suggested substitute rule, it is difficult to determine every manner in which the two proposals differ However, the substitute rule's basic premise is that the commission should not regulate an activity if it does not cause pollution.

The commission received a number of comments asking for clarification of the proposed amendments. Most of these comments asked that certain definitions be added or changed so that it would be clear that certain types of pits were covered by the rule Some comments asked that the term "dewater" be defined. Other comments asked for slight wording changes to make the intent of the rule clear

Several comments were received regarding proposed §3.8(d)(4)(C), which authorizes the use of basic sediment pits under certain conditions. Some persons suggested that the commission authorize the use of basic sediment pits as blowdown pits, and that basic sediment pits be used to dispose of saltwater. The commission also received comments suggesting that the maximum surface area covered by a basic sediment pit be specified

The commission received several comments complaining of the requirement in §3 8(d)(1) that the disposal of all oil and gas wastes be permitted or authorized by rule The comments argued that the disposal of certain wastes should not be regulated because their disposal was unlikely to cause pollution

The commission received comments that the chloride limitation in proposed §3 8(d)(3)(B) (now §3.8(d)(3)(C)), relating to landfarming drilling fluid should be raised from 3,000 milligrams per liter (mg/l) to 6,100 mg/l.

Several people commented that §3.8(d)(4) should authorize completion fluids to be deposited in reserve pits and mud circulation pits Two people commented that this was particularly true when the reserve pit or mud circulation pit contained at least 6,100 mg/l chloride since the dewatering time for completion pits and such "high salt" reserve pits and mud circulation pits is the same

A number of comments were received concerning various time limits in the proposed amendments. Most

of the comments requested more time for dewatering certain reserve pits (§3.8(d)(4)(G)(ii)(II)) and for dewatering and backfilling completion/workover pits (§3.8(d)(4)(G)(ii)(III)). Some comments requested that emergency permits (§3.8(d)(6)(F)) be valid for longer than 15 days.

One person commented that the commission should recognize the need for pits to dispose of "dirty saltwater" or saltwater that might plug a disposal well if disposed of in such a well. The comment suggested that the commission permit such pits.

Proposed §3.8(d)(5)(B) outlines the responsibility of a waste generator for improper disposal of waste by a waste hauler when the generator knew or should have known that the hauler was likely to improperly dispose of the waste. A number of people objected to the concept of a waste generator being responsible for acts of a waste hauler. One person commented that the commission had no authority to adopt such a rule because the Saltwater Haulers Act determined the responsibility of the generator, and the commission's rule was in conflict with that statute.

One person commented that proposed §3.8(d)(6)(B) should specifically state the information which will be required in an application to use a pit or dispose of oil and gas wastes.

Several people made comments concerning proposed §3.8(d)(6)(C) regarding notice of permit applications. Some comments suggested the rule should require publishing notice of an application rather than delivering a copy of the application to various surface owners. Another comment suggested the need for a mechanism for publishing notice when an applicant was unable to locate all persons entitled to personal notice. One person felt more than 15 days' notice should be given.

In commenting on the proposal concerning minor permits (§3.8(d)(6)(G)), one person suggested that the commission should define "minor."

The commission received some comments objecting to the proposed requirement (§3.8(d)(7)) to repermit pits used for the storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters. Another person commented that the proposed rule sets out a time schedule for filing applications for repermitting pits, but fails to set out a deadline by which the commission must have acted on all such applications.

A number of people filed comments objecting to the record keeping requirements of proposed §3.8(g). The comments stated that the records required of the water producer in §3.8(g)(1) were slightly different than the records required of the water hauler in §3.8(f). The comments pointed out that if these records were different, a producer might not be able to comply with §3.8(g) by just keeping copies of the hauler's run tickets as envisioned by §3.8(g)(2). Several people commented that the rule should require the hauler to give a copy of his records to the water producer. However, one person commented that the hauler should not be required by rule to give a copy of his records to the water producer.

Since most people commenting on the proposed amendments only commented on a portion of the section, it is impossible to tell how they felt about the rest of the section. Most comments received commented unfavorably on a portion of the rule. However, if a person commented favorably (or unfavorably) on only a few portions of the section, it cannot be assumed that the person was totally in favor of (or against) the whole rule. Even the person who submitted a substitute rule cannot be regarded as totally opposed to the section since certain provisions of the commission's proposal were included in the substitute rule. Therefore, people commenting on the section have not been listed as being in favor of or against the section but only as commenting on the section. Alice Specialty Company, Inc., Amoco Production Company U.S.A., Cities Service Oil and Gas Corporation; Conoco, Inc., Delta Drilling Company, Diamond Shamrock Corporation, Exxon Company, U.S.A., Exxon Pipeline Company, Gas Processors Association, International Petroleum Corporation, Mesa Petroleum Company, Miller and Associates Consulting Engineers, Inc., The Permian Corporation, Phillips Petroleum Company; Pogo Producing Company, Sierra Club, Lone Star Chapter, Sun Exploration and Production Company; Texaco, U.S.A., Texas Eastern Products Pipeline Company, Texas Independent Producers and Royalty Owners Association, Texas Mid-Continent Oil and Gas Association, W. B. Hinton Drilling Company, Inc., West Central Texas Oil and Gas Association, and Western Oil Transportation Company, Inc.

The substantive changes made in the amendments finally adopted were as a result of comments received. The commission's reasons for agreeing or disagreeing with comments are as follows.

The commission disagrees with the premise of the substitute rule offered by one association commenting on the commission's proposal. Whether or not an activity actually causes pollution can only be determined after the pollution has occurred. The commission has the duty to prevent pollution, and therefore must regulate activities which might result in pollution.

The commission agrees that the proposed section needed clarification in certain areas. Although the commission did not intend the definitions in §3.8(a) to be comprehensive, the omission of definitions for certain pits led to unnecessary confusion about the coverage of the proposed amendments. Therefore, definitions for fresh makeup water pit and water condensate pit have been added, and definitions for basic sediment pit, collecting pit, flare pit, and skimming pit have been modified. Also, the term "gas plant evaporation pit" has been changed to "gas plant evaporation/retention pit." A definition for the term "dewater" has also been added.

Also for clarification, the commission has subdivided §3.8(d)(4)(A) into clauses *(i)-(v)* and deleted some apparently contradictory and therefore confusing language from §3.8(d)(7)(A) and (C). In §3.8(d)(3)(A),

the commission also clarified which disposal methods are authorized for fresh water condensate.

The commission agrees that the rule should include a surface area limitation for basic sediment pits. Therefore, §3.8(d)(4)(C) has been modified to add a provision that the area covered by such a pit shall not exceed 250 square feet The commission disagrees that basic sediment pits should be used as blowdown pits or for the disposal of free saltwater. Historically, the commission has not approved of saltwater disposal in basic sediment pits Additionally, House Bill 2005 requires that saltwater disposal pits be permitted, and the commission believes basic sediment pits should be authorized by rule rather than permitted. This regulatory approach avoids a large paperwork burden on both the commission and the regulated industry.

The commission disagrees that the disposal of some oil and gas waste should be totally unregulated. However, to the extent that certain wastes are less likely to cause pollution, the commission agrees that the disposal of those wastes can be adequately regulated by restriction in the rule rather than by individual permits To this end, the commission has added a new §3 8(d)(3)(B), which authorizes disposal without a permit of inert and essentially insoluble oil and gas wastes such as concrete and wire, provided the disposal is by a method other than disposal into surface water

The commission disagrees that the chloride level of drilling fluid which can be landfarmed without a permit should be raised from 3 000 mg/l to 6,100 mg/l Such an increase to 6,100 mg/l increases the risk of environmental harm and should only be allowed, if at all, after the commission has had an opportunity to study in detail a permit application to landfarm such saline drilling fluid

The commission disagrees that reserve pits and mud circulation pits should always be used as completion pits. The placement of a small amount of saline completion fluid into a reserve pit containing a large amount of low chloride drilling fluid might make the drilling fluid too salty to dispose of by landfarming. Also, the rationale of the comments for putting completion fluids into "high salt" reserve pits is faulty. While the dewatering time period is the same for both types of pits, the start of that time period comes at different times A "high salt" reserve pit is to be dewatered within 30 days from cessation of drilling while the dewatering of a completion pit is to occur within 30 days of well completion.

The commission disagrees that the dewatering time for reserve pits with chlorides of at least 6,100 mg/l and for completion/workover pits should be more than 30 days Leaving saltwater in such pits might result in the pollution of fresh groundwater However, the commission does agree that the backfilling time for a completion/workover pit can be extended since the major threat of pollution from such a pit is removed when the pit is dewatered. Therefore, §3.8(d)(4)(G)(ii) (III) has been changed to allow 120 days to backfill a completion/workover pit without the need for a showing of good cause and director approval. The commission agrees that an emergency permit may need to last longer than 15 days. Section 3.8(d)(6)(F) has been changed to state that emergency permits are valid up to 30 days. This means an emergency permit may also be issued for any time period short of 30 days.

Saltwater disposal pits may be permitted under the proposed section. However, to obtain such a permit, an applicant must conclusively show that use of the pit cannot cause pollution of surrounding agricultural land nor pollution of surface or subsurface water. The exact showing required by an applicant is set forth in §3.8(d)(6)(A). This showing is required by statute and cannot be changed by commission rule.

The responsibility provision in §3 8(d)(5) is designed to make a generator more careful in selecting the waste handlers with whom he deals The commission believes the provision will help reduce illegal dumping of oil and gas waste The commission disagrees that the Saltwater Haulers Act definitively answers the question of when a waste generator may be held liable for the acts of a waste hauler. The Saltwater Haulers Act does state that a generator may not utilize the services of an unpermitted water hauler. The Act does not state that the generator may not be held liable for improper waste disposal by a hauler The commission has general authority to adopt rules to prevent pollution Section 3 8(d)(5) is a valid exercise of that discretion and does not conflict with the provisions of the Saltwater Haulers Act Instead, §3 8(d)(5) supplements the requirements of the Act

The commission disagrees that the proposed section should specifically state the information required in a permit application Proposed §3 8(d)(6)(B) requires an applicant to use a commission-prescribed application form when it exists. The commission needs the flexibility to change its application forms without need for an accompanying rule change. Under the proposed section, the commisssion cannot permit an activity unless it determines that pollution will not result from the permitted activity Therefore, an application will always need to contain sufficient information for the commission to make that determination

The commission disagrees with the comments suggesting that notice of an application should always be given by publication rather than by personal service Those persons most likely to be affected by an activity should be given notice by personal sevice if possible. However, the commission agrees that if an applicant, after diligent efforts, has been unable to locate persons entitled to notice under the proposed section, then a mechanism should be in place to allow the applicant to publish notice of the application and thereby meet the notice requirements of the section Section 3.8(d)(6)(C) has been modified accordingly The commission disagrees that more than 15 days' notice is necessary. Based on experience with its underground injection control rules, the commission believes 15 days is ample time for a person to protest an applica-

tion. Lengthening the notice period would unduly delay the processing of unprotested applications.

The commission disagrees that the term "minor" in §3.8(d)(6)(G) should be defined. Whether or not the amount of a waste is minor will vary depending on several factors, including the volume of waste, type of waste, disposal technique, and disposal location. Any attempt to define minor would probably omit several situations that should be handled by minor permits, and needlessly limit the commission's efforts to regulate oil and gas waste disposal.

The commission believes that the repermitting of certain pits as set out in §3.8(d)(7) is required by a combination of the provisions of House Bill 2005, 68th Legislature, 1983, and the fact that many existing commission permits do not address all the provisions of House Bill 2005.

The commission agrees that the records required by §3.8(f) and (g) should be sufficiently similar to allow a water producer to comply with §3.8(g) by maintaining information provided to him by a water hauler. Section 3.8(g) has been modified accordingly. The commission did not propose any amendments to the saltwater hauler provisions of §3.8 so the commission cannot consider at this time requiring the water hauler to provide copies of his records to the water producer.

The amendments are adopted under the Texas Natural Resources Code, §§85.201, 85.202, 91.101, and 91.455 (effective September 1, 1983), which provides the Railroad Commission of Texas with the authority to make rules to prevent the waste of oil and gas, to adopt rules to prevent pollution of surface and subsurface water, or to adopt rules concerning pits used to store or dispose of oil field brines.

§3.8. Water Protection.

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

(1) Basic sediment pit—Pit used in conjunction with a tank battery for storage of basic sediment removed from a production vessel or from the bottom of an oil storage tank. Basic sediment pits were formerly referred to as burn pits.

(2) Brine pit—Pit used for storage of brine which is used to displace hydrocarbons from an underground hydrocarbon storage facility.

(3) Collecting pit—Pit used for storage of saltwater prior to disposal at a tidal disposal facility, or pit used for storage of saltwater or other oil and gas wastes prior to disposal at a disposal well or fluid injection well. In some cases, one pit is both a collecting pit and a skimming pit.

(4) Completion/workover pit—Pit used for storage or disposal of spent completion fluids, workover fluids, and drilling fluid, silt, debris, water, brine, oil scum, paraffin, or other materials which have been cleaned out of the well bore of a well being completed or worked over.

(5) Drilling fluid disposal pit—Pit, other than a reserve pit, used for disposal of spent drilling fluid.

(6) Drilling fluid storage pit—Pit used for storage of drilling fluid which is not currently being used but which will be used in future drilling operations. Drilling fluid storage pits are often centrally located among several leases.

(7) Emergency saltwater storage pit—Pit used for storage of produced saltwater for limited period of time. Use of the pit is necessitated by a temporary shutdown of disposal well or fluid injection well and/or associated equipment, by temporary overflow of saltwater storage tanks on a producing lease, or by a producing well loading up with formation fluids such that the well may die. Emergency saltwater storage pits may sometimes be referred to as emergency pits or blowdown pits.

(8) Flare pit—Pit which contains a flare and which is used for temporary storage of liquid hydrocarbons which are sent to the flare during equipment malfunction but which are not burned. A flare pit is used in conjunction with a gasoline plant, natural gas processing plant, pressure maintenance or repressurizing plant, tank battery, or a well.

(9) Fresh makeup water pit--Pit used in conjunction with drilling rig for storage of water used to make up drilling fluid

(10) Gas plant evaporation/retention pit—Pit used for storage or disposal of cooling tower blowdown, water condensed from natural gas, and other wastewater generated at gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants.

(11) Mud circulation pit—Pit used in conjunction with drilling rig for storage of drilling fluid currently being used in drilling operations.

(12) Reserve pit—Pit used in conjunction with drilling rig for collecting spent drilling fluids; cuttings, sands, and silts; and wash water used for cleaning drill pipe and other equipment at the well site. Reserve pits are sometimes referred to as slush pits or mud pits.

(13) Saltwater disposal pit—Pit used for disposal of produced saltwater.

(14) Skimming pit—Pit used for skimming oil off saltwater prior to disposal of saltwater at a tidal disposal facility, disposal well, or fluid injection well.

(15) Washout pit—Pit located at a truck yard, tank yard, or disposal facility for storage or disposal of oil and gas waste residue washed out of trucks, mobile tanks, or skid-mounted tanks.

(16) Water condensate pit—Pit used in conjunction with a gas pipeline drip or gas compressor station for storage or disposal of fresh water condensed from natural gas

(17) Generator—Person who generates oil and gas wastes

(18) Carrier—Person who transports oil and gas wastes generated by a generator. A carrier of another person's oil and gas wastes may be a generator of his own oil and gas wastes.

(19) Receiver—Person who stores, handles, treats, reclaims, or disposes of oil and gas wastes generated by a generator. A receiver of another person's oil and gas wastes may be a generator of his own oil and gas wastes.

(20) Director—Director of the Oil and Gas Division or his staff delegate designated in writing by the director of the Oil and Gas Division or the commission.

(21) Person—Natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) Affected person—Person who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(23) To dewater—To remove the free water.

(24) To dispose—To engage in any act of disposal subject to regulation by the commission including, but not limited to, conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, landfarming, or allowing to seep, or to cause or allow any such act of disposal.

(25) Landfarming—A waste management practice in which oil and gas wastes are mixed with or applied to the land surface in such a manner that the waste will not migrate off the landfarmed area

(26) Oil and gas wastes—Materials to be disposed of or reclaimed which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, or activities associated with underground storage of hydrocarbons. The term oil and gas wastes includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semi-liquid, or solid waste material.

(27) Oil field fluids—Fluids to be used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, or activities associated with underground storage of hydrocarbons. The term oil field fluids includes, but is not limited to, drilling fluids, completion fluids, surfactants, and chemicals used to detoxify oil and gas wastes

(28) Pollution of surface or subsurface water—The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface or subsurface water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(29) Surface or subsurface water—Groundwater, percolating or otherwise, suitable for domestic or livestock use, irrigation of crops, or industrial use, and lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt. navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(b) No pollution. No person conducting activities subject to regulation by the commission may cause or allow pollution of surface or subsurface water in the state.

(c) Exploratory wells. Any oil, gas, or geothermal resource well or well drilled for exploratory purposes shall be governed by the provisions of statewide or field rules which are applicable and pertain to the drilling, safety, casing, production, abandoning, and plugging of wells.

(d) Pollution control.

(1) Prohibited disposal methods. Except for those disposal methods authorized for certain wastes by paragraph (3) of this subsection or subsection (e) of this section, or disposal methods permitted pursuant to §3.9 of this title (relating to Disposal Wells) or §3 46 of this title (relating to Fluid Injection into Productive Reservoirs) (Rules 9 or 46), no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water

(2) Prohibited pits. No person may maintain or use any pit for storage of oil or oil products Except as authorized by paragraph (4) of this subsection, no person may maintain or use any pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, without obtaining a permit to maintain or use the pit. A person is not required to have a permit to use a pit if a receiver has such a permit, if the person complies with the terms of such permit while using the pit, and if the person has permission of the receiver to use the pit. The pits required by this paragraph to be permitted include, but are not limited to, the following types of pits: saltwater disposal pits; emergency saltwater storage pits; collecting pits; skimming pits; brine pits; drilling fluid storage pits (other than mud circulation pits); drilling fluid disposal pits (other than reserve pits or slush pits), washout pits; and gas plant evaporation/retention pits If, after the effective date of this subsection, a person maintains or uses a pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, and the use or maintenance of the pit is neither authorized by paragraph (4) or (7)(C) of this subsection nor permitted, then the person maintaining or using the pit shall backfill and compact the pit in the time and manner required by the director. Prior to backfilling the pit, the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit.

(3) Authorized disposal methods.

(A) Fresh water condensate. A person may, without a permit, dispose of fresh water which has been condensed from natural gas and collected at gas pipeline drips or gas compressor stations, provided the disposal is by a method other than disposal into surface water of the state

(B) Inert wastes A person may, without a permit, dispose of inert and essentially insoluble oil and gas wastes including, but not limited to, concrete, glass, wood, and wire, provided the disposal is by a method other than disposal into surface water of the state.

(C) Low chloride drilling fluid. A person may, without a permit, dispose of the following oil and gas

wastes by landfarming, provided the wastes are disposed of on the same lease where they are generated, and provided the person has the written permission of the surface owner of the tract where landfarming will occur: water base drilling fluids with a chloride concentration of 3,000 milligrams per liter (mg/l) or less, drill cuttings, sands, and silts obtained while using water base drilling fluids with a chloride concentration of 3,000 mg/l or less; and wash water used for cleaning drill pipe and other equipment at the well site.

(D) Other drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by burial, provided the wastes are disposed of at the same well site where they are generated: water base drilling fluids which had a chloride concentration in excess of 3,000 mg/l but which have been dewatered; drill cuttings, sands, and silts obtained while using oil base drilling fluids or water base drilling fluids with a chloride concentration in excess of 3,000 mg/l; and those drilling fluids and wastes allowed to be landfarmed without a permit.

(E) Completion/workover pit wastes A person may, without a permit, dispose of the following oil and gas wastes by burial in a completion/workover pit, provided the wastes have been dewatered, and provided the wastes are disposed of at the same well site where they are generated: spent completion fluids, workover fluids, and the materials cleaned out of the well bore of a well being completed or worked over.

(F) Effect on backfilling A person's choice to dispose of a waste by methods authorized by this paragraph shall not extend the time allowed for backfilling any reserve pit, mud circulation pit, or completion/workover pit whose use or maintenance is authorized by paragraph (4) of this subsection.

(4) Authorized pits A person may, without a permit, maintain or use reserve pits, mud circulation pits, completion/workover pits, basic sediment pits, flare pits, fresh makeup water pits, and water condensate pits on the following conditions:

(A) Reserve pits and mud circulation pits. A person shall not deposit or cause to be deposited into a reserve pit or mud circulation pit any oil field fluids or oil and gas wastes, other than the following:

(i) drilling fluids, whether fresh water base, saltwater base, or oil base;

(ii) drill cuttings, sands, and silts separated from the circulating drilling fluids;

(iii) wash water used for cleaning drill pipe and other equipment at the well site,

(iv) drill stem test fluids; and

(v) blowout preventer test fluids.

(B) Completion/workover pits. A person shall not deposit or cause to be deposited into a completion/workover pit any oil field fluids or oil and gas wastes other than spent completion fluids, workover fluids, and the materials cleaned out of the well bore of a well being completed or worked over

(C) Basic sediment pits. A person shall not deposit or cause to be deposited into a basic sediment pit any oil field fluids or oil and gas wastes other than basic sediment removed from a production vessel or from the bottom of an oil storage tank Although a person may store basic sediment in a basic sediment pit, a person may not deposit oil or free saltwater in the pit The total capacity of a basic sediment pit shall not exceed a capacity of 50 barrels. The area covered by a basic sediment pit shall not exceed 250 square feet.

(D) Flare pits. A person shall not deposit or cause to be deposited into a flare pit any oil field fluids or oil and gas wastes other than the hydrocarbons designed to go to the flare during upset conditions at the well, tank battery, or gas plant where the pit is located A person shall not store liquid hydrocarbons in a flare pit for more than 48 hours at a time

(E) Fresh makeup water pits. A person shall not deposit or cause to be deposited into a fresh makeup water pit any oil field fluids or oil and gas wastes

(F) Water condensate pits A person shall not deposit or cause to be deposited into a water condensate pit any oil field fluids or oil and gas wastes other than fresh water condensed from natural gas and collected at gas pipeline drips or gas compressor stations

(G) Backfill requirements

(i) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, completion/workover pit, basic sediment pit, flare pit, or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule:

(I) Reserve pits and mud circulation pits which contain fluids with a chloride concentration of 6,100 mg/l or less and fresh makeup water pits shall be dewatered, backfilled, and compacted within one year of cessation of drilling operations

(II) Reserve pits and mud circulation pits which contain fluids with a chloride concentration in excess of 6,100 mg/l shall be dewatered within 30 days and backfilled and compacted within one year of cessation of drilling operations.

(III) All completion/workover pits used when completing a well shall be dewatered within 30 days and backfilled and compacted within 120 days of well completion. All completion/workover pits used when working over a well shall be dewatered within 30 days and backfilled and compacted within 120 days of completion of workover operations.

(IV) Basic sediment pits, flare pits, and water condensate pits shall be dewatered, backfilled, and compacted within 120 days of final cessation of use of the pits

(V) If a person constructs a sectioned reserve pit, each section of the pit shall be considered a separate pit for determining when a particular section should be dewatered

(ii) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, or completion/workover pit shall remain responsible for dewatering, backfilling, and compacting the pit within the time prescribed by clause *(i)* of this subparagraph (G), even if the time allowed for backfilling the pit extends beyond the expiration date or transfer date of the lease covering the land where the pit is located

(iii) The director may require that a person who uses or maintains a reserve pit, mud circulation pit, fresh makeup water pit, completion/workover pit, basic sediment pit, flare pit, or water condensate pit backfill the pit sooner than the time prescribed by clause *(i)* of

this subparagraph (G) if the director determines that oil and gas wastes are likely to escape from the pit or that the pit is being used for improper disposal of oil and gas wastes

(iv) Prior to backfilling any reserve pit, mud circulation pit, completion/workover pit, basic sediment pit, flare pit, or water condensate pit whose use or maintenance is authorized by this paragraph (4), the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit

(5) Responsibility for disposal.

(A) Permit required No generator or receiver may knowingly utilize the services of a carrier to transport oil and gas wastes if the carrier is required by this rule to have a permit to transport such wastes but does not have such a permit No carrier may knowingly utilize the services of a second carrier to transport oil and gas wastes if the second carrier is required by this rule to have a permit to transport such wastes but does not have such a permit No generator or carrier may knowingly utilize the services of a receiver to store, handle, treat, reclaim, or dispose of oil and gas wastes if the receiver is required by statute or commission rule to have a permit to store, handle, treat, reclaim, or dispose of such wastes but does not have such a permit No receiver may knowingly utilize the services of a second receiver to store, handle, treat, reclaim, or dispose of oil and gas wastes if the second receiver is required by statute or commission rule to have a permit to store, handle, treat, reclaim, or dispose of such wastes but does not have such a permit Any person who plans to utilize the services of a carrier or receiver is under a duty to determine that the carrier or receiver has all permits required by the Oil and Gas Division to transport, store, handle, treat, reclaim, or dispose of oil and gas wastes

(B) Improper disposal prohibited No generator, carrier, receiver, or any other person may improperly dispose of oil and gas wastes or cause or allow the improper disposal of oil and gas wastes A generator causes or allows the improper disposal of oil and gas wastes if

(i) the generator utilizes the services of a carrier or receiver who improperly disposes of the wastes, and

(ii) the generator knew or reasonably should have known that the carrier or receiver was likely to improperly dispose of the wastes and failed to take reasonable steps to prevent the improper disposal

(6) Permits

(A) Standards for permit issuance. A permit to maintain or use a pit for storage of oil field fluids or oil and gas wastes may only be issued if the commission determines that the maintenance or use of such pit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface waters. A permit to dispose of oil and gas wastes by any method, including disposal into a pit, may only be issued if the commission determines that the disposal will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water. A permit to maintain or use any unlined pit, other than an emergency salt-water storage pit, for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters may only be issued if the commission determines that the applicant has conclusively shown that use of the pit cannot cause pollution of surrounding productive agricultural land nor pollution of surface or subsurface water, either because there is no surface or subsurface water in the area of the pit, or because the surface or subsurface water in the area of the pit would be physically isolated by naturally occurring impervious barriers from any oil and gas wastes which might escape or migrate from the pit. Permits issued pursuant to this paragraph will contain conditions reasonably necessary to prevent the waste of oil, gas, or geothermal resources and the pollution of surface and subsurface waters. A permit to maintain or use a pit will state the conditions under which the pit may be operated, including the conditions under which the permittee shall be required to dewater, backfill, and compact the pit. Any permits issued pursuant to this paragraph may contain requirements concerning the design and construction of pits and disposal facilities, including requirements relating to pit construction materials, dike design, liner material, liner thickness, procedures for installing liners, schedules for inspecting and/or replacing liners, overflow warning devices, leak detection devices, and fences. However, a permit to maintain or use any lined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters will contain requirements relating to liner material, liner thickness, procedures for installing liners, and schedules for inspecting and/or replacing liners

(B) Application An application for a permit to maintain or use a pit or to dispose of oil and gas wastes shall be filed with the commission in Austin The applicant shall mail or deliver a copy of the application to the appropriate district office on the same day the original application is mailed or delivered to the commission in Austin A permit application shall be considered filed with the commission on the date it is received by the commission in Austin When a commission-prescribed application form exists, an applicant shall make application on the prescribed form according to the instructions on such form The director may require the applicant to provide the commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water

(C) Notice The applicant shall give notice of the permit application to the surface owner of the tract upon which the pit will be located or upon which the disposal will take place When the tract upon which the pit will be located or upon which the disposal will take place lies within the corporate limits of an incorporated city, town, or village, the applicant shall also give notice to the city clerk or other appropriate official Where disposal is to be by discharge into a watercourse other than the Gulf of Mexico or a bay, the applicant shall also give notice to the surface owner of each waterfront tract between the discharge point and ½ mile downstream of the discharge point except for those waterfront tracts within the corporate limits of an incorporated city, town, or village. When one or more waterfront tracts within ½ mile of

the discharge point lie within the corporate limits of an incorporated city, town, or village, the applicant shall give notice to the city clerk or other appropriate official. Notice of the permit application shall consist of a copy of the application together with a statement that any protest to the application should be filed with the commission within 15 days of the date the application is filed with the commission. The applicant shall mail or deliver the required notice to the surface owners and the city clerk or other appropriate official on or before the date the application is mailed or delivered to the commission in Austin. If, in connection with a particular application, the director determines that another class of persons, such as offset operators, adjacent surface owners, or an appropriate river authority, should receive notice of the application, the director may require the applicant to mail or deliver notice to members of that class. If the director determines that, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required by this subparagraph (C) to be notified, then the director may authorize the applicant to notify such persons by publishing notice of the application. The director shall determine the form of the notice to be published. The notice shall be published once each week for two consecutive weeks by the applicant in a newspaper of general circulation in the county where the pit will be located or the disposal will take place. The applicant shall file proof of publication with the commission in Austin.

(D) Protests and hearings. If a protest from an affected person is made to the commission within 15 days of the date the application is filed, then a hearing shall be held on the application after the applicant requests a hearing. If the director has reason to believe that a person entitled to notice of an application has not received such notice within 15 days of the date an application is filed with the commission, then the director shall not take action on the application until reasonable efforts have been made to give such person notice of the application and an opportunity to file a protest to the application. If the director determines that a hearing is in the public interest, a hearing shall be held. A hearing on an application shall be held after the commission provides notice of hearing to all affected persons, or other persons or governmental entities, who express an interest in the application in writing. If no protest from an affected person is received by the commission, the director may administratively approve the application. If the director denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the hearings examiner shall recommend a final action by the commission.

(E) Modification, suspension, and termination. A permit granted pursuant to this paragraph (6), or a renewal permit granted pursuant to paragraph (7) of this subsection, or a permit which has been issued by the commission prior to the effective date of this subsection but which does not expire pursuant to paragraph (7) of this subsection, may be modified, suspended, or terminated by the commission for good cause after notice and opportunity for hearing. A finding of any of the following facts shall constitute good cause:

(i) pollution of surface or subsurface water is occurring or is likely to occur as a result of the permitted operations;

(ii) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations;

(iii) the permittee has violated the terms and conditions of the permit or commission rules;

(iv) the permittee misrepresented any material fact during the permit issuance process;

(v) the permittee failed to give the notice required by the commission during the permit issuance process;

(vi) a material change of conditions has occurred in the permitted operations, or the information provided in the application has changed materially.

(F) Emergency permits. If the director determines that expeditious issuance of the permit will prevent or is likely to prevent the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water, the director may issue an emergency permit. An application for an emergency permit to use or maintain a pit or to dispose of oil and gas wastes shall be filed with the commission in the appropriate district office. Notice of the application is not required. If warranted by the nature of the emergency, the director may issue an emergency permit based upon a verbal application, or the director may verbally authorize an activity before issuing a written permit authorizing that activity. An emergency permit is valid for up to 30 days, but may be modified, suspended, or terminated by the director at any time for good cause without notice and opportunity for hearing. Except when the provisions of this subparagraph (F) are to the contrary, the issuance, denial, modification, suspension, or termination of an emergency permit shall be governed by the provisions of subparagraphs (A)-(E) of this paragraph.

(G) Minor permits. If the director determines that an application is for a permit to store only a minor amount of oil field fluids or to store or dispose of only a minor amount of oil and gas waste, the director may issue a minor permit provided the permit does not authorize an activity which results in waste of oil, gas, or geothermal resources or pollution of surface or subsurface water. An application for a minor permit shall be filed with the commission in the appropriate district office. Notice of the application shall be given as required by the director. The director may determine that notice of the application is not required. A minor permit is valid for 30 days, but a minor permit which is issued without notice of the application may be modified, suspended, or terminated by the director at any time for good cause without notice and opportunity for hearing. Except when the provisions of this subparagraph (G) are to the contrary, the issuance, denial, modification, suspension, or termination of a minor permit shall be governed by the provisions of subparagraphs (A)-(E) of this paragraph.

(7) Existing permits and pits.

(A) Existing permits. Each permit to maintain or use a lined or unlined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters, which has been issued by the commission prior to the effective date of this subsection (d), shall ex-

pire 180 days after the effective date of this subsection. Every other permit to store oil field fluids or oil and gas wastes or to dispose of oil and gas wastes, which permit has been issued by the commission prior to the effective date of this subsection (d), shall remain in effect until modified, suspended, or terminated by the commission pursuant to paragraph (6)(E) of this subsection. The permits which will expire pursuant to this paragraph (7) include, but are not limited to, permits for the following types of pits saltwater disposal pits, emergency saltwater storage pits, skimming pits, and brine pits.

(B) Renewal permits Any person holding a permit scheduled to expire pursuant to subparagraph (A) of this paragraph may apply to the commission for renewal of the permit If a person makes timely and sufficient application for renewal of a permit, then, notwithstanding the provisions of subparagraph (A) of this paragraph, the permit shall not expire until final commission action renewing or denying renewal of the permit. An application for renewal of a permit shall be filed with the commission in Austin within 180 days of the effective date of this subsection No notice of the application is required The director may administratively approve an application for renewal of a permit No hearing shall be held on an application for renewal of a permit unless the applicant requests a hearing or the director determines that a hearing is necessary No renewal permit will be issued unless the standards for permit issuance stated in paragraph (6)(A) of this subsection have been met

(C) Operating existing unpermitted pits. If, as of the effective date of this subsection, a person is maintaining or using a pit, which is required by this subsection to be permitted but which was not required to be permitted prior to the effective date of this subsection, then the person maintaining or using the pit may continue to maintain or use the pit for 180 days after the effective date of this subsection If a person makes timely and sufficient application for a permit to maintain or use such an existing but unpermitted pit, then the person may continue to use the pit until final commission action denying the permit An application for a permit shall be considered timely if it is filed with the commission within 180 days of the effective date of this subsection. The issuance or denial of the permit shall be governed by the provisions of paragraph (6) of this subsection. The unpermitted pits, whose use or maintenance is authorized by this subparagraph (C), include, but are not limited to the following types of pits drilling fluid storage pits, gas plant evaporation/retention pits, and washout pits

(D) Backfilling existing pits If, as of the effective date of this subsection, a person is maintaining or using a basic sediment pit which does not meet the 50-barrel size limitation of paragraph (4)(C) of this subsection, then that person shall dewater, backfill, and compact the pit or rebuild the pit to comply with the 50-barrel size limitation within 180 days of the effective date of this subsection Any person who, as of the effective date of this subsection, is maintaining or using a lined or unlined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters, which pit was permitted prior to the effective date of this subsection, shall dewater, backfill, and compact the pit within 270 days of the effective date of this subsection unless the person applies for a renewal permit pursuant to subparagraph (B) of this paragraph. If a person applies for a renewal of a permit to maintain or use a lined or unlined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters, the director may extend the time for dewatering, backfilling, and compacting the pit to up to 90 days after final commission action denying renewal of the permit. If, as of the effective date of this subsection, a person is maintaining or using a pit, which is required by this subsection to be permitted but which was not required to be permitted prior to the effective date of this subsection, then the person maintaining or using the pit shall dewater, backfill, and compact the pit within 270 days of the effective date of this subsection unless the person applies for a permit to maintain or use the pit within the 180-day period allowed by subparagraph (C) of this paragraph. If a person applies for such a permit to maintain or use a previously unpermitted pit, the director may extend the time for dewatering, backfilling, and compacting the pit to up to 90 days after final commission action denying issuance of the permit The director may require that pits required to be backfilled by this subparagraph be dewatered, backfilled, and compacted sooner than the time prescribed by this subparagraph if the director determines that oil and gas wastes are likely to escape from the pit or that the pit is being used for improper disposal of oil and gas wastes.

(e) Pollution prevention (reference Order 20-59,200, effective May 1, 1969).

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

(f) Saltwater haulers.

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

(g) Record keeping.

(1) Produced water. When produced water is hauled by truck from the lease where it is produced to an off-lease disposal facility, the person producing the water shall keep, for a period of two years from the date of water production, the following records:

(A) identity of the property from which the produced water is hauled;

(B) identity of the commission-approved disposal facility to which the produced water is delivered;

(C) name, address, and permit number (WHP No.) of saltwater hauler transporting the water from producing lease to disposal facility; and

(D) volume of produced water transported each day from producing lease to disposal facility by saltwater hauler.

(2) Retention of run tickets. A person may comply with the requirements of paragraph (1) of this subsection by retaining run tickets or other billing information created by the saltwater hauler, provided the run tickets or other billing information contain all the information required by paragraph (1).

(3) Examination and reporting The person keeping any records required by this subsection (g) shall make the records available for examination and copying by members and employees of the commission during reasonable working hours. Upon request of the commission, the person keeping the records shall file such records with the commission.

(h) Penalties. Violations of this section may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the commission. The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.68 of this title (relating to Pipeline Connection and Severance) (Rule 73) for violation of this section.

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

Issued in Austin, Texas, on March 5, 1984

TRD-842825 Mack Wallace, Chairman
Buddy Temple and Jim Nugent, Commissioners
Railroad Commission of Texas

Effective date May 1, 1984
Proposal publication date. December 9, 1983
For further information, please call (512) 445-1186.

TITLE 22. EXAMINING BOARDS
Part IX. Texas State Board of Medical Examiners
Chapter 195. Administrative Sanction Procedure

22 TAC §§195.1-195.4

The Texas State Board of Medical Examiners adopts amendments to §§195 3, with changes to the proposed text published in the January 3, 1984, issue of the *Texas Register* (9 TexReg 35) Sections 195 1, 195 2, and 195 4 are adopted without changes and will not be republished in this issue

The amendments are necessary to take care of certain "housekeeping" changes Further, it was necessary to make a language change allowing the chief executive officer of the agency or the secretary of the board to determine violations subject to the administrative sanction procedure The changes also set out a procedure whereby sanctions may be attended by District Review Committee members

The changes streamline the administrative sanction process and provide for more activity by District Review Committee members

The comments received related only to clarification of the language in §195 3 C Dean Davis of Davis and Davis suggested expanding the language of §195 3(3) to coincide with language in other parts of the section. The suggestions dealt with addition of the word "secretary" and allowance of one or more board members, or District Review Committee members, to serve as board representatives The agency agreed with the comments and made changes to the adopted version.

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

§195.3 Procedure. If the secretary or chief executive officer of the board approves administrative sanction hearing procedure for the resolution of alleged violations of Texas Civil Statutes, Article 4495b, or the rules of the board, the following procedure is to be followed.

(1) The secretary or chief executive officer will notify the licensee in writing of the time, date, and place of the administrative sanction hearing Such notice shall provide sufficient time for the licensee to adequately prepare and arrange for appearance at the site of the hearing but shall not be less than 10 nor more than 40 days following receipt of the notice Such letter of notification shall inform the licensee of the nature of the alleged violation, shall inform the licensee that he or she may be represented by counsel but need not be necessarily so represented, that the licensee may offer testimony of such witnesses as the licensee may desire, that the hearing will be before a hearings officer and one or more representatives of the board or members of a district review committee, and that the licensee may exercise his or her option to have the matter presented by formal complaint in a public hearing before the full board of medical examiners A copy of the board rules relating to the administrative sanction hearing shall be enclosed with the notice of the hearing Notice of the hearing, with enclosures, shall be sent by certified mail, return receipt requested, to the current address of the licensee on file with the Texas State Board of Medical Examiners

(2) (No change)

(3) The administrative sanction hearing will be conducted by a hearings officer who shall explain to the licensee and his or her counsel the provisions of these sections relating to the conduct of the hearing, shall swear each witness, question each witness, and afford all parties to the hearing the opportunity to make such statements as are material and relevant The hearings officer may exclude irrelevant, immaterial, or unduly repetitious evidence The secretary or chief executive officer may designate one or more members of the board or members of a district review committee to serve as board representatives for the hearing

(4) The hearings officer shall not require the parties to the hearing to offer proof of admissibility of documents and may receive and consider such statements as he or she deems relevant and material even though such testimony may be hearsay in nature

(5) (No change)

(6) Minutes of the hearing shall be taken by an employee of the board or, at the direction of the hearings officer, a recording of the testimony may be made in lieu of minutes The minutes or recording, or transcription thereof, shall be for the exclusive use of the board and shall nor be made available to the licensee, his or her attorney, or any other person, unless such minutes, re-

cording, or transcription is to be used in a subsequent disciplinary proceeding

(7) The hearings officer shall exclude from the hearing room all persons except witnesses during their testimony, the licensee, his or her attorney, board members, district review committee members, and board employees.

(8) At the conclusion of the hearing, or as soon thereafter as is practicable, the hearings officer and the board representatives, if any, shall make findings of fact and conclusions of law which shall be recorded and shall make recommendations for resolution or correction of the matters found in violation of the Medical Practice Act, Texas Civil Statutes, Article 4495b, or board rules Such recommendations may include limitation or cancellation of the licensee's authority to practice medicine; limitation or cancellation of the licensee's authority to possess, prescribe, administer, or dispense drugs or medications, limitation or cancellation of hospital privileges; change or limitation of practice setting or practice organization; requirement that the licensee submit to care, counseling, or treatment of physicians designated by the secretary or chief executive officer of the board as a condition for initial, continued, or renewal of license or other authorization to practice medicine, requirement that the person participate in a program of education or counseling prescribed by the secretary or chief executive officer or recommended by the hearings officer, and requirement that the person practice under the direction of a physician designated by the secretary or chief executive officer of the board for a specified period of time

(9) Following the presentation of recommendations by the hearings officer, and with the advice of counsel if licensee is so represented at the hearing, licensee shall either reject or voluntarily accept the recommendations of the hearings officer If the licensee accepts such recommendations, the licensee shall execute as soon thereafter as is practicable such letters, agreements, affidavits, or other documents as are necessary to effect the accomplishment of the voluntary acceptance of the recommendations If the licensee rejects the recommendations of the hearings officer, the matter shall be automatically referred to the Investigation Division for appropriate action

(10) Following acceptance of the recommendations presented by the hearing officer and the execution of the necessary documents as provided in paragraph (9) of this section, a report of the hearing, the findings made by the hearings officer and representatives of the board, and the executed documents shall be submitted to the secretary or chief executive officer of the board who shall approve or disapprove the recommendations and actions taken pursuant to the administrative sanction hearing

(11) If the secretary or chief executive officer approves the actions taken as a result of the hearing, such notifications as are required by Texas Civil Statutes, Article 4495b, and as agreed upon in the affidavit or other document executed by licensee, shall be made

(12) The secretary or chief executive officer, the hearings officer, the District Review Committee members, the board employees, and the board members shall not disclose the nature of the hearing or the results thereof except as required by Texas Civil Statutes, Article 4495b, these sections, or order of a court unless such disclosure is authorized by the licensee or his or her attorney; provided, however, that disclosure shall be made in accordance with the voluntary agreements or affidavits executed by licensee and shall be made to other state or federal agencies requesting such information which have jurisdiction or authorization over aspects of medical practice covered by such limitations or restrictions voluntarily accepted by licensee

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 March 7, 1984

TRD-842753 A Bryan Spires, Jr , M D.
Executive Director
Texas State Board of Medical Examiners

Effective date· March 29, 1984
Proposal publication date: January 3, 1984
For further information, please call (512) 452-1078.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 113. Toxic Materials

Subchapter A. Inorganic Flouride Compounds and Beryllium

31 TAC §§113 1-113.3, 113.8, 113.9, 113.11, 113.13

The Texas Air Control Board (TACB) adopts new Subchapter A, concerning inorganic flouride compounds and beryllium, and amendments to §§113.1-113.3, 113 8, 113 9, 113.11, and 113.13, without changes to the proposed text published in the September 9, 1983, issue of the *Texas Register* (8 TexReg 3573).

The designation for §§113 1-113 13, concerning toxic materials, as Subchapter A, concerning inorganic flouride compounds and beryllium, allows the addition of new Subchapter B, concerning lead from stationary sources The amendments to §§113 1-113.3, 113.8, 113 9, 113 11, and 113 13 make all previous references to the chapter refer instead to the new subchapter designation These amendments are administrative in nature and involve no change in substance

No comments were received concerning adoption of the amendments The Environmental and Community Health Services Section of the El Paso City-County Health Unit supported Subchapter A as proposed. An individual made five suggestions for substantive changes in Subchapter A that are beyond the scope of this hearing proposal

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), re-

quires 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." Brandt Mannchen, who suggested substantive changes beyond the scope of the proposal, is categorized as against The Environmental and Community Health Services Section of the El Paso City-County Health Unit was for the proposal.

Copies of the written comments and the transcript of the hearing are available for inspection at the Texas Air Control Board Austin office, 6330 Highway 290 East, Austin, Texas 78723.

The amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the Texas Air Control Board with the authority to make rules con tent with the general intent and purposes of the Texas Clean Air Act, and to amend any rule or regulation the Texas Air Control Board 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 March 8, 1984

TRD-842785 Bill Stewart, P E
Executive Director
Texas Air Control Board

Effective date: March 29, 1984
Proposal publication date September 9, 1983
For further information, please call (512) 451-5711, ext. 354.

Subchapter B. Lead from Stationary Sources

Nonferrous Smelters in El Paso County

31 TAC §§113.41-113.43, 113.51-113.53, 113.71

The Texas Air Control Board (TACB) adopts new §§113.41, 113 43, 113.51-113 53, and 113.71 with changes, and new §113 42 without changes to the proposed text published in the September 9, 1983, issue of the *Texas Register* (8 TexReg 3575). These new rules are contained in the new undesignated head "Nonferrous Smelters in El Paso County." In addition, the TACB elsewhere in this issue withdraws new §113 72, the proposed text of which was also published in the September 9, 1983, issue of the *Texas Register*

The new rules contained in the undesignated heads concerning nonferrous smelters in El Paso County, alternate controls, and compliance and control plan requirements form new Subchapter B, concerning lead from stationary sources. These new rules are adopted as part of the State Implementation Plan (SIP) for Lead in El Paso County. These new rules, in conjunction with newly adopted revisions to the SIP for Lead in El Paso County, provide additional emission reductions necessary to abate lead in air pollution in El Paso County and to demonstrate attainment of the National Ambient Air Quality Standard (NAAQS) for lead.

New §113.41, concerning maintenance and operation of control equipment, requires the owner or operator of any nonferrous smelter in El Paso County to maintain and operate all equipment used to prevent emissions of particulate matter to the atmosphere in accordance with the best practices in routine use in the field of air pollution control.

New §113.42, concerning areas accessible to the general public, requires the owner or operator of any nonferrous smelter in El Paso County to prohibit access by the general public to certain property. This section is adopted without changes and will not be republished.

New §113.43, concerning control of fugitive dust, requires the control of fugitive dust from roads, outdoor bulk material storage areas, and open unpaved areas for any nonferrous smelter in El Paso County. The new rule requires the paving of plant roads, the minimizing of visible emissions resulting from the use and cleaning of plant roadways, and the documentation of programs to minimize roadway emissions. Also, the new rule requires that water spraying in combination with chemical sealing be used to minimize visible emissions from the outdoor storage of bulk materials containing more than 1.0% lead by weight, the resealing of piles within 24 hours of activity breaking the seal, the documentation of programs to comply with the requirements, and prior approval by the executive director for the procedures to be used. In addition, the new rule requires that a control program be developed and implamented utilizing chemical sealing, water sprays, or other effective methods to minimize visible emissions from most open unpaved areas, that the control program be approved in advance by the executive director, and that documentation of the program's effectiveness be kept Finally, the new rule allows for alternate compliance with some requirements provided certain restrictive conditions are met

New §113 51, concerning materials handling and transfer, requires the owner or operator of any nonferrous smelter in El Paso County to comply with certain provisions concerning the handling and transfer of materials. These provisions include requirements for the control of fugitive emissions of lead sinter and of collected particulate matter containing more than 1.0% lead by weight Control measures include enclosing conveying and transport systems, venting particulate matter through certain air pollution control equipment, and treating collected particulate matter. Requirements include no visible emissions from the transport of collected particulate matter and compliance with vent gas concentration limits for lead from certain control equipment.

New §113 52, concerning smelting of lead, requires the owner or operator of any lead smelter in El Paso County to meet certain requirements. These require-

ments include equipping each blast furnace with an automatic system to control tuyere air flow; equipping each lead blast furnace, lead dross reverberatory furnace, receiving lead kettle, and final dross lead kettle with a ventilation system approved by the executive director to minimize visible emissions; venting the required ventilation systems to the atmosphere only through particulate matter control equipment, complying with vent gas concentration limits from certain control equipment, maintaining and operating all required control equipment to minimize visible emissions, and documenting the compliance with certain control measures

New §113 53, concerning smelting of copper and zinc, requires the owner or operator of any copper or zinc smelter in El Paso County to comply with the following requirements installing a design approved by the executive director on each copper converter, exhausting emissions captured by the secondary hoods through a duct system that is under negative pressure and through a particulate matter control system, maintaining the lead concentration in the gas stream leaving the required control device at 0.001 grain per dry standard cubic foot or less if the device controls only secondary hood emissions or requiring the control device to be at least 95% efficient in reducing lead emissions if the device also controls lead from other sources, venting the gas from the control device to the atmosphere at no less than 230 feet above grade, and submitting a control plan to be approved by the executive director specifying how the required performance shall be verified

New §113 71, concerning lead emission limits for stacks, sets lead emission limits for certain vent gas streams at nonferrous smelting operations existing in El Paso County as of September 9, 1983.

Proposed §113 72, concerning stack height requirements, would have required that certain nonferrous smelter stacks in El Paso County be at least a specified height above grade. Four stacks at the ASARCO, Inc , El Paso Smelter would have been affected. However, the TACB is withdrawing the proposal

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

Three commenters testified concerning proposed §113 41 Two commenters (ASARCO, Inc , and Brandt Mannchen) were against the proposal and one commenter (the El Paso Regional Group of the Sierra Club) was for the proposal

Four commenters testified concerning proposed §113 42 Two commenters (ASARCO, Inc , and the New Mexico Environmental Improvement Division) were against the proposal, and two commenters (Brandt Mannchen and the El Paso Regional Group of the Sierra Club) were for the proposal.

Six commenters testified concerning proposed §113.43. Five commenters (ASARCO, Inc , Region 6 of the U S. Environmental Protection Agency; the City of Dallas Department of Health and Human Services; the New Mexico Environmental Improvement Division; and Brandt Mannchen) were against the proposal, and one commenter (the El Paso Regional Group of the Sierra Club) was for the proposal.

Six commenters testified concerning proposed §113.51. Five commenters (ASARCO, Inc., Region 6 of the U.S. Environmental Protection Agency; the New Mexico Environmental Improvement Division; the City of Dallas Department of Health and Human Services; and Brandt Mannchen) were against the proposal, and one commenter (the El Paso Regional Group of the Sierra Club) was for the proposal.

Six commenters testified concerning proposed §113.52 Four commenters (ASARCO, Inc.; Region 6 of the U.S Environmental Protection Agency; the New Mexico Environmental Improvement Division; and the City of Dallas Department of Health and Human Services) were against the proposal, and two commenters (Brandt Mannchen and the El Paso Regional Group of the Sierra Club) were for the proposal.

Seven commenters testified concerning proposed §113.53. Six commenters (ASARCO, Inc ; the United Steel Workers of America; the City of Dallas Department of Health and Human Services, Region 6 of the U.S. Environmental Protection Agency; the El Paso City-County Health Unit; and Brandt Mannchen) were against the proposal, and one commenter (the El Paso Regional Group of the Sierra Club) was for the proposal.

Six commenters testified concerning proposed §113.71. Five commenters (ASARCO, Inc.; Region 6 of the U.S Environmental Protection Agency; the City of Dallas Department of Health and Human Services; the El Paso City-County Health Unit; and Brandt Mannchen) were against the proposal, and one commenter (the El Paso Regional Group of the Sierra Club) was for the proposal

Five commenters testified concerning proposed §113.72 All five commenters (ASARCO, Inc.; the Environmental Improvement Division; the United Steel Workers of America; the El Paso Regional Group of the Sierra Club, and Brandt Mannchen) were against the proposal and questioned the usefulness or reasonableness of raising the height of the four affected stacks The proposal is withdrawn.

A more complete summary of comments and discussion of issues are given in the following sections. In addition, copies of the written comments and the transcript of the hearing are available for inspection at the Texas Air Control Board Austin office, 6330 Highway 290 East, Austin, Texas 78723.

The summary of comments and evaluation of testimony concerning the proposed rules is organized by section and follows the summary and evaluation concerning general issues and other issues.

Two commenters testified on the rule provisions in general. The El Paso Regional Group of the Sierra Club thanked the TACB for coming to El Paso to receive comments on the proposed rules; it supported and urged speedy adoption of all the proposed rules except §113.72, concerning stack height requirements

ASARCO, Inc , objected to the hearing and suggested that the following are true Without having a contested case hearing, it is a violation of the Texas Administrative Procedure Act to write a regulation that deprives a single entity of property and rights granted by permits or licenses from an agency It was a violation of constitutional due process to proceed without the company's having had access to much of the scientific basis on which the regulatory requirements were proposed The modeling on which the proposed plan and regulation were based was not fully available to ASARCO prior to or at the hearing

The comments on stack height requirements are discussed under §113 72, which contains the pertinent provisions

The Texas Clean Air Act (TCAA), §3 10(a), provides that a rule or regulation adopted by the board may differ in its terms and provisions as between particular conditions, particular sources, and particular areas of the state This provision appears to confer on the board the authority to adopt rules of the type proposed in this matter The staff does not believe that the Administrative Procedure and Texas Register Act, the stated purpose of which was merely to afford minimum standards of uniform practice and procedure for state agencies, to provide for public participation in the rule-making process, to provide adequate and proper public notice of proposed agency rules and agency actions through publication of a state register, and to restate the law of judicial review of agency action, was intended to limit the authority conferred by the TCAA

Regarding the constitutional argument that cross-examination and other adjudicatory procedures are required, the staff believes the authorities are predominately to the contrary The company makes reference to the case of Bunker Hill Company *v* EPA, 572 F 2d 1286 (9th Circuit 1977) The court in that case did in fact instruct that cross-examination be allowed on remand of the proceeding to the Environmental Protection Agency This action, however, followed a determination that the agency's decision on the technical feasibility of certain emission controls was arbitrary and capricious, and did not hold that the failure to allow adjudicative procedures in the initial proceedings was improper Thus, had the agency not acted arbitrarily regarding the substantive matters associated with the case, there seems to be substantial doubt as to whether the failure to allow cross-examination would have vitiated its action Moreover, the court explicitly noted that as a general matter, cross-examination may not be required as a matter of right in such proceedings (572 F 2d 1286 at 1305 note 41)

In addition, ASARCO's position misapplies the APA's definition of "rule " The term is defined in the statute as any statement of "general applicability" that prescribes law or policy. Though certain elements of the rule-making package are limited to ASARCO's operations, the package as a whole is clearly broader in its terms and susceptible of application to others. ASARCO's approach would erroneously read "applicability" to mean "application" as a matter of fact.

Further, ASARCO's position erroneously assumes that this proceeding meets the APA definition of "contested case" which triggers the requested procedural elements "Contested case" is defined as a proceeding in which rights are determined after an "adjudicative hearing." The interests of local governments, civic groups and the public in air quality and NAAQS attainment, and the presence of such general issues as modeling reliability, emissions from Mexico and contributions of lead from motor vehicles and other sources, preclude a mandatory classification of this proceeding as "adjudicative " Anaconda *v* Ruckelshaus, 482 F 2d 1301 (CA10, 1973), Hercules, Inc. *v* EPA, 598 F 2d 91 (CADC, 1978); Utah International, Inc *v* Department of Interior, 553 F.S. 872 (DC Utah, C D 1982) See also Davis *v* City of Lubbock, 326 SW2d 699 (TxSup 1959). It follows that the proceeding could not properly be denominated a "contested case " This is as it should be since application of trial-type procedures as required for contested cases would have effectively prevented the substantial public participation that occurred in this matter

The arguments that ASARCO did not have adequate access to much of the scientific basis and the modeling on which the regulatory requirements were based are largely without merit The scientific and modeling information has been given to ASARCO as it became available To allow adequate time for ASARCO to evaluate and comment on all pertinent materials, the deadline for submitting comments was extended a number of times with the last deadline for comments extended to December 27, 1983

A number of commenters discussed matters that were either not directly related to specific provisions of the proposed rules or were outside the scope of this hearing Two commenters testified on the cost of controls. Three commenters suggested additional controls and other rules beyond those proposed One commenter proposed that a special committee be formed to work on reasonable and effective air pollution control measures for the ASARCO El Paso plant

ASARCO, Inc , stated that although pollution control costs for the ASARCO, Inc , El Paso plant have turned a profitable plant into a marginal one, ASARCO is willing to spend money on effective projects to reduce ambient lead levels ASARCO commented that the ASARCO estimate for the capital cost is $16.5 million compared to the TACB estimate of $9 to $9 5 million and that the ASARCO estimate for the annualized cost for the first year is $26 to $26 5 million compared to the TACB preamble estimate of $14 8 million ASARCO, Inc , and the United Steel Workers of America stated that the funds are not available to pay for all the controls in the proposed rules.

The cost and economic impact of controls are important considerations, but since nonattainment of a NAAQS is involved, the Federal Clean Air Act requires that appropriate controls for attainment be developed Certainly, the most cost-effective combination of controls that will provide for attainment needs to be selected. The cost estimates the staff presented in the preamble to the proposed rules stated that the capital cost estimates should be considered to be accurate within a factor of two or three ASARCO's testimony indicates that the TACB estimates of capital cost and of annualized cost were within a factor of two of the company's estimates.

Several commenters suggested additional controls and rules beyond those proposed The El Paso Regional Group of the Sierra Club and Brandt Mannchen discussed the use of vehicle inspection and maintenance or antitampering programs to aid in reducing lead emissions The Department of Health and Human Services of the City of Dallas strongly urged adoption in any plan for Dallas of a property-line, net-concentration approach for lead similar to the requirements in Regulation I (Chapter 101) for total suspended particulate matter The City of Dallas and Brandt Mannchen each urged consideration of regulating smelter emissions of toxic heavy elements besides lead Brandt Mannchen also supported expanding the lead regulation to statewide applicability

Some of these suggestions may have merit, however, as a matter of fairness and because of the statutory requirements of the Administrative Procedure and Texas Register Act, these suggestions cannot be considered for adoption at this time since they were not proposed and subjected to public scrutiny and comment

The United Steel Workers of America proposed formation of a tri-partite committee comprised of representatives of ASARCO, Inc , the United Steel Workers of America, and government regulatory personnel to work on feasible and effective air pollution control measures for the ASARCO El Paso plant

Under the timetable imposed by EPA in its court agreement with the Natural Resources Defense Council (NRDC), there has been insufficient time to constitute such a committee and have it provide significant input to resolve some of the various pollution control issues giving due weight to the differing perspectives of the interested parties However, the idea deserves consideration as a means to develop any new control measures and to resolve new or unanticipated difficulties with the measures that are adopted

Concerning §113 41, ASARCO, Inc , objected to the "whichever is greater" approach in the proposal because it would establish a standard with which ASARCO believes compliance is impossible The company suggested that it would be liable if a piece of control equipment were not to function as effectively as predicted by the designer or manufacturer Also, the proposal made no provision for deterioration of performance with age ASARCO suggested that the TACB substitute a maintenance standard based on generally accepted air pollution control practices and add rules requiring that certain maintenance records be compiled and maintained. Brandt Mannchen supported proper operation and maintenance (O&M) However, he wanted TACB to detail what proper O&M consists of, and he questioned how, given the wording that is proposed, inspectors could determine the percentage efficiency of equipment to ensure proper operation.

It is true that some control equipment never achieves the control efficiency it was designed to meet However, while there may be some deterioration of control efficiency with age of the equipment, proper maintenance practices can maintain the control efficiency of much equipment with little change. The purpose of the proposal was to require that emission control equipment for particulate matter not be removed and that it be well maintained to minimize emissions There would be substantial difficulty in attempting to determine the control efficiency that the proposed rule would require for each device, and field enforcement would be difficult It would be unwieldy to try to describe in detail in a regulation what constitutes proper operation and maintenance A requirement to use good maintenance practices and to maintain records of the maintenance should be effective and more readily enforceable

Concerning §113 42, ASARCO, Inc., opposed this requirement and suggested that this rule be withdrawn or modified to require only that appropriate actions are taken to prevent extended trespasses The company suggested that it is not necessary to prohibit public access to certain ASARCO property because the predicted post-control exceedance of the national ambient air quality standards (NAAQS) for lead is based on use of a poor model ASARCO stated that use of a more appropriate model would show no exceedance of the lead standard and thus no need for the rule The company commented that even if an exceedance were still predicted, it should not be necessary to erect a fence to prohibit public access because the area is rugged desert terrain and is, for all practical purposes, inaccessible ASARCO stated that under Texas law the posting of "No Trespassing" signs is sufficient to prevent public access The State of New Mexico Environmental Improvement Division commented that there are valid objections to the requirement to enclose totally all ASARCO land by fence rather than to posting signs

Brandt Mannchen suggested that areas that are accessible to the public should be made inaccessible The El Paso Regional Group of the Sierra Club also supported the proposal

Dispersion modeling of estimated ASARCO emissions after application of any of the proposed combinations of controls predicts lead concentrations above the NAAQS on ASARCO property east of IH 10 and west of Mesa Drive The staff estimate of the cost for a fence to prohibit public access was developed and included in the estimated cost of controls as a worst case scenario only If the proposed requirement to pro-

hibit public access can be met by less expensive means such as posting "No Trespassing" signs and be legally enforceable, the regulation as proposed would be complied with.

The proposed new lead rules and the associated control plan for El Paso were developed to provide a lead SIP for El Paso that EPA can approve. The EPA actions taken to disapprove portions of the Missouri Lead SIP because of failure to provide for attainment at all points to which its general public has access (48 Fed Reg 48977) indicate that a proposed SIP would not be approvable by EPA if it allowed public access to an area with a predicted ambient lead level over the standard.

Six commenters testified on the provisions of proposed new §113.43, concerning control of fugitive dust. One commenter supported the proposal, while five commenters had reservations concerning certain requirements for no visible emissions Two commenters expressed opposing views on the requirement to pave all roads, while one of these commenters additionally opposed the provisions concerning outdoor bulk material storage areas Differing views were also expressed by three commenters concerning the requirement that certain areas have complete vegetational cover, with two commenters opposing or expressing reservations concerning the provision and one commenter supporting it. Finally, two commenters discussed various implications of the provisions concerning exemptions or alternate requirements.

The El Paso Regional Group of the Sierra Club generally supported the proposed rule.

The EPA commented that for a "no visible emissions" standard to be fully acceptable to EPA, it would need to include a test method. The EPA also suggested that since there may be problems with enforcement of a "no visible emissions" standard at night and during inclement weather, inclusion of specific operating procedure requirements may be needed ASARCO, Inc., stated that a strict "no visible emissions" standard is technically infeasible for the use and cleaning of plant roads and for outdoor bulk material storage areas. The City of Dallas suggested that there are limitations to the usefulness of a "no visible emissions" standard because of problems in observing the operations and because ambient lead levels can exceed the standard without there being visible emissions Brandt Mannchen suggested that there is a need to define better what is acceptable as visible emissions New Mexico suggested that there may be valid objections to the proposed "no visible emissions" requirement

Based on supporting documentation presented by ASARCO, the staff has re-evaluated its estimate of emissions due to windblown fugitive from open areas The staff now estimates emissions from open areas with the current level of control to be 2.82 tons a year instead of 6.03 tons, which was the staff estimate prior to the hearing. Uncontrolled emissions of lead from the slag dump area are estimated at 0 2 tons a year, and no further control for this area has been assumed in the control strategy. The control strategy is based on a 95% control efficiency for other open areas within the main ASARCO plant bounded by IH 10 and Paisano Drive. Even at this control efficiency, some visible emissions may exist. Controlled emissions from areas other than the slag dump are estimated at about 0.64 tons a year.

Since dispersion modeling predicts a ground-level contribution of less than 0.01 ug/m^3 at critical receptors for all sources of windblown fugitive with the proposed controls, the requirement for "no visible emissions" would apparently contribute little if any to the reduction of emissions from roads and outdoor bulk material storage areas in the area if the roads and storage areas are controlled by appropriate work practices and cleaning and sealing procedures Testimony also indicated that a "no visible emissions" standard for roadways is not technically practicable to meet at all times. Therefore, it appears that it may be unreasonable and ineffective to keep a "no visible emissions" requirement here.

ASARCO, Inc , noted that results from modeling performed by its consultant indicate that roadways contribute a negligible amount to ambient lead levels. In addition, the company noted that more than half of the plant roadways are already paved ASARCO indicated in its testimony that it believes that it is technically infeasible to clean plant roads without producing some visible emissions. The company suggested, as an alternative, a requirement that all plant roads be paved, sealed, sprayed, or treated in such a manner as to minimize visible emissions ASARCO, Inc , stated that it would be willing, if necessary, to maintain logs of spraying, sealing, and similar programs Brandt Mannchen supported the paving of all roads

ASARCO is correct in pointing out that emissions from roadways are not one of the major contributors to modeled lead concentrations off the plant property, but they do make some contribution to nonattainment of the lead standard, so reasonable and effective controls are justified. ASARCO's suggestion that a combination of measures be carried out "to minimize visible emissions" points toward a reasonable approach However, in general all plant roads should be paved to a thickness sufficient to prevent damage by the weight of traffic using the roadway because the crust created by a chemical sealant cannot withstand the weight of traffic Water spray on an unpaved roadway would have to be almost continuous due to El Paso's low humidity to minimize visual emissions The use of chemical sealant, dust suppression agents, and/or water sprays on paved roads could be supplements to cleaning the paved roads Because of the level of detail involved in such a plan, it would be unwieldy to try in the regulation to set out standards that could be used to determine whether the plan does effectively "minimize visible emissions resulting from the use of said roadways " Requiring that a plan to minimize fugitive dust emissions from roadways be submitted for the executive director's approval would improve assurance that the plan would be effective,

but it would add some administrative burden. Written logs documenting the frequency of control would be useful to air pollution control agency employees in determining whether the plan was being carried out as written. This approach would overcome the enforcement difficulties the City of Dallas and EPA pointed out with a "no visible emissions" standard. It would also eliminate the need to determine what constitutes "visible emissions" from open areas and storage piles.

ASARCO, Inc., noted that some bulk materials stored outdoors, such as coal and dirt, do not contain significant amounts of lead and urged that such materials not be covered by the provisions of this paragraph. ASARCO, Inc., suggested that the language be revised to require that water and water sprays, chemical sealants, or other systems be used whenever practical to minimize lead emissions from bulk materials that are stored outdoors and that contain more than 1.0% lead by weight. ASARCO also suggested a requirement that piles be resealed within 24 hours after they are initially broken into or added to

The bulk of material containing significant amounts of lead is normally handled and stored in well-controlled buildings constructed under TACB Permit C-4151. If the lead and copper ore bedding building is full, ore may be stored in outdoor storage piles and should be controlled. However, the primary purpose for which §113.43 was proposed is the control of reentrainment by wind of lead-bearing particulate matter. Although there could be a marginal benefit from chemical sealing or water spraying of all outdoor storage piles, the 1.0% lead content threshold should not significantly impact emissions reductions, and determining compliance would not be more difficult since materials stored outside that contain less than 1.0% lead are readily discernible from ore-bearing materials with lead contents greater than 1.0%. ASARCO recommends that when material is added to or removed from an outdoor storage pile the pile be resealed as soon as practicable, but in no event later than 24 hours after the seal is initially broken. To enforce such a stipulation, detailed records of activity in the storage pile area would have to be maintained

ASARCO, Inc , presented extensive comments indicating that the requirement to install and maintain complete vegetational cover on certain areas is technically infeasible or economically unreasonable to meet and that it would be ineffectual in reducing ambient lead levels For example, ASARCO stated that natural vegetational cover in the area of El Paso ranges from 17 to 26%; it would cost $12,000 to $15,000 an acre to establish native vegetational cover at the plant or it would take $50,000 to $75,000 an acre to establish complete, landscaped vegetational cover; and ISC modeling indicates that area sources contribute less than 0.04% to ambient air lead levels in the vicinity of the smelter

ASARCO, Inc , suggested that a reasonable alternate requirement would be to use a map to detail the areas that would be subject to fugitive emission controls, which would include, where practicable, sealing, spraying, sprinkling, or other treatments to minimize visible emissions. New Mexico suggested that valid objections may exist to the vegetation requirement for such areas as slag heaps. Brandt Mannchen fully supported the vegetation of unpaved areas.

In the El Paso area a requirement for complete vegetational cover may not be technically feasible and economically reasonable. Complete vegetational cover was specified in the proposal to indicate the level of control required and to indicate the level of alternative, equivalent controls that would be acceptable. ASARCO recommends water spraying, sprinkling, chemical sealing, or treatment in some other manner be utilized. Although this recommendation is too general to be readily enforceable, a combination of chemical sealing and water spraying could provide control equivalent to complete vegetational cover.

There are difficulties with the ASARCO recommendations that a map indicating plant areas requiring further control should be incorporated into the regulation. It would be plant-specific, and any physical revision at the smelter would then require revision of the map and therefore the regulation itself. An alternative would be to describe generally the types of areas to which the requirement would not apply. An advantage of this approach is that it would not require a regulation change if the ASARCO plant were physically altered or other plants become subject to the rule. There are some difficulties in defining the area to which the requirements would apply. The word "property" as defined in the general rules is not appropriate because it refers to "all land under common control or ownership," which, if applied to the ASARCO El Paso smelter, would include land to the east of IH 10. The staff intent in drafting the proposal was to have the requirement as it would affect ASARCO apply only to the company's land west of IH 10 and east of Paisano Drive. The use of the term "smelter site" might adequately define the area to which the requirements for fugitive dust control would apply.

ASARCO, Inc., commented that proposing unreasonable requirements turns the SIP development process on its head. It puts the burden of developing the SIP on the company either through proposing appropriate controls in the rule-making process or applying for exemptions or alternate controls after the rules are adopted. ASARCO, Inc., recommended that it is better to write appropriate requirements into the regulation as it is adopted rather than using the exemption mechanism, which would require the cumbersome and expensive additional step of submitting the changes as SIP revisions, but that an exemption/alternate control provision be retained

ASARCO further recommended that the word "shall" be substituted for "may" in the first sentence of the proposed subsection (c) to make the granting of a requested exemption mandatory, not discretionary, when the criteria listed in §113.43(c)(1)-(3) are satisfied. Finally, the company urged the board to strike the phrase "or cause or contribute to a condition of

air pollution" at the end of subsection (c). ASARCO suggested that the phrase is unnecessary since the agency has independent statutory powers outside the SIP or any other provision of its rules for dealing with "conditions of air pollution."

The EPA stated that any exemptions or alternate requirements must be submitted to EPA as SIP revisions and that to have an approvable SIP the state must commit to submitting any such exemptions as SIP revisions.

New Mexico commented that it is preferable to have requirements spelled out in rules rather than to have exception procedures that require SIP revisions, which are cumbersome to make and get approved by EPA

The statement that the proposal "turns the SIP process on its head" mischaracterizes the entire rulemaking/SIP process. Properly speaking, that process is, first, to provide for sufficient reductions to attain the agency objective, and, second, to accomplish that goal through requirements which are as reasonable as possible The present proposal was developed and published with that rationale in mind. That the proposal allows for alternative measures that might later appear to be more desirable is fully consistent with that rationale

The staff agrees with the comments of ASARCO and New Mexico that there are substantial advantages to writing requirments that will actually have to be met into the rules rather than using an exemption or alternate means of control procedure However, it appears worthwhile to include procedures to allow for exceptions and alternate means of control so that there will be a mechanism in place to deal with unanticipated and exceptional situations without using the cumbersome procedure of amending the regulations Nonetheless, these exceptions and alternate controls would need to be submitted to EPA as SIP revisions as EPA noted.

Analysis of court decisions indicates that there is little practical difference between using "may" or "shall" in authorizing an agency head to carry out an action contingent on certain criteria In general it has been held that the "may" becomes mandatory if all the conditions are met An advantage to using "shall" is that it is obvious from the language of the rule that the authority is not discretionary

ASARCO's suggestion to remove the prohibition against the executive director's granting an exemption if the exemption would "cause or contribute to a condition of air pollution" raises significant questions about the purpose of the rules that are being considered here ASARCO suggests that the restriction is unnecessary because the agency has independent statutory powers outside the SIP or any other provisions of its rules for dealing with conditions of air pollution The question arises whether the proposed regulations should be adopted only to meet federal requirements or whether they should be written to deal with air pollution as defined under the Texas Clean Air Act while also meeting federal requirements It is unlikely that omission of the phrase from this particular exemption provision would make any practical difference, since the difference in emissions from any exemption would likely be trivial, since the requirement to meet the lead standard would still be in the exemption provision, and since it appears unlikely that a condition of pollution from any other contaminant would result from any exemption under this section. On the other hand, omitting the phrase could theoretically require the executive director to issue an exemption that would not cause a problem with the federal ambient air standard for lead even though it would cause a condition of pollution from another contaminant. Although the condition of pollution could be remedied by action under the Act or under the TACB nuisance rule, it appears more efficient to require that the executive director not issue such an exemption in the first place

Six commenters testified on the provisions of proposed §113 51, titled "Materials Handling and Transfer " Four commenters expressed reservations about requirements for no visible emissions One commenter presented de ailed testimony about which sources should be controlled and about how they should be controlled, while another commenter stated the 1.0% lead content threshold for applicability of some provisions might be too high Two commenters testified concerning the mass concentration emission limits for lead, one commenter presented detailed information concerning what grain loading limits are appropriate for gas streams vented to the atmosphere through particulate control equipment, while the other commenter suggested that test methods for determining compliance with the mass emission limits should be specified One commenter supported the provisions in general

ASARCO, Inc , testified on §113 51(1) that most of the emissions from the handling of lead sinter occur when the sinter comes out of the storage bin and goes into the charge car or when the charge is dumped into the lead blast furnace ASARCO suggested that a requirement to "encapsulate" the loading of the charge cars and then to wet the sinter in the charge cars would be reasonable and effective Analysis indicates that ASARCO's testimony is correct that fugitive emissions associated with the handling of lead sinter occur almost entirely during the filling of the charge cars at the storage bins and during the charging of the blast furnaces Prior to the public hearing, the staff understood that sinter car charging took place in a tunnel that was ventilated to multicyclones and then to a baghouse As a result the staff felt the sinter loading area was already well controlled

However, the "tunnel" is open on the sides and local hoods are used to capture emissions Also, sinter is first loaded, and then coal is loaded on top of the sinter Emissions have been recalculated taking these facts into consideration Complete enclosure of the car loading area and venting to air pollution control equipment, as the company recommends, would result in 99% capture of emissions from loading Wet-

ting down loaded cars to minimize visible emissions during transport would result in 99% control of emissions from transport of the sinter Therefore, controls proposed by the company provide the same level of control as that of the proposal

ASARCO, Inc., noted that only three baghouses (the lead sinter machine (D&L) baghouse, the lead blast furnace baghouse, and the zinc deleading baghouse) were mentioned in the draft control strategy ASARCO stated that only these three units plus the copper converter electrostatic precipitator (ESP) have emissions that contribute appreciably to ambient air lead levels. ASARCO suggested that the requirements in §113. 51(2), concerning particulate matter collected by air pollution control equipment, should be restricted to these three baghouse facilities Brandt Mannchen questioned whether the 1 0% lead content threshold for applicability of the rules may be too high.

The 1.0% lead content threshold is useful to distinguish between dusts that need to be controlled to reduce lead emissions and essentially lead-free dusts such as those from coal Using the threshold would reduce the regulatory burden Also, the content of defined materials in processes is generally well known, so there would be little need for additional analysis to determine percentage lead content

Particulate matter captured by the lead sinter electrostatic precipitator (ESP) in the ASARCO plant is currently moisturized in a zig zag blender ASARCO testified that this area is currently being enclosed and will be ventilated through a new baghouse The company also testified that it plans to install equipment such that dust captured by the D&L baghouse and blast furnace baghouse would be transported via enclosed conveying systems to the same enclosed moisturizing system The transfer of moisturized dust to railroad cars would also occur in an enclosed structure vented to the same baghouse This control strategy for the lead department dust handling should result in the same degree of control as that provided in the proposal Section 113 51(2) could be modified to allow for such transfer by deleting the requirement for negative pressure in the conveyor system

Particulate matter captured in the copper and zinc departments is currently moisturized in a pug mill Dust captured by the copper roaster ESP, the copper reverberatory furnace ESP, the copper converter ESP, the converter building ventilation baghouse, and the zinc deleading baghouse are processed in this area Prior to the public hearing, staff estimates of emissions without further control had been based on processing only zinc deleading baghouse dust in the pug mill However, particulate matter collected by the three ESPs and ventilation baghouse in the copper department is also moisturized in the pug mill Taking this into account, the estimate of emissions without further control has been revised from 1 8 tons per year to 2.1 tons per year ASARCO testified that the pug mill will be controlled by a new ventilation system and local hoods vented through a wet scrubber ASARCO has already commenced construction on this project as part of a written agreement between the company, OSHA, and the United Steelworkers of America.

Particulate matter from operations outside the lead, copper, and zinc departments is handled as follows. Particulate matter collected by the cadmium roaster baghouse is currently packaged for shipment directly from the baghouse Particulate matter collected by the other remaining baghouses is either slurried with water and handled wet or returned to the process by enclosed conveying systems Even though these sources are currently well controlled, application of the regulation would provide an enforceable measure to ensure that the current level of control is maintained. The proposed rule could be modified to allow for slurrying and wet conveying to be considered equivalent to venting of conveying emissions to control equipment.

ASARCO recommended that the phrase "are under negative pressure" be deleted since positive pressure conveying systems would not be allowed if negative pressure were required Although the staff feels the option to use positive pressure conveying systems should be available, the seals on such systems require more frequent maintenance to ensure a tight fit Visible emissions from such a system would be a sign of inadequate maintenance If the "no visible emissions" requirement of §113 51(3) were adopted as proposed, the adequacy of maintenance of such a system could be determined and equivalent control levels provided.

Several commenters questioned the requirement for "no visible emissions " ASARCO, Inc , commented that it is not technically practicable for the sources that would be affected under §113 51(3) to meet a requirement that prohibits visible emissions The EPA stated that a test method would be needed to make such a requirement fully acceptable New Mexico stated that there may be valid objections to a "no visible emissions" requirement. The City of Dallas commented on problems with the enforcement and the efficiency of a "no visible emissions" limit

Properly maintained enclosed conveying systems and enclosed containers for transporting industrial dusts can meet a "no visible emissions" standard A requirement of "no visible emissions" is not, therefore, unreasonable to attain for the sources that would be affected by §113 51 (3) Further, such a requirement would be necessary to detect improper maintenance of seals and other equipment should a positive pressure conveying system be used The "no visible emissions" requirement is an adequate enforcement tool here because the emissions would occur continuously when the equipment was operating. In this instance, there would not be the problems a "no visible emissions" standard suffers from when it is applied to an intermittent source that might not be observable at night or in inclement weather Providing a "test method" within the rules would not add to the enforceability of this requirement because the phrase is readily understood and interpreted from the commonly understood meaning of the words

Brandt Mannchen questioned whether lead content of 1.0% by weight in proposed §113.51(2), (4), and (6) may be too high. Under the requirements of proposed §113.51 (2), (4), and (6), the only particulate matter that is collected by air pollution control equipment and that has a lead content equal to or less than 1.0% by weight is currently either slurried with water or returned in enclosed conveying systems to the process. Section 113.41 would require that these controls be maintained.

ASARCO questioned the use of the terms "pelletized or water granulated" in §113.51(4) and recommended the phrase "agglomerated by moisturizing " This change would clarify the requirements

ASARCO requested that the lead blast furnace baghouse dust that is to be processed through the cadmium roaster be exempt from the moisturization requirement. ASARCO contended but did not document that the material cannot be properly and efficiently processed in the cadmium roaster if it has been excessively moisturized. However, proper control of water addition should result in a moisturization level that will yield an acceptable feed to the cadmium roaster while also minimizing the potential for fugitive emissions from the dust, so it appears that the cadmium roaster feed does not need to be exempt from the moisturization requirement.

ASARCO requested that the application of §113 51(4) be restricted to the four dust handling systems ASARCO suggested are significant sources with respect to §113.51 (2)

As discussed previously under §113.51(2), all lead-bearing particulate matter except that collected in the lead department, copper department, and the zinc deleading baghouse is packaged for shipment, slurried with water, or returned directly to process in enclosed conveying systems Therefore, limiting the application of §113 51(4) to the appropriate source types would reduce the regulatory requirement without reducing the benefit significantly. If §113.51(4) is worded in this way, several control devices are mentioned, however, the requirement applies to the equipment that handles the particulate matter collected by the named devices However, to provide for some flexibility in controlling dust handling, it would seem appropriate to allow for equivalent control systems if approved by the executive direr

In ASARCO's written testimony on §113.51(5), the company stated on page 62 that it commits "to upgrade the existing ventilation system and hood around the pug mill, a piece of equipment that is used to moisturize collected dust from the converter ESP " However, on pages 69 and 70 and pages 2 and 3 of Appendix I, the company suggested a rewording for paragraphs (4), (5), and (6) of proposed §113 51, that reads as follows. "all particulate matter collected by. converter electrostatic precipitator shall be agglomerated by moisturizing the same within an enclosed structure " To resolve whether ASARCO was recommending the use of local hoods or an enclosed structure in §113.51(5), the staff contacted the company and determined that local hoods were meant to be recommended. The difference in emissions between this ASARCO proposal and the hearing proposal for complete building enclosure with ventilation through a baghouse is estimated to be about 0 5 tons of lead per year. The difference between the predicted ground-level concentrations is 0 08 ug/m^3 near the smelter and 0.02 ug/m^3 in elevated terrain, and the difference in cost is estimated by the staff to be at least $125,000

ASARCO recommended that the phrase "agglomerated by moisturizing" be used in §113 51(6) instead of the terms "granulated or pelletized " The change would clarify this paragraph as well as §113 51(4), for which it was also suggested

Concerning §113.51(7), EPA stated that for any mass emission limit to be fully acceptable to EPA, a test method used to determine compliance must be specified Emission limits, like highway speed limits, are measurable by technical means In an enforcement action, the quality of the data is an issue much as it is in a speeding case, but in neither is there a need to specify the measurement technique in the rule that specifies the limit A significant disadvantage of including test methods in rules is that, as technology advances, any improvements in test methods can occur only through the slow and laborious process of amending the rules that specify the test methods Currently TACB rules generally do not specify test methods.

Concerning §113 51(7), ASARCO testified that a lead grain loading of 0 001 grain per dry standard cubic foot (gr/DSCF) could not be guaranteed on a day-to-day basis and recommended that a reasonably achievable limit for new baghouses would be 0 005 gr/DSCF Based on the testimony and available technical information, the staff considers the lead limit of 0.005 gr/DSCF to be reasonable A change from the proposed requirement to the one suggested by ASARCO would affect three ASARCO control devices. the D&L baghouse and controls on the zig zag blender in the lead department and on the pug mill in the copper and zinc departments

The emissions from the D&L baghouse (CD-6) exit the lead stack (E-13) and must meet a total particulate matter new source performance standard (NSPS) of 0 022 gr/DSCF The additional inlet loading due to the proposed additional increase of particulate collected due to the recommended change to §113 51(1) is about 0 1% of the current estimated value Allowable emissions for this source after the additional particulate collection will continue to be based on the NSPS allowable Reference to §113 51(1) in §113 51(7) could therefore be deleted since the NSPS applies However, since ASARCO's testimony indicates that 0 005 grain of lead per dry standard cubic foot (gr Pb/DSCF) is a reasonable limit for such baghouses, it appears reasonable to retain the proposed application of §113 51(7) to §113 51(1)

The following is the evaluation of the air quality impact for changing the lead emission limit in §113 51(7)

from 0.001 gr/DSCF to 0.005 gr/DSCF. Controlled emissions from the dust handling in the ASARCO lead department (zig zag blender) are estimated to be 0.26 tons of lead per year by the staff assuming a 95% baghouse collection efficiency. At 0.005 gr Pb/DSCF, the baghouse flow rate corresponding to this emission rate would be about 1,500 standard cubic feet per minute (SCFM) The baghouse currently being installed by ASARCO will have a fan capacity of at least 1,200 actual cubic feet per minute (ACFM) at ambient temperature. Dispersion modeling by the staff assuming 1,500 SCFM and 0 005 gr Pb/DSCF predicts approximately 0 005 ug/m^3 at the two critical receptors in elevated terrain. Controlled emissions from the dust handling in the copper and zinc departments (pug mill) are estimated to be 0.1 tons of lead per year (T Pb/y) by the staff assuming complete enclosure vented to a baghouse at 95% collection efficiency. At 0.005 gr Pb/DSCF, the baghouse flow would be about 600 SCFM ASARCO proposes local hoods vented to a wet scrubber The staff estimates controlled emissions from the scrubber at 0 38 T Pb/y and a flow rate of 2,100 SCFM at 0 005 gr Pb/DSCF. The fan capacity for the scrubber is not currently known but should be less than the flow to the new lead department baghouse Dispersion modeling assuming a 600 SCFM flow rate and 0 1 tons of lead per year emission rate predicts 0 01 ug/m^3 near the smelter and about 0.002 ug/m^3 in elevated terrain. If a worst case assumption of 600 SCFM and 0 38 T Pb/y is made, the predicted contribution ground-level concentrations would increase to 0.04 ug/m^3 near the facility and less than 0 01 ug/m^3 in elevated terrain

Thus it appears that a lead emission limit of 0.005 gr/DSCF in §113 51(7) would be technically achieveable, have a moderate impact on affected sources, and support an effective SIP for lead in El Paso.

Six commenters testified on the provisions of proposed §113 52, concerning the smelting of lead. One commenter supported the proposal in general. Four commenters expressed reservations concerning the requirements for no visible emissions, while one commenter favored the no visible emission rules. One commenter testified concerning the installation and effectiveness of systems for controlling tuyere air flow to reduce blast furnace lead emissions. Another commenter stated that test methods should be included for determining compliance with mass emissions limits

The El Paso Regional Group of the Sierra Club supported the proposal in general.

ASARCO, Inc., stated that automatic control of tuyere air is a feasible and effective measure for reducing upset emissions from the lead blast furnaces and that such controls are intended to be installed at the El Paso plant ASARCO stated that the effectiveness of this control measure is 84% rather than 75% credited in the TACB control strategy A review of the documentation provided by the company indicates that an 84% control efficiency can be expected to result from installation of the tuyere air control. No comments were received opposing the requirement for automatic control of tuyere air

ASARCO, Inc , commented that it is not technically feasible to meet a "no visible emissions" standard for lead or slag tapping from a blast furnace, for a lead receiving kettle or final dross lead kettle, or for the charging area of a blast furnace In lieu of these "no visible emissions" requirements, ASARCO recommended as an effective alternative the use of specific equipment, operation, maintenance, and record-keeping requirements

The EPA commented that for a "no visible emissions" standard to be fully acceptable to EPA, it would need to include a test method The EPA also suggested that since there may be problems with enforcement of a "no visible emissions" standard at night and during inclement weather, inclusion of specific operating procedure requirements may be needed The City of Dallas suggested that there are limitations to the usefulness of a "no visible emissions" standard because of problems in observing the operations and because ambient lead levels can exceed the standard without there being visible emissions New Mexico suggested that there may be valid objections to the proposed "no visible emissions" requirement Brandt Mannchen suggested that the no visible emissions rules would be easy to enforce and that they should help field investigators determine compliance

The only effective means of completely eliminating visible emissions from lead smelting operations would be to enclose the lead plant in a building and vent emissions through air pollution control equipment Such enclosure goes beyond the controls contemplated in the control strategy. Complete enclosure would decrease the predicted ground level impact at critical receptors by less than 0.1 ug/m^3 compared to the local collection hoods on which the control strategy is based Due to the relatively small benefit that would be obtained at high cost, enclosure of the lead plant may not be economically reasonable. To assure that specific control systems planned for installation meet as a minimum the control efficiencies in the control strategy, a requirement for approval of the control systems by the executive director could be included.

The EPA stated that for mass emission limits to be fully acceptable to EPA, a test method for determining compliance should be included. Such measurable limits are analogous to speed limits, and it is unnecessary to specify a measurement method to make such a limit enforceable. This matter is discussed more fully in the evaluation of testimony on §113.51(7)

ASARCO suggested that each lead receiving kettle be controlled by a hood only when pouring is taking place and that no control be required for the final dross lead kettle The staff estimates uncontrolled emissions for the lead dross kettles at maximum capacity are 5 4 tons of lead per year with a maximum predicted ground level impact of 0.57 ug/m^3. The emissions after control are estimated to be 0.8 tons of lead per year with a predicted maximum ground level impact

of 0.09 ug/m^3 The TACB proposed control of the lead dross kettles is, therefore, effective. Since such control is technologically feasible and in use on similar metallurgical kettles at moderate cost, it is reasonable as well as effective

ASARCO recommended that measurements on installed control systems be made at least once every three months to verify continued performance. This would be a reasonable and effective requirement if the monitoring is frequent enough to assure that the equipment is functioning properly and is repaired promptly. In addition, keeping records of the dynamite usage in lead blast furnaces would give a useful indication of the effectiveness of tuyere air control in reducing upset conditions that lead to substantial fugitive emissions from the charging area

Eight commenters testified on the provisions of §113.53, titled "Smelting of Copper and Zinc." One commenter supported the proposal in general. Two commenters expressed opposing views on the need for this section One recommended deleting the entire section, while the other commenter supported the control measures for fugitive emissions as being based on good technical analysis and necessary for attainment of the national ambient air quality standards (NAAQS) for lead

Three commenters expressed differing views concerning the requirements for secondary hoods for copper converters One commenter recommended deletion of the secondary hood requirements or, as a second choice, making the requirements conditional upon certain occurrences A second commenter requested that the installation of secondary hoods be delayed so that the hoods could be designed to reduce arsenic emissions and meet the EPA's arsenic standard when established A third commenter supported the installation of secondary hoods

Four commenters testified about enclosing the converter building Two commenters stated that the converter building should not be enclosed because enclosure would endanger the health of the workers and for other reasons One commenter questioned how certain negative pressure requirements could be enforced, while another commenter suggested that certain data be kept by the TACB for reference

Three commenters testifed concerning the mass concentration limits One commenter wanted test methods to be included Another commenter raised several questions about the limits, including the equipment used to meet the requirements and why some limits appeared more stringent than others The third commenter stated that certain limits were unreasonable and unattainable and proposed alternate limits

Four commenters also testified about the requirement for no visible emissions One commenter approved of the requirement because it would be easy to enforce, while another commenter questioned whether the requirement would be easy to enforce on a routine basis The third commenter opposed the requirement because it was unnecessary, unworkable, and infeasible, and the fourth recommended the inclusion of test methods.

ASARCO, Inc , recommended deletion of the entire section on the basis that there is no need for it The New Mexico Environmental Improvement Division supported the proposed regulations and control measures for fugitive emissions as being based on good technical analysis and as being necessary for attainment of the lead standard

To support its statement that the converter building is not a significant source of fugitive lead emissions, ASARCO stated that the company has conducted sampling around the converter building, both while the copper department was operating and while the copper department was shut down According to ASARCO, the results indicate that there was no reduction in measured ambient lead concentrations when the copper plant was not operating. Since none of the details on sampling locations, frequency, methods, or results of sampling have been submitted as testimony, the staff has no means of evaluating the adequacy of the sampling program or determining whether analysis of the data supports the conclusion suggested by ASARCO ASARCO testified that sampling programs around other copper smelters operated by the company have detected no significant lead values No details were submitted into evidence to support the contention.

ASARCO has also performed sampling in the copper smelter building and submitted the results together with calculations of lead emissions as Exhibit V in its written testimony The staff has evaluated the data in Exhibit V and has determined that, based upon the information available, the copper converter building is a significant source of fugitive lead emissions that contribute to ambient lead levels and nonattainment of the NAAQS for lead The following analysis provides support for this conclusion

Measurements above the worker level were collected by ASARCO on July 1 with the wind from 327 (and on July 8 with the wind from 154) Table I of Exhibit V lists air sample results The samples at points one and two on July 1 and at points five and six on July 8 are not representative of air in the building since they are at the point of wind entry Although it could also be reasonably argued that the samples at sampling point three on July 1 and at sampling point four on July 8 are also not representative due to wind effects, these samples are used in this staff analysis to obtain a lower-bound estimate of lead emissions

The averaging of samples three-six on July 1 and one-four on July 8, adjusted linearly to 100% production, results in an average lead concentration of 2,395 ug/m^3 for July 1 and 2,628 ug/m^3 for July 8 These values are for an elevation 53 feet above the converter building floor In the Exhibit V calculations, ASARCO linearly adjusts the average concentration calculated using all samples from 53 feet to 75 feet The copper converter building is approximately 90 feet tall A plot was made of the available data from Table II of Exhibit

V for Zone A and Zone B as well as the staff calculated average for the 53-foot level Based on the limited data currently available, an exponential increase with building height would be predicted instead of the linear increase assumed by ASARCO Fugitive emissions from the upper areas of the building could therefore be several times the 11 7 tons per year (tpy) lead calculated by ASARCO If the value at the 75-foot height from the data plot of 8,000 ug/m^3 is used as an average concentration for upper level emissions, 32 6 tpy of lead would be emitted Using the conservatively low concentration of 218 ug/m^3 for lower level emissions would result in calculated total lead emissions of 32.9 tpy, compared to the 41 9 tpy calculated from emission factors by the staff If lead emissions are 11 7 tpy from the upper areas and 0 3 tpy from the lower areas, the predicted ground level impact without further control would be 0 41 ug/m^3 compared to 1 38 ug/m^3 calculated based on the TACB staff analysis assuming 41 6 t/y from the upper areas and 0.3 t/y from lower areas Since the sampling was so limited, the reliability of these results is open to question

In either case, reduction in copper converter building emissions would be required to demonstrate attainment of the NAAQS for lead in El Paso

In Exhibit V, ASARCO referred to a draft revision of EPA Publication AP-42, §7 3 (Primary Copper Smelting), as a basis for calculation of fugitive lead emissions from sources other than the copper converter In Table 7 3-3 of the draft revision, the fugitive emission factor for a copper converter is about 68% higher than the curernt AP-42 value used by the staff. Use of this factor would increase the staff estimate from 41 9 t/y to 69 4 t/y

ASARCO, Inc , recommended deletion of the secondary hood requirements or, as a secondary choice, revising the rules to make them conditional upon certain occurrences ASARCO stated that the cost would be about $2 million with little lead air quality benefit However, ASARCO stated that it is committed to installing secondary hoods to meet other environmental objectives (particularly the improvement of in-house working conditions), but the commitment is predicated on three factors final issuance by the EPA of a national emission standard for hazardous air pollutants (NESHAPS) for arsenic from copper smelters, EPA approval of a secondary hood design to meet the final arsenic NESHAPS, and revisions by the TACB of its SO_2 limits for the copper stack annulus to reflect increased emissions due to improved collection efficiency for fugitive SO_2 and revision of the copper stack opacity limit because of uncertainty about the effect of the changes on opacity

The El Paso City-County Health Unit also requested that the installation of secondary hoods be delayed until the EPA's arsenic standard is established The agency commented that secondary hoods should be designed to reduce arsenic emissions in addition to lead emissions Finally, the El Paso City-County Health Unit noted that the installation of secondary hoods might increase in-stack concentrations of SO^2.

Brandt Mannchen supported the installation of secondary hoods.

Controlled converter building fugitive emissions following the addition of secondary hoods on copper converters and no further enclosure of the building are estimated to be 2 0 tpy in ASARCO Exhibit V The staff estimate for this scenario is 3 2 tpy The predicted ground level impact for the ASARCO estimated is 0.09 ug/m^3 while calculation based on the staff estimate predicts 0.14 ug/m^3

ASARCO suggested that secondary hood installation should be conditioned on final promulgation of the proposed NESHAPS for arsenic and approval by EPA of an acceptable secondary hood design The staff analysis indicates that the fugitive emissions from the copper converters make a significant contribution to ambient lead levels in populated areas near the ASARCO El Paso smelter and that secondary hoods would reduce lead concentrations significantly The NAAQS for lead is an established standard. In light of a Sixth Circuit ruling, the EPA (48 FedReg 48978) has revised its interpretation of the Federal Clean Air Act statutory requirement for a demonstration of final attainment of a primary national ambient air quality standard The Act, §110(a)(2)(A), provides for approval of an SIP if it "provides for attainment as expeditiously as practicable but in no case later than three years from the date of approval of such plan " Since the secondary hood design may require EPA approval if the arsenic NESHAPS is promulgated, it may be reasonable to consider a later compliance date for installation of secondary hoods The size and complexity of the project to install the hoods are substantial enough that a three-year schedule may be as expeditious as practicable

ASARCO and the El Paso City-County Health Unit also suggested that the TACB would have to revise Regulation II (31 TAC Chapter 112) due to the addition of SO_2 from the secondary hoods on the copper converters to its copper stack annulus Since the emissions to be collected by the secondary hoods are fugitive in nature, TACB Regulation II (31 TAC Chapter 112) would not require revision because SO_2 concentration limitations address process emissions In fact, §112 16(f) requires the following

> The owner or operator of a nonferrous smelter shall utilize best engineering techniques to capture and vent fugitive SO_2 emissions through a stack or stacks Such techniques shall include, but not be limited to, the following
>
> (1) operating and maintaining all ducts, flues, and stacks in a leakfree condition,
>
> (2) operating and maintaining all process equipment and gas collection systems in such a fashion that leakage of SO_2 gases will be prevented to the maximum extent possible, and
>
> (3) whenever possible, using gas collection systems and/or ducting collected SO_2 emissions through the tallest stack or stacks serving the facility

In addition, the net ground level concentration limitation in §112 9 would not require revision since emissions would occur from an elevated stack instead of

near ground level, and there would be no increases in SO_2 emissions. Ground level SO_2 concentrations would, in fact, be expected to decrease from current levels due to routing of what are now fugitive emissions to the stack

ASARCO has testified that TACB Regulation I (Chapter 111) may also require revision to increase the allowable opacity for the copper stack if secondary hoods are installed and emissions routed through a baghouse to the annulus of the main 828-foot tall copper stack. Since the flow rate is greater than 100,000 ACFM, §111.26 would allow 15% opacity unless an optical instrument capable of measuring opacity is installed in the flue If ASARCO is required to install an opacity monitor on the annulus of the main stack (which began construction prior to January 31, 1972), §111 21 would allow an opacity of 30% Since there is no straightforward way of calculating the increase in opacity which would result from routing fugitive emissions collected by a secondary hood system to the main stack, it cannot be determined with certainty whether the 30% limitation can be attained However, it is likely that because of the extremely high control efficiencies achieved by baghouses, an opacity less than 30% should be achievable In the event ASARCO cannot meet the 30% opacity limitation, the company could apply for approval of an alternate limit under §111 28.

ASARCO, Inc , testified that further enclosure of the copper converter building is not feasible and that occupational health dangers would result if the staff's proposal were implemented. The United Steel Workers of America (USWA) stated that closing the converter aisle would not help reduce lead air pollution but would endanger the health and safety of workers in the building The union representative stated that the converter aisle workers are monitored closely, and there have been no reports that workers have excessive blood lead levels ASARCO suggested that no further controls be required for the converter building at this time ASARCO stated that the converter building is not a significant source of fugitive lead emissions and thus building enclosure is unwarranted to improve ambient lead levels. Enclosing the converter building is infeasible and would endanger workers in the building A similar previous attempt to enclose the converter building created conditions that were unacceptable to the OSHA and the workers and led to the partial reopening of the building The further enclosure of the converter building would negate the efforts of the OSHA, USWA, and ASARCO to develop feasible controls and practices to protect workers from excessive exposure to pollutants such as lead and arsenic ASARCO further supported this position by stating that all known attempts at complete enclosure have resulted in such intolerable conditions that the enclosure was breached

The staff has evaluated two options, both of which assume the installation of secondary hoods on the copper converters. The first option would require additional enclosure of the building to achieve an average 90% building capture efficiency Emissions captured by the secondary hood would be routed to a new baghouse. The second option would require no additional building enclosure, and emissions captured by the secondary hoods would be routed to the existing converter building ventilation baghouse and then to the annulus of the main copper stack Dispersion modeling indicate that the difference in predicted ground level concentrations is 0.07 ug/m^3 higher for option 2 at critical receptors near the plant and 0 03 ug/m^3 higher at a receptor 2 0 kilometers north of the main stack. If option one were to be chosen, it may not be technically practicable to maintain an acceptable occupational environment Because of this concern and the small difference between the air quality impacts between the two options, the second option would be the preferable approach. Because full building enclosure and continuous air inflow would be necessary to meet a no visible emissions standard, such a standard could not be met under the second option

Brandt Mannchen supported the adoption of the requirement for no visible emissions from any building because it is easy to enforce The City of Dallas questioned whether the no visible emissions requirement really would be easy to enforce on a routine basis. ASARCO, Inc., opposed the no visible emissions requirement as being unnecessary, unworkable, and infeasible ASARCO suggested that a more realistic solution would be a provision requiring all air pollution control equipment installed at its converter building be maintained and operated so as to minimize emissions from the facility The EPA commented that for a no visible emission standard to be approvable by the EPA, it would need to include a test method If the copper converter building is not fully enclosed, as discussed previously, the no visible emission requirement is inappropriate

Brandt Mannchen suggested that data on airflow into the building should be kept by the TACB for future reference The City of Dallas questioned how practical the routine enforcement of the negative pressure requirements would be Under the proposal, the TACB could maintain the data in its files if it found a useful purpose for doing so, but it would not be required to do so The staff has developed a measurement technique for routine compliance checks at the RSR Corporation secondary lead smelter in Dallas, where a similar airflow requirement is in force

The EPA stated that for the mass concentration limits to be fully acceptable to the EPA, they should include a test method to determine compliance and recommended EPA Method 12 Brandt Mannchen raised several questions concerning mass concentration limits He wanted to know what type of equipment could meet the outlet limitations and why the limit under §113 53(6) was more stringent than others elsewhere ASARCO, Inc , stated that the proposed requirement that baghouse lead emissions be limited to 0 001 gr/DSCF was both unreasonable and unattainable ASARCO commented that existing baghouses could not meet such a standard and even new baghouses could not be guaranteed to meet better than 0 005 gr/DSCF. In addition, the company stated that

the 0 001 gr/DSCF lead emission limitation for the converter building baghouse would therefore be completely unreasonable based on current technology ASARCO concluded that any grain loading limitation on lead emissions from the converter building should apply to any new baghouse to which the ventilation system is vented and should be 0 005 gr/DSCF

ASARCO testified that the 0 001 gr Pb/DSCF should be revised to 0 005 gr Pb/DSCF The Draft Environmental Impact Statement (EIS) for Low Arsenic Primary Copper Smelters (EPA-450/3-83-010a) estimates required air flow for a secondary hood system at ASARCO El Paso at 230,000 ACFM (pages 6-13) and 180°F (pages 3-39) At 0 001 gr Pb/DSCF the lead emission rate would be 6 7 tpy Based on the staff estimate of uncontrolled converter fugitive, a 95% capture efficiency by the hoods (pages 3-71), and 95% control by the baghouse, lead emissions would be 4 8 tpy Since the design flow rate which will be used is unknown, dispersion modeling by the staff was based on 230,000 ACFM and 4 8 tpy The maximum predicted ground-level concentration from a 230-foot tall stack is less than 0 02 ug/m^3

If 0 005 gr/DSCF at 230,000 ACFM is allowed, allowable lead emissions would be 33 7 tpy In Exhibit V, ASARCO estimates uncontrolled converter fugitive emissions at 31 5 tpy If ASARCO's estimate were correct, no reduction in emissions would occur If the staff's estimate of uncontrolled fugitive is assumed, an emission rate of 33 7 tpy would reflect a 65% control efficiency Since a new baghouse should be able to attain a control efficiency of at least 95%, the 0 001 gr Pb/DSCF requirement should be retained if routing is to a new baghouse

ASARCO testified that a lead emission limitation of 0 0001 gr/DSCF was completely unreasonable and unattainable for the copper converter building ventilation baghouse (CD 8) The staff sampled the copper converter building ventilation baghouse during the period of April 20 May 2, 1982, and found a lead emission rate of 0 17 lb/hr at about 70% of maximum operating capacity Assuming linear increase with production rate, lead emissions at maximum capacity would be 1 1 tpy

The CD-8 baghouse has a maximum flow rate of 488,000 SCFM At this flow rate and 0 0001 gr Pb/DSCF, lead emissions would be 1 7 tpy. If the ASARCO proposal of 0 005 gr Pb/DSCF were adopted, allowable air emissions of lead would be 87 tpy at this flow rate In Exhibit V of ASARCO's written testimony, lead emissions captured by the building are calculated at 23 tpy at the baghouse inlet With the current level of control, the staff estimates about 70 tpy at the baghouse inlet Allowing an emission rate of 87 tpy at the baghouse outlet, therefore, seems unreasonable

ASARCO also requested the option to route emissions captured by converter secondary hoods to this existing baghouse If provision for the option is incorporated, the staff estimates the inlet lead to CD-8 would increase from about 70 tpy to almost 110 tpy. Under worst case assumptions, lead emissions would increase to 6 1 tpy or almost 0.0004 gr/DSCF The predicted ground level concentration at this emission rate would be 0.002 ug/m^3 at a critical receptor in elevated terrain. Since baghouses in sanitary service should routinely perform at control efficiencies greater than 95%, a reasonable alternative to an outlet concentration limit would be the specification of a control efficiency, if the control device also controls lead emissions from other sources

Although the EPA stated that for mass emission limits to be fully acceptable to the EPA a test method for determining compliance should be included, such measurable limits are analogous to speed limits, and it is unnecessary to specify a measurement method to make such a limit enforceable This matter is discussed more fully in the evaluation of testimony on §113 51(7)

Six commenters testified on the provisions of proposed §113.71, concerning lead emissions limits for stacks. Diverse opinions were expressed by four commenters concerning the lead emission limits for certain vent gas streams Four commenters also expressed differing opinions concerning the opacity limits and monitoring for certain stacks. One commenter supported the provisions in general

The City of Dallas stated that it is encouraged that emission limitations for vent gas streams were addressed in proposed Table 113 71(1). However, the city noted that the rates were designed for a particular primary lead facility and suggested that stack and vent rates should be established for secondary lead smelters in general As noted in the preamble to the proposed rules, comments of this nature will be considered in regard to development of rules to apply in other areas or statewide

The EPA suggested that the emission limits should include a test method to determine compliance if the limitations are to be fully acceptable to the EPA. The EPA recommended EPA Method 12, 40 Code of Federal Regulations Part 60, Appendix A The EPA noted that no test method or averaging time (if any) was indicated for the proposed opacity limits Although the EPA prefers to have test methods specified for numerical emission limits, such measurable limits are analogous to speed limits, and it is unnecessary to specify a measurement method to make such a limit enforceable. The opacity limits proposed as §113.71(b) have been deleted from the section as adopted

Brandt Mannchen suggested that data on airflow for the continuously monitored stacks should be kept by the TACB Data on stack emissions and parameters are normally kept by the TACB in its emissions inventory files. It is not clear what benefit there would be from the TACB's having the additional air flow data in its possession, and the requirement would be an administrative burden on both the affected source(s) and the agency

Brandt Mannchen also questioned why the emission limits in Table 113.71(1) were greater than those limits under §113 52 and §113.53 Table 113.71(1)

would establish lead emission limits for existing stacks, most of which are for process emissions, while §113.52 and §113.53 would control fugitive emissions.

ASARCO, Inc , gave several reasons why it considers that these provisions should be deleted and suggested an alternate way to establish lead emission limits for a reduced number of vent streams. ASARCO stated that the modeling results indicate that stack emissions are a very minor source for ambient lead levels and that the lead emission estimates developed for use in the TACB's computer modeling and the such estimates are necessarily imprecise and may bear little relation to actual stack emissions. Thus, the company suggested that, if post-control stack emission limits are to be set, they should be based on actual stack emissions adjusted to reflect maximum plant production ASARCO further commented that the lead stack emission limits were developed without considering the technical feasibility of sampling some of the stacks and that the copper slag settling furnace and the anode furnaces have short stacks and emit gas streams with extremely high temperatures ASARCO stated that, consequently, sampling would be precluded and compliance could not be verified ASARCO stated that because of the metallurgy of certain processes, they do not have the potential to produce significant lead emissions, therefore, sampling should not be required for these sources Among these sources are the copper slag holding furnace, the anode furnaces, and the antimony plant ASARCO suggested that, after all required control equipment is in place and operating, the TACB and/or ASARCO should perform sampling to determine actual lead emissions from the few stacks with potentially significant emissions and that the sampling results for this limited set of sources could then be used to establish emission limits adjusted to maximum production

ASARCO testified that the lead emission limits are deficient since they are estimates developed for use in dispersion modeling, since the metallurgy of certain processes does not have the potential to produce significant emissions, and since modeling results indicate that stack emissions are a minor source of ambient lead levels The antimony plant baghouse is allowed an emission rate of two pounds of particulate matter per hour under Permit C-3638 To make a worst case estimate, the staff has considered the metallurgy of the process and used an estimate that 5 0% of the allowable particulate emissions will be lead This stack would then produce a predicted ground level lead concentration of 0 004 ug/m^3 at the critical receptor in elevated terrain Since total particulate emissions are limited by a TACB permit and the predicted ground level lead concentration is negligible, the removal of the lead emission limitations for the antimony plant baghouse would have no practical effect on ambient lead levels

The south copper anode furnace, north copper anode furnace, and copper slag settling furnace are not controlled by air pollution control equipment These sources, therefore, have a significant potential for emissions of particulate matter, but lead content would be low (0 05% by weight (wt%) lead from each of anode furnaces and 0 4 wt% lead from the slag settling furnace) The total predicted ground level contribution for these three stacks at the critical receptor in elevated terrain is 0 0055 ug/m^3 Since the potential uncontrolled emissions of lead are low due to the metallurgy of the process and predicted ground level concentration is negligible, the removal of the lead emission limitation for these stacks would have no practical effect on ambient lead levels

Emissions from the #1 Sulfuric Acid Plant and #2 Sulfuric Acid Plant are controlled by spray chambers, electrostatic precipitators, venturi scrubbers, packed scrubbers, mist eliminators, and the acid plants themselves As a result, potential emissions of lead are low as long as control equipment is functioning properly. The total predicted ground level contribution from both stacks at the critical receptor in elevated terrain is 0 0027 ug/m^3 The removal of lead emission limitations for these stacks would have essentially no effect on ambient lead levels

The particulate matter emissions from the lead and copper ore conveying baghouse (E-10), lead ore unloading building baghouse (E-11), lead ore bedding building baghouse (E-12), copper ore unloading building baghouse (E-21), and copper ore bedding building baghouse (E-22) are controlled by TACB Permit C-4151 Proposed allowable lead emissions for the first four were limited to 50% of the permit allowable particulate rate adjusted for lead content of the baghouse catch The adjustment was made by the staff based on stack sampling in 1979 and, therefore, the proposed allowable lead emissions rate for these four stacks has been attained in routine operation However, at the present time there is not a legally enforceable measure to limit lead emissions from these sources to these rates Therefore, adoption of the proposed allowable lead emission rates would be a necessary part of producing a legally enforceable lead SIP for El Paso

These stacks also contribute significantly to predicted ground level concentrations Although the particulate emissions from the remaining copper ore bedding building baghouse are controlled by Permit C-4151 and the proposed lead emissions limit is believed to be consistent with the permit allowable particulate rate, this stack has a large enough predicted impact on ambient lead concentrations that retention of the emission limitation in the regulation may be appropriate Dispersion modeling of the lead emissions from the existing stack associated with this baghouse predicts a ground level impact of 0 42 ug/m^3 near the smelter and 0 54 ug/m^3 in elevated terrain

Emissions from the remaining stacks are controlled by air pollution control equipment The total predicted ground level concentration for these stacks is 0 244 ug/m^3 near the smelter and 0 113 ug/m^3 in elevated terrain Since the controlled emissions from these stacks make a significant contribution to predicted ground level concentrations at critical receptors, deletion of the proposed allowable lead limits which en-

sure continued effective control would impair the legal enforceability of the lead SIP for El Paso

The El Paso City-County Health Unit noted that the proposed opacity limit for the lead stack is 5 0%, while the current operating permit allows 15% and suggested that the operating permit and new rules be consistent ASARCO, Inc , stated that the proposed opacity requirements are neither reasonable nor warranted and presented several arguments why the provisions should be deleted. Adoption of the proposed 5.0% opacity limit on the lead stack would amend ASARCO's existing permit through a rule-making proceeding. This is not permissible under the Texas Administrative Procedure and Texas Register Act Since such an amendment of a permit may only be accomplished in a contested case hearing, the rule would be invalid No information has been provided by the TACB in any of the documents and working papers associated with the preamble and proposed regulations to justify the reduction in opacity limits or to explain how the reduction would affect ambient lead levels ASARCO has an existing permit limit of 15% opacity for the lead stack, and measured opacity readings typically in the 4 0-6 0% range, so adoption of a 5 0% opacity limit would result in frequent routine violations under normal operating conditions ASARCO also testified that there are physical limitations that would prevent the installation of continuous opacity monitors on some of the blast furnace baghouse stacks

The opacity limits and monitoring requirements proposed as §113 71(b) have been deleted from the rule as adopted

Review by legal counsel has indicated that the title of Table 113 71(1) should be changed to read "Lead Emission Limits for Certain Vent Gas Streams at Nonferrous Smelting Operations Existing in El Paso County as of September 9, 1983 " This would clarify that the rule applies to the vent gas streams from various baghouses even if ownership of the plant or responsibility for operations at the smelter were to change hands Since the ASARCO, Inc , smelter is the only nonferrous smelter in El Paso at present, the provisions would not apply to new nonferrous smelters, and no new operations or smelters would be brought within the scope of §113 71 as a result of this title change However, new nonferrous smelters would be subject to best available control technology under the TACB's new source review and permit system

The new sections are adopted under Texas Civil Statutes, Article 4477-5, §3 09(a), which provide the Texas Air Control Board with the authority to make rules consistent with the general intent and purposes of the Texas Clean Air Act, and to amend any rule or regulation the TACB makes

§113 41 Maintenance and Operation of Control Equipment. The owner or operator of any nonferrous smelter located in El Paso County shall maintain and operate all equipment used for the purpose of preventing emissions of particulate matter to the atmosphere in accordance with the best practices in routine use in the field of air pollution control and shall compile written logs documenting all maintenance and repair activities undertaken with respect to such equipment. The entries made in the maintenance and repair logs shall be retained for a period of at least three years and, upon request, shall be made available for inspection during normal working hours by employees of the Texas Air Control Board or local air pollution control agencies.

§113.43. Control of Fugitive Dust.

(a) The owner or operator of any nonferrous smelter located in El Paso County shall comply with the following requirements

(1) Roads.

(A) All plant roadways shall be paved unless the executive director has approved a plan to minimize fugitive emissions from roads and that plan specifies which roads are to be paved and which are to be treated in some other manner; and

(B) all paved plant roadways shall be cleaned with such equipment and in a manner that will minimize visible emissions resulting from the use and from the cleaning of such roadways; and

(C) written logs documenting the frequency of all sealing, spraying, cleaning, and other programs for the minimization of roadway emissions shall be maintained. The logs shall be retained for a period of at least three years and shall be made available for inspections during normal working hours by employees of the Texas Air Control Board or local air pollution control agencies.

(2) Outdoor bulk material storage areas.

(A) Water spraying in combination with chemical sealing shall be used to minimize visible emissions resulting from the outdoor storage of bulk materials containing more than 1 0% lead by weight; and

(B) when materials are added to or removed from a chemically sealed outdoor pile of bulk materials, thereby resulting in the breaking of the pile's chemical seal, the pile shall be resealed within 24 hours after such activity; and

(C) written logs shall be maintained and updated daily to document the actions carried out to comply with the requirements of this paragraph, and the logs shall be retained for a period of at least three years and shall be made available for inspection during normal working hours by employees of the Texas Air Control Board or local air pollution control agencies; and

(D) approval for the procedures used to comply with the requirements of this paragraph shall be obtained in advance from the executive director.

(b) Open unpaved areas.

(1) The owner or operator of any nonferrous smelter in El Paso County shall develop and implement a control program that utilizes chemical sealing, water sprays, or other effective methods to minimize visible emissions of fugitive dust from all open unpaved areas on the smelter site except outdoor bulk material storage areas covered by the provisions of subsection (a)(2) of this section, slag dump area(s), and areas with surface slope greater than 45°, and

(2) the owner or operator shall obtain the executive director's approval of the control program plan before it is implemented, and

(3) the executive director shall approve the plan if he determines that the applicant has submitted sufficient

information to demonstrate that implementation of the plan will minimize fugitive emissions of lead from the affected areas of the smelter site, and

(4) the owner or operator shall carry out the plan as approved and shall maintain logs adequate to demonstrate that it is being carried out. He shall keep the logs at least three years and shall make them available for inspection during normal working hours by employees of the Texas Air Control Board or local air pollution control agencies.

(c) The executive director shall approve an exemption from one or more requirements of subsection (a) and/or subsection (b) of this section if he determines that the owner or operator has provided sufficient information to demonstrate that

(1) compliance with the requirements is technically impracticable or economically unreasonable, and

(2) controls that are technically practicable and economically reasonable are implemented to minimize emissions, and

(3) the emissions allowed by the exemption(s) will not prevent attainment or maintenance of the national ambient air quality standards for lead or cause or contribute to a condition of air pollution.

§113.51. Materials Handling and Transfer The owner or operator of any nonferrous smelter located in El Paso County shall comply with the following requirements:

(1) all lead sinter shall be transferred from storage bins to charge cars in an enclosed structure that is vented to the atmosphere only through air pollution control equipment After such transfer, the contents of the charge cars shall be wet down sufficiently to minimize visible emissions during subsequent transport and charging into a lead blast furnace; and

(2) all particulate matter containing more than 1.0% lead by weight collected by air pollution control equipment shall be transported in closed containers or shall be transported by enclosed conveying systems that are vented to the atmosphere only through particulate matter control equipement or shall be slurried with water and transported wet; and

(3) there shall be no visible particulate emissions from the transport of collected particulate matter containing more than 1 0% lead by weight; and

(4) all collected particulate matter from lead sinter machine electrostatic precipitators, lead sinter machine ventilation baghouses, lead blast furnace baghouses, copper roaster electrostatic precipitators, copper reverberatory furnace electrostatic precipitators, copper converter electrostatic precipitators, copper converter building ventilation baghouses, and zinc deleading baghouses shall be agglomerated by moisturizing with water, returned by enclosed conveyance to plant smelting processes, or equipped with an equivalent control system approved by the executive director, and

(5) all moisturizing of collected particulate matter required by paragraph (4) of this section shall meet the following requirements·

(A) moisturizing of collected particulate matter from lead sinter machine electrostatic precipitators, lead sinter machine ventilation baghouses, and lead blast furnace baghouses shall occur in an enclosed structure that is under negative pressure, and

(B) moisturizing of collected particulate matter from other sources identified in paragraph (4) of this section shall be controlled by local exhaust hoods approved by the executive director, and

(C) all emissions resulting from the controls required by subparagraphs (A) and (B) of this paragraph shall be vented to the atmosphere only through particulate matter control equipment; and

(6) collected particulate matter that contains more than 1 0% lead by weight and that has been agglomerated by moisturizing shall be handled in an enclosed structure that is under negative pressure and is vented to the atmosphere only through particulate matter control equipment; and

(7) the lead concentration in the gas streams exhausted to the atmosphere through control equipment required by paragraphs (1), (2), (5), and (6) of this section shall not exceed 0 005 grain per dry standard cubic foot, unless the control equipment consists of a baghouse fabricated prior to March 31, 1984. If the control equipment consists of a baghouse fabricated prior to March 31, 1984, the lead concentration in the gas stream exhausted to the atmosphere shall not exceed 0 010 grain per dry standard cubic foot

§113 52 Smelting of Lead The owner or operator of any lead smelter located in El Paso County shall comply with the following requirements

(1) Each blast furnace shall be equipped with an automatic system to control tuyere air flow; and

(2) each lead blast furnace shall be equipped with a ventilation system approved by the executive director to minimize visible emissions from the tapping of lead and slag; and

(3) each lead dross reverberatory furnace shall be equipped with a ventilation system approved by the executive director to minimize visible emissions from the charging and tapping of the furnace, and

(4) each receiving lead kettle and final dross lead kettle shall be equipped with a ventilation system approved by the executive director to minimize visible emissions; and

(5) ventilation systems required by paragrapns (2)-(4) of this section shall be vented to the atmosphere only through particulate matter control equipment, and

(6) the lead concentration in the gas streams exhausted to the atmosphere through control equipment required by paragraph (5) of this section shall not exceed 0 005 grain per dry standard cubic foot for new control equipment or 0 01 grain per dry standard cubic foot for existing control equipment, and

(7) once the control equipment required by paragraphs (1)-(4) of this section is installed and operating

(A) the control equipment shall be maintained and operated so as to minimize visible emissions from the process and equipment subject to such control, and

(B) measurements, such as capture velocity, duct velocity, or static pressure, that demonstrate the effectiveness of the control equipment in controlling visible emissions and that are approved by the executive director shall be made at least quarterly or on a schedule approved by the executive director, and

(C) written logs describing all maintenance and measurements performed on the control equipment

and recording the dynamite consumption for each lead blast furnace shall be compiled, and the logs shall be maintained for a period of at least three years and shall be made available for inspection during normal working hours to employees of the Texas Air Control Board or local air pollution control agencies

§113.53. Smelting of Copper and Zinc. The owner or operator of any copper or zinc smelter located in El Paso County shall comply with the following requirements:

(1) secondary hoods of design approved by the executive director shall be installed on each copper converter; and

(2) the emissions captured by the secondary hoods required by paragraph (1) of this section shall be exhausted through a duct system that is under negative pressure and through a system or device for the control of particulate matter, and

(3) the lead concentration in the gas leaving the system or device required by paragraph (2) of this section shall not exceed 0 001 grain per dry standard cubic foot if the system or device controls only the emissions from the secondary hoods If the system or device also controls lead emissions from other sources, the system or device shall be at least 95% efficient in reducing lead emissions. The owner or operator shall submit a control plan, including a method for verifying that the required performance is achieved The control plan shall be subject to the executive director's approval The vent gas from the system or device required by paragraph (2) of this section shall be vented to the atmosphere no less than 230 feet above grade

§113 71 Lead Emissions Limits for Stacks. No person may cause, suffer, or allow emissions in excess of any limit specified in Table 113.71(1) in this section.

TABLE 113 71(1)

Lead Emission Limits for Certain Vent Gas Streams at Nonferrous Smelting Operations Existing in El Paso County as of September 9, 1983

Vent Gas From	Lead Emission Limits, lb/hr
Lead and Copper Ore Conveying Baghouse	0.4
Lead Ore Unloading Building Baghouse	4.1
Lead and Copper Ore Bedding Building Baghouses (Total)	7.4
Lead Sinter Plant Material Handling Baghouse	12.8
Lead Blast Furnace Baghouse Stacks (Total)	2.2
Copper Ore Unloading Building Baghouse	0.1
Copper Reverberatory Furnace Electrostatic Precipitator	1.5
Copper Converter Building Ventilation Baghouse —If Used Only To Control Building Ventilation Air	0.3
—If Used To Control Emissions From Copper Converter Secondary Hoods in Addition to Building Ventilation. Air	1.4
Zinc Fuming Furnace and Deleading Kilns Baghouse	4.3
Cadmium Plant Baghouse	0.4

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

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Executive Director
Texas Air Control Board

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Alternate Controls

31 TAC §113.111, §113.112

The Texas Air Control Board (TACB) adopts new §113.111 and §113 112, with changes to the proposed text published in the September 9, 1983, issue of the *Texas Register* (8 TexReg 3579)

The new sections contained in the undesignated heads concerning nonferrous smelters in El Paso County, alternate controls, and compliance and control plan requirements form new Subchapter B, concerning lead from stationary sources These new sections are adopted as part of the State Implementation Plan (SIP) for lead in El Paso County. These new sections, in conjunction with the newly adopted revisions to the SIP for lead in El Paso County, provide additional emission reductions necessary to abate lead air pollution in El Paso County and to achieve attainment of the National Ambient Air Quality Standards (NAAQS) for lead.

Section 113 111 provides for the executive director to approve an alternate means of control of a particular source if the applicant demonstrates that the alternate control will yield emission reductions for the same air containment that are at least equivalent to the emission reductions that would otherwise be required in terms of their quantity and their impact on air quality, including health and welfare effects The exception is that the executive director would approve an alternate control plan in lieu of any requirement of §113.52(2)-(5), concerning smelting of lead, if he determined that the applicant had provided sufficient information to demonstrate that the alternate control would assure that emissions of particulate matter from

each affected facility would be reduced by an amount specified in §113 111 and relied upon in the SIP

Section 113 112 requires that any proposed alternate emission (i e , "bubble") reductions be actual reductions, not "credits" for past reductions that have already occurred

Three commenters testified on the provisions of §113 111

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 " Since each of the three commenters (Brandt Mannchen, Region 6 of the U S Environmental Protection Agency (EPA), and ASARCO, Inc) suggested some changes for §113 111, they were categorized as "against " No comments were received on §113 112, however, the phrase "in El Paso County" has been added to the title for clarification

Region 6 of the EPA commented that these rules are not detailed enough to be approved as generic bubble rules, therefore, each action taken under this undesignated head would have to be submitted to the EPA as a revision of the SIP, and the state must commit to do so for any alternate plan affecting the federally approved SIP

Brandt Mannchen asked how inspectors would be able to enforce provisions and determine compliance with the alternate means of control

ASARCO, Inc , stated that, because of the way the proposed rules were drafted, ASARCO would be forced to present numerous requests for alternate means of control since many of the proposed control requirements are unattainable or unreasonable Moreover, any request for an alternate means of control might very well involve a costly and time-consuming amendment to the lead SIP ASARCO requested that the TACB prepare a specific, workable, and reasonable set of rules, but that an alternate means of control section be kept in the regulation to provide a mechanism for dealing with unexpected problems with specific requirements

The EPA has the authority to require individual SIP revisions for alternate controls under these proposed rules Should it be determined that such individual revisions are necessary, the EPA should clearly state that determination in connection with formal approval of the SIP provisions The EPA, in its proposed approval of the Texas lead SIP (48 Code of Federal Regulations 57338, December 29, 1983), stated that all alternate lead control measures or exemptions approved by the TACB must be submitted to the EPA as a SIP revision

Having alternate control provisions for a plant would increase the complexity of work for air pollution control inspectors because the information needed by an inspector to make compliance/noncompliance determinations would be increased, but the information should be available in the files the inspector would normally consult in preparation for making an inspection

In response to comments from ASARCO and other commenters suggesting that specific requirements appropriate to the affected sources be written into the rules, the staff has evaluated the hearing comments and recommended such specific requirements throughout the proposal For this reason, the last part of proposed §113 111, dealing with requirements in §113 52, is no longer needed and has been deleted from the section as adopted However, it appears desirable to keep a general alternate means of control provision to deal with unforeseen problems with specific provisions

Copies of the written comments and the transcript of the hearing are available for inspection at the Texas Air Control Board Austin office, 6330 Highway 290 East, Austin, Texas 78712

The new sections are adopted under Texas Civil Statutes, Article 4475 5, §3 09(a), which provide the Texas Air Control Board with the authority to make rules consistent with the general intent and purposes of the Texas Clean Air Act, and to amend any rule or regulation the Texas Air Control Board makes

§113 111 Alternate Means of Control in El Paso County Any person affected by any emission control requirement of the undesignated head concerning nonferrous smelters in El Paso County of this subchapter (relating to Lead from Stationary Sources) may request the executive director to approve an alternate control requirement The executive director shall approve such alternate means of control if the applicant demonstrates that the alternate control will yield emission reductions for the same air contaminant that are at least equivalent to the emission reductions that would otherwise be required in terms of their quantity and their impact on air quality, including health and welfare effects

§113 112 Alternate Emission Reductions in El Paso County The executive director shall not approve, pursuant to §101 23 of this title (relating to Alternate Emission Reduction ("Bubble") Policy), controls in lieu of those required by the provisions of §§113 41-113 72 of this subchapter (relating to Nonferrous Smelters in El Paso County) if such proposed alternate controls were implemented prior to the effective date of §§113 41-113 72

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 March 8, 1984

TRD 842787

Bill Stewart, P E
Executive Director
Texas Air Control Board

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

Compliance and Control Plan Requirements

31 TAC §§113 121-113 124

The Texas Air Control Board (TACB) adopts new §§113 121-113 124, with changes to the proposed text published in the September 9, 1983, issue of the *Texas Register* (8 TexReg 3579)

The new sections contained in the undesignated heads concerning nonferrous smelters in El Paso County, alternate controls, and compliance and control plan requirements form new Subchapter B, concerning lead from stationary sources These new sections are adopted as part of the State Implementation Plan (SIP) for lead in El Paso County These new sections, in conjunction with newly adopted revisions to the SIP for lead in El Paso County, provide additional emission reductions necessary to abate lead air pollution in El Paso County and to demonstrate attainment of the National Ambient Air Quality Standard (NAAQS) for lead

New §113 121, titled "Compliance with Other Rules," provides that the rules in Subchapter B apply independently to affected persons, that they do not supersede any other regulatory requirements, and that if more than one requirement applies, the stricter requirement must be met

New §113 122, titled "Dates for Control Plan Submission and for Final Compliance," sets March 31, 1984, as the date for submitting a control plan and sets dates for final compliance with various rule provisions These dates range from the effective date of the rule to February 28, 1989

New §113 123, titled "Control Plan Procedure," specifies the required contents of a control plan to be submitted to the executive director

New §113 124, titled "Reporting Procedure," specifies requirements for progress reports and notification of completion of steps in the control plan

No comments were received regarding adoption of new §113 121, §113 123, or §113 124 Three commenters discussed §113 122

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 agrees with the proposal in its entirety is categorized as "for" the proposal In this rule-making process, three commenters (ASARCO, Inc , the El Paso City-County Health Unit, and Brandt Mannchen) suggested some changes, therefore, their comments are categorized as "against" proposed §§113 121-113 124 One commenter, the El Paso Regional G.oup of the Sierra Club, was "for" the proposal

Copies of the written comments and the transcript of the hearing are available for inspection at the Texas Air Control Board Austin office, 6330 Highway 290 East, Austin, Texas 78723

The El Paso City-County Health Unit requested that the installation of secondary hoods required by §113 53(1) be delayed until a National Emission Standards for Hazardous Air Pollutants (NESHAPS) standard for arsenic has been established by the Environmental Protection Agency (EPA) ASARCO, Inc , stated that the time necessary to complete most of the projects that would be required by the proposed rules would be considerably longer than the proposed compliance dates would allow It would not be possible to carry out all the work concurrently while maintaining operations at the plant Moreover, trying to complete all necessary projects too quickly would mean too many contract personnel working at the plant at any given time In the past this has led to increased emissions The company provided an alternate approach for setting compliance dates for various sections Brandt Mannchen urged setting the compliance dates as early as possible

It is important to set compliance dates as early as is reasonable to remedy any conditions of air pollution that exist and to attain the NAAQS for lead in El Paso County as quickly as possible It is also important to set reasonable compliance dates because work done too hastily may lead to near-term increases in ambient lead levels by increasing fugitive emissions from the smelter site and by interfering with operation and maintenance of the plant, thereby causing an increase in upset conditions and associated emissions Also, adequate time is needed to design and install equipment properly so that emissions are minimized over the long term

The section and paragraph numbers in this discussion and the compliance date recommendations and options presented as follows refer only to the provisions in the staff recommendations, which are collected in Tab 3, The Rules as Recommended for Adoption, of the public hearing record Both the content and the numbering of provisions in the TACB hearing proposal and in the regulatory language that ASARCO, Inc , suggested are different from one another and from the content and numbering in the staff recommendations presented here and collected in Tab 3 It would be misleading to associate the proposed compliance dates with provisions in either of those documents

There was considerable comment on the proposal to require secondary hoods on copper converters to reduce ambient air lead impacts The question of the need for the hoods is discussed under §113 53, titled "Smelting of Copper and Zinc "

ASARCO expressed concern over having to install secondary hoods now to meet a lead requirement and later having to replace them with hoods of a different design in response to NESHAPS requirements for arsenic Such an outcome would be unreasonable and unfair ASARCO suggested that the requirement for secondary hoods be conditioned explicitly upon the EPA's adoption of a NESHAPS standard for arsenic from copper smelters, the EPA's approval of a secondary hood design capable of satisfying the standard, and the TACB's provision of relief from sulfur dioxide and opacity limitations applicable to any stack emissions that would be affected by the installation of the secondary hoods for the copper converters This is discussed under §113 53 Making the h ood requirements conditional upon the first two previously mentioned actions would alleviate ASARCO's concern about doing the job twice On the other hand, lead emissions that the hoods would capture do make a significant contribution to ambient air lead concentrations in areas where lead air pollution problems exist, so there is a need to proceed with installation of the hoods Also, federal requirements specify that all controls needed to attain an air quality standard must be in effect within three years of the approval of the SIP for attainment of the standard It appears that three years would be more than adequate time to design, fabricate, and install the secondary hoods

Designing secondary hoods to meet both Texas and federal requirements for lead as well as EPA arsenic requirements may not present a significant difficulty Both contaminants are in the same emission stream from the converters Because of problems with the arsenic's subliming, it may be more difficult to remove from the exhaust gas stream than the lead, but control equipment designed to remove the arsenic should easily meet the proposed requirements on lead If there is a problem for ASARCO, it appears that it would be with the EPA's standard setting process, not with designing hoods to meet both lead and arsenic standards If ASARCO were subject to an enforceable, federally approved Texas lead SIP requirement to install the secondary hoods, it appears ASARCO would be in a strong position to insist, if necessary through legal action, that the EPA proceed in a timely manner to approve ASARCO's secondary hood design However, it might be possible to reduce the risk to ASARCO of being caught between conflicting TACB and EPA requirements The TACB could specify a specific date for compliance with the secondary hood requirements that allows for an extended time (such as five years) for compliance At the same time, a provision could be added requiring compliance by a reasonable time (such as two years) after the date of final action by the EPA on a NESHAPS for arsenic affecting the El Paso copper smelter This conditional date would allow final compliance within three years from the date of final approval of the lead SIP by the EPA, provided the EPA takes final action on the arsenic NESHAPS within approximately 18 months

ASARCO did not discuss in its written testimony the date for submission of compliance plans to the executive director, but it did specify the date in its suggested alternate SIP proposal as six months after the effective date of the subchapter Four or five months should be adequate time to submit a compliance plan, especially in light of the large amount of work ASARCO has already completed in preparing engineering analyses and cost estimates for the various control measures under consideration Four or five months would also allow for compliance plan submittal prior to final EPA action to approve the lead SIP for El Paso

In general, the adopted compliance dates allow the amount of time ASARCO suggested would be needed to meet each requirement for which ASARCO suggested a date The dates were developed in consider ation of the possibility that the subchapter might become effective in late February 1984 Some of the provisions that nominally would become effective immediately will not actually apply immediately because they will apply only after a piece of control equipment has been put in place or a work practice has been started.

After these rules that are applicable to El Paso County were proposed in the September 9, 1983, issue of the *Texas Register* (8 TexReg 3575), rules applicable to Dallas County were proposed in the December 9, 1983, issue of the *Texas Register* (8 TexReg 5117) The control requirements for Dallas County were proposed under a new undesignated head titled "Lead Smelters in Dallas County " Since the undesignated heads for "Alternate Controls" and "Compliance and Control Plan Requirements" had been proposed for El Paso County, but not yet adopted, *Texas Register* filing requirements dictated that the similar provisions for Dallas County had to be proposed as separate rules rather than as amendments to the rules for El Paso To make the Alternate Controls and Compliance and Control Plan provisions for El Paso easy to interpret after the corresponding provisions for Dallas County are adopted, the phrase "in El Paso County" is being added to each section title References to the sub chapter "Lead from Stationary Sources" are being narrowed to the undesignated head, 'Nonferrous Smelters in El Paso County " Also, "in El Paso County" is added after the word "persons" in the text of §113.121

Further changes in proposed §113 122 are made based upon testimony which addressed the need for reasonable and adequate time to submit a control plan and to install control equipment Those changes include the replacement of the "March 31, 1984," date for control plan submission by "July 31, 1984," the addition of "or paragraph" in three places for clarity, and changes in the table of affected provisions and dates of final compliance

These new sections are adopted under Texas Civil Statutes, Article 4477-5, §3 09(a), which provide

the Texas Air Control Board with the authority to make rules consistent with the general intent and purpose of the Texas Clean Air Act, and to amend any rule or regulation the Texas Air Control Board makes.

§113.121 Compliance with Other Rules in El Paso County The rules in this subchapter (relating to Lead from Stationary Sources) apply independently to affected persons in El Paso County They do not supersede any other regulatory requirements If more than one requirement applies, the stricter requirement must be met.

§113 122 Dates for Control Plan Submission and for Final Compliance in El Paso County Any person affected by the requirements of this undesignated head relating to nonferrous smelters in El Paso County shall submit a control plan to the executive director by July 31, 1984, and shall be in compliance as soon as practicable but no later than the dates specified in the following table If no compliance date is specified for a section or paragraph in this subchapter (relating to Lead from Stationary Sources), all affected persons shall be in compliance with the section no later than the effective date of the section and shall remain in continuous compliance with the section or paragraph

Rule or Paragraph Number	Date of Final Compliance
§113 41	July 31, 1984
§113 42	July 31, 1984
§113 43	December 31, 1984
§113 51	December 31, 1985
§113 52(1)	February 28, 1985
§113 52(2)	July 31, 1984
§113 52(3)	February 28, 1985
§113 52(4)	February 28, 1985
§113 53	February 28, 1989*

* or two years from the date of final action by the U.S. Environmental Protection Agency on national emission standards for hazardous air pollutants (NESHAPS) for inorganic arsenic from low-arsenic-throughput copper smelters, whichever is sooner.

§113 123 Control Plan Procedure in El Paso County A control plan for compliance with the requirements of this subchapter (relating to Lead from Stationary Sources) shall be submitted to the executive director detailing the compliance status of all emissions controls required by this subchapter (relating to Lead from Stationary Sources) and describing in detail the method to be followed to achieve and maintain compliance The plan shall specify the exact dates by which specific steps will be taken to achieve compliance The plan shall include all the following

(1) the dates by which contracts for emission control systems or process modifications will be awarded, or dates by which orders will be issued for the purchase of component parts to accomplish emission control or process modification,

(2) the date of initiation of on-site construction or installation of emission control equipment or of process change,

(3) the date by which process modification or on-site construction or installation of emission control equipment is to be completed,

(4) the date by which final compliance is to be achieved.

§113.124. Reporting Procedure in El Paso County After a control plan for compliance with the requirements of this subchapter (relating to Lead from Stationary Sources) has been submitted to the executive director, progress reports shall be submitted every 90 days for all control plans specified in §113 123 of this title (relating to Control Plan Procedure in El Paso County). The Executive Director shall also be notified of the completion of each separate step in the control plan within five days after completion All reports and notifications shall be submitted in writing by the person submitting the compliance control plan.

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

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Executive Director
Texas Air Control Board

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 89. Institutional Services for Children Committed for Delinquent Behavior

Security

37 TAC §§89.540, 89.545, 89.555, 89.560, 89.565, 89.570, 89.575, 89.585, 89.600, 89.605, 89.610

The Texas Youth Commission adopts new §§89.540, 89.545, 89.555, 89.560, 89 565, 89 570, 89 575, 89 585, 89.600, 89 605, and 89 610, without changes to the proposed text published in the January 31, 1984, issue of the *Texas Register* (9 TexReg 569.)

The new rules governing the operation of security units at TYC institutions provide for increased staff efficiency, ensure due process for students, and greater staff accountability through use of these rules as a management tools

Superintendents of TYC institutions will be required to implement these rules according to uniform, established standards The operation of security units will be monitored regularly by the superintendents and by central office line and technical support staff Any identified deficiencies will be corrected in a timely manner

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Human Resources Code, §61 075, which provides the Texas Youth Commission with the authority to order the confinement of a delinquent child committed to the agency under conditions it believes best designed for the child's welfare and the interests of the public

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 March 8, 1984

TRD-842784 Ron Jackson
Executive Director
Texas Youth Commission

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Proposal publication date January 31, 1984
For further information, please call (512) 452-8111.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IV. State Commission for the Blind

Chapter 173. Donations

40 TAC §§173.1-173.8

The State Commission for the Blind adopts new §§173.1-173 8, without changes to the proposed text published in the December 30, 1983, issue of the *Texas Register* (8 TexReg 5522)

The new sections concern who may accept donations for the commission, solicitation and investing of donations, restricted and unrestricted donations, and standards of conduct between employees and officers of the commission and private donors

The new sections govern the use of an employee or property of the commission by a private donor, service by an officer or employee of the commission as an officer or director of a private donor, monetary enrichment on an officer or employee of the commission by a private donor, and other potential conflict-of-interest situations

No comments were received regarding adoption of the new sections

The new sections are adopted under the Texas Human Resources Code, §91 030, which provides the State Commission for the Blind with the authority to adopt rules governing the relationship between private donors and the Commission for the Blind and its employees

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

Issued in Austin, Texas, on March 9, 1984

TRD 842850 John C Wilson
Executive Director
State Commission for the Blind

Effective date March 30, 1984
Proposal publication date December 30, 1983
For further information, please call (512) 475-6890

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 Although some notices may be received too late for publication before the meeting is held, all those filed are published in the *Register* Notices concerning state agencies, colleges, and universities must contain the date, time, and location of the meeting, and an agenda or agenda summary Published notices concerning county agencies include only the date, time, and location of the meeting These notices are published alphabetically under the heading "Regional Agencies" according to the date on which they are filed

Any of the governmental entities named above must have notice of an emergency meeting, or 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 However, notices of emergency additions or revisions to a regional agency's agenda will not be published since the original agenda for the agency was not published

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 These notices may contain more detailed agendas than space allows to be published in the *Register*.

Open Meetings

Texas Department of Agriculture

Friday, March 16, 1984, 10 a.m. The Family Farm and Ranch Advisory Council of the Texas Department of Agriculture will meet in Room 930A, Stephen F Austin Building, 1700 North Congress Avenue, Austin According to the agenda, the council will consider an overview of a program, review provisions of the Family Farm and Ranch Security Act, consider a report on the status of the security fund, discuss responsibilities of advisory council members, and implementation of FFRSA concerning application procedure, credit analysis and underwriting guidelines, third-party sponsored loans, seller-sponsored loans, and paper flow, and organization of the Advisory Council concerning officers and committees

Contact: Katie Bond, P O Box 12847, Austin, Texas 78711, (512) 475-6346

Filed: March 8, 1984, 10 50 a.m
TRD-842754

State Banking Board

Wednesday, March 21, 1984, 2 p.m. The State Banking Board will meet at 2601 North Lamar Boulevard, Austin. According to the agenda, the board will conduct a voting session; consider an application for charter for First Bank of Terrell, Terrell, an interim charter application for New Summit Bank, San Antonio, domicile change applications for Midland American Bank, Midland, and First State Bank, Chilton, a rescind interim charter on Allied Bank, Roanoke, and point of sale and unmanned teller machine rules; and review criteria for bank charter applications and applications approved but not yet open for business

Contact: O A Cassity, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451

Filed: March 12, 1984, 1:31 p.m.
TRD-842890

Interagency Council on Early Childhood Intervention

Wednesday, March 21, 1984, 8:30 a.m. The Interagency Council on Early Childhood Intervention will meet at 1101 East Anderson Lane, Austin According to the agenda, the council will review public comments, approve the February minutes, hear a staff report, and discuss the 1986-1987 budget

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas, (512) 458-7342

Filed: March 13, 1984, 8 01 a m
TRD-842915

Texas Education Agency

Committees of the Texas Elementary and Secondary School Planning Council of the Texas Education Agency (TEA) will meet in Room 101-E, TEA North Building, 1200 East Anderson Lane, Austin Days, times, committees, and agendas follow

Tuesday, March 20, 1984, 8 a.m. The Committee on Planning, Research, and Curriculum will discuss 19 TAC §21 101, concerning required curriculum, the Water Education Program, applications for support services personnel units (6PU), and an analysis of 1983-1984 education service center budgets

Tuesday, March 20, 1984, 10:30 a.m. The Committee on Interagency Coordination, Policy Development, Communication Services, and School Support will conduct

hearings on a proposed state board rule relating to student absences for extracurricular or other activities, discuss the management information project, and consider proposed changes in state board rules relating to school accreditation, plans for the annual meeting of the Statewide Advisory Commission on education service centers, the Advisory Committee on Integrated Telecommunications Systems, and legislative proposals to be submitted to the 69th Legislature

Tuesday, March 20, 1984, 1 p.m. The Committee on Finance and Program Administration will consider an update on space use fees, discuss payment of personnel from varied funding sources and bilingual/technical assistance and migrant allocations, hear a status report on special education, and discuss the plan for vocational meetings and rules, and the state board rule on contracts and agreements, budgeting, accounting, auditing, and reporting changes, and the status of the Educational Consolidated Improvement Act (ECIA), Chapter 2

Tuesday, March 20, 1984, 2:45 p.m. The Committee on Professional Development and Support will hear a report on a public hearing on proposed teacher education requirements, consider proposed workshops for high school counselors regarding sources of financial aid for students, and discuss House Bill 246 requirements relating to computers in education

Contact: Ernest Chambers, 201 East 11th Street, Austin, Texas 78701, (512) 475-6400.

Filed: March 12, 1984, 3:01 p.m.
TRD-842902-842905

Wednesday, March 21, 1984, 8 a.m. The Texas Elementary and Secondary School Planning Council will meet in the fourth floor conference room, Teacher Retirement System Building, 1001 Trinity Street, Austin. According to the agenda, the council will hear reports from the commissioner of education, the Committee on Planning, Research, and Curriculum, the Committee on Interagency Coordination, Policy Development, and School Support, the Committee on Finance and Program Administration, and the Committee on Professional Development and Support

Contact: Ernest Chambers, 201 East 11th Street, Austin, Texas 78701, (512) 475-6400

Filed: March 12, 1984, 3:01 p.m.
TRD-842906

Texas Employment Commission

Tuesday, March 20, 1984, 9 a.m. The Texas Employment Commission (TEC) will meet in Room 644, TEC Building, 15th Street and Congress Avenue, Austin. According to the agenda summary, the commission will consider prior meeting notes and internal procedures of the Office of Commission Appeals; consider and act upon higher level appeals in unemployment compensation cases in Docket 12, and set the date of the next meeting

Contact: Courtenay Browning, TEC Building, Room 608, 15th Street and Congress Avenue, Austin, Texas, (512) 397-4415

Filed: March 12, 1984, 2:09 p.m.
TRD-842891

Joint Select Committee on Fiscal Policy

Friday, March 16, 1984, 10 a.m. The Joint Select Committee on Fiscal Policy will meet in emergency session in the House Appropriation Committee Room 309, State Capitol, Austin. According to the agenda, the committee will discuss state spending policies and issues. The emergency status is necessary to meet the timetables of committee members

Contact: Tom Scott, P.O. Box 12068, Austin, Texas 78711, (512) 475-3106

Filed: March 9, 1984, 9:23 a.m.
TRD-842801

Office of the Governor

Thursday, March 15, 1984, 9:30 a.m. The Governor's Advisory Committee on Minority Business of the Governor's Small Business and Equal Employment Opportunity of the Office of the Governor met in emergency session at the Holiday Inn, 1901 Tyler, Expressway 83 and 177, Harlingen. According to the agenda, the committee conducted an open forum for minority contractors. The emergency status was necessary to ensure meeting the projected timetable for submitting a report to the governor.

Contact: Edward Moore or Carl Mullen, 201 East 14th Street, Room 403, Austin, Texas 78711, (512) 475-6507.

Filed: March 13, 1984, 9:31 a.m.
TRD-842921

Texas Department of Health

Friday, March 16, 1984, 9 a.m. The Municipal Solid Waste Management and Resource Recovery Advisory Council of the Texas Department of Health will meet in Room G-107, 1100 West 49th Street, Austin. According to the agenda summary, the council will discuss the council legislative mandate and the selection of a vice-president and executive secretary, consider background information on the Solid Waste Program and solid waste laws, conduct an overview of solid waste issues and a briefing on the Municipal Solid Waste Management and Resource Recovery and Conservation Act, House Bill 1719, and discuss House Bill 1719 funding and the council's calendar for the year

Contact: Jack C. Carmichael, P.E., 1100 West 49th Street, Austin, Texas 78756, (512) 458-7343

Filed: March 8, 1984, 4:05 p.m.
TRD-842791

Texas Health and Human Services Coordinating Council

Monday, March 19, 1984, 3 p.m. The Texas Health and Human Services Coordinating Council will meet in Room 101 and Room 102, Texas Law Center, 1414 Colorado Street, Austin. According to the agenda, the council will review minutes of the previous meeting, proposed operating rules for final adoption, and the budget, consider committee reports, hear a presentation on child abuse in state operated facilities, and consider the schedule of future meetings

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

Filed: March 9, 1984, 1:09 p.m.
TRD-842804

Texas Health Facilities Commission

Thursday, March 22, 1984, 1:30 p.m. The Texas Health Facilities Commission will meet in Suite 305, Jefferson Building, 1600 West 38th Street, Austin. According to the agenda summary, the commission will consider the following applications

Certificates of Need
East Texas Medical Imaging, Athens
AS83-1116-310
Lakeland Medical Center, Athens
AH83-1116-308

Colonial Hospital, Inc., Terrell
AH83-1122-392
Anderson County Memorial Hospital, Palestine
AH83-1122-393
Smither Geriatric Center, Huntsville
AN83-0803-078
Spohn Hospital, Corpus Christi
AH83-1116-309
John Peter Smith Hospital, Fort Worth
AH83-1004-193

Nunc Pro Tunc Orders
Southwest Texas Methodist Hospital, San Antonio
AH83-0610-616
Dallas Medical Imaging, Dallas
AS82-1004-085

Contact: Judith A Monaco, P.O Box 50049, Austin, Texas 78763.

Filed: March 12, 1984, 9:35 a.m.
TRD-842870

Texas Historical Commission

Wednesday, March 21, 1984, 1 p.m. The Main Street Committee of the Texas Historical Commission will meet at the Carrington-Covert House, 1511 Colorado Street, Austin According to the agenda, the committee will study testimony given at the House Committee on Cultural and Historical Affairs hearing, analyze and prepare the 1986-1987 budget request, and discuss funding needs for 1985

Contact: Anice Reed, P O Box 12276, Austin, Texas 78711, (512) 475-3092

Filed: March 8, 1984, 1 20 p.m.
TRD-842767

Texas Department of Human Resources

Wednesday, March 14, 1984, 9 a.m. The Advisory Committee on Child Care Facilities and the Advisory Council on Child Care of the Texas Department of Human Resources (DHR) met in emergency rescheduled session at the Sheraton Crest Inn, 111 East First Street, Austin According to the agenda, the committee and council heard the licensing director's report and discussed child care administrator fees, day care review, and a work plan The emergency status was necessary for the committee and the council to meet together to consider DHR board directives recently received on the director's report The two groups could not meet together on the previously posted March 15 meeting.

Contact: Doug Sanders, P O Box 2960, Austin, Texas 78769, (512) 441-3355, ext 6039.

Filed: March 13, 1984, 9 16 a.m.
TRD-842916

Texas Indian Commission

Monday and Tuesday, March 19 and 20, 1 p.m. and 8:30 a.m. respectively. The Texas Indian Commission will meet at the Alabama/Coushatta Indian Reservation Community Center, Livingston According to the agenda summary, the commission will meet on Monday to discuss administration and the Alabama/Coushatta Indian Reservation On Tuesday the commission will discuss the Tigua Indian Reservation and other business

Contact: Raymond D Apodaca, 9434 Viscount, Suite 122, El Paso, Texas 79925, (915) 591-4461

Filed: March 8, 1984, 10 30 a.m.
TRD-842755

State Board of Insurance

The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin Days, times, and dockets follow

Monday, March 19, 1984, 9 a.m. Docket 7625—reinsurance agreement whereby the Texas Heritage Life Insurance Company, Abilene, has been totally reinsured by Southern Medical Life Insurance Company, Waco

Contact: J C Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353

Filed: March 9, 1984, 11.07 a m
TRD-842803

Tuesday, March 20, 1984, 9 a.m. Docket 7618—application for original charter of Houston United Casualty Insurance Company, Houston

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: March 12, 1984, 10 10 a m
TRD-842881

Tuesday, March 20, 1984, 10 a.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin According to the agenda summary, the board will decide on a motion for a rehearing filed by the Texas Catastrophe Property Insurance Association in the appeal of Northland Casualty Company from action of the Texas Catastrophe Property Insurance Association, hear reports from the commissioner and fire marshal; and consider board orders on several different matters as itemized on the complete agenda

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

Filed: March 12, 1984, 4 02 p m
TRD-842910

The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin Days, times, and dockets follow

Tuesday, March 20, 1984, 1:30 p.m. Docket 7617 –application of Great Southern Life Insurance Company for approval of revaluation of home office property

Contact: Tom I McFarling, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-1076

Filed: March 12, 1984, 10 10 a m
TRD-842882

Wednesday, March 21, 1984, 1:30 p.m. Docket 7632—merger agreement whereby World Service Life Insurance of Texas, Fort Worth, will be merged into United Fidelity Life Insurance Company, Fort Worth

Contact: J C Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353

Filed: March 12, 1984, 10 10 a m
TRD-842883

Thursday, March 22, 1984, 9 a.m. The State Board of Insurance will meet in the Hearing Room, DeWitt Greer Building, 11th and Brazos Streets, Austin According to the agenda, the board will conduct a public hearing to consider proposed Rules 059 .41.43.300- 326 (as published at 9 TexReg 1076) concerning the planning, selling, installing, maintaining, or servicing of fire protection sprinkler systems

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

Filed: March 12, 1984, 10 08 a m
TRD-842874

The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin Days, times, and dockets follow

Thursday, March 22, 1984, 9 a.m. Docket 7201—application of Providence Life Insur-

ance Company, Johnston, Rhode Island, for authority to issue variable annuity contracts

Contact: J C Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353

Filed: March 12, 1984, 10 10 a m
TRD-842884

Friday, March 23, 1984, 9 a.m. Docket 7553—whether the Group I legal reserve life insurance agent's license held by Steven R Spielberg should be canceled or revoked

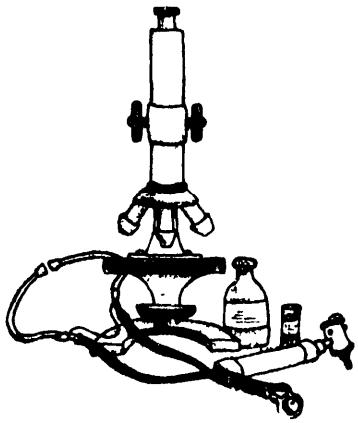
Contact: Tom I McFarling, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-1076

Filed: March 12, 1984, 10 10 a m
TRD-842885

Friday, March 23, 1984, 1:30 p.m. Docket 7621—application for original charter of National Credit Life Insurance Company, Arlington

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287

Filed: March 12, 1984, 10 10 a.m
TRD-842886



Texas Commission on Law Enforcement Officer Standards and Education

Wednesday, March 28, 1984, 10 a.m. The Texas Commission on Law Enforcement Officer Standards and Education will meet at 1606 Headway Circle, Austin Items on the agenda include the minutes, final adoption of amendments to 37 TAC §§211 75, 211 76, 211 78, and 211 79, final adoption of §211 74, application of the Bexar County Sheriff's Department for academy certification, and staff activity or planning reports

Contact: Alfredo Villarreal, 1606 Headway Circle, Austin, Texas 78754, (512) 834-9222

Filed: March 9, 1984, 1 33 p m
TRD-842805

Texas Mohair Producers Board

Thursday, March 22, 1984, 2 p.m. The Texas Mohair Producers Board of the Texas Department of Agriculture will meet at the Holiday Inn Civic Center, 801 Avenue Q, Lubbock According to the agenda, the board will administer an oath of office, elect officers, hear financial and market reports; and discuss grower programs

Contact: Bob Paschal, P O Box 5337, San Angelo, Texas, 76902, (915) 655-3161.

Filed: March 12, 1984, 3.45 p m.
TRD-842909

Board of Pardons and Paroles

Monday, March 12, 1984, 2 p.m. The Board of Pardons and Paroles met in emergency session at 8610 Shoal Creek Boulevard, Austin According to the agenda, the board considered a request by condemned felon James David Autry (Texas Department of Corrections Execution 670) that the board recommend to the governor that his death sentence be commuted to life imprisonment After dealing with the commutation request, the board considered Autry's request for a recommendation to the governor for a 45-day reprieve of execution The emergency status was necessary because Autry was scheduled to be executed on March 14, 1984

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2713

Filed: March 12, 1984, 10 48 a m
TRD-842887

Monday-Friday, March 26-30, 1984, 9 a.m. daily. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin According to the agenda, the board will review cases of inmates for parole consideration, take action on requests for executive clemency, review and act upon reports regarding administrative releasees, review procedures affecting the daily operation of staff, consider and act regarding needed administrative rule changes, take action upon gubernatorial directives, take action concerning certifying and contracting with community residential facilities, and consider and act in personnel matters

Contact: John W Byrd, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2716

Filed: March 12, 1984, 10 48 a m
TRD-842888

Texas State Board of Pharmacy

Tuesday and Wednesday, March 20 and 21, 1984, 1 p.m. and 8:30 a.m. respectively. The Texas State Board of Pharmacy will meet in the Capitol Room, Austin Hilton Inn, 6000 Middle Fiskville Road, Austin According to the agenda summary, the board will meet to approve the November 15-18, 1983, violation hearing minutes and the December 7, 1983, board business meeting minutes, discuss recommendations submitted by the board advisory committee on the intensive outpatient home health care pharmacy, discuss and act on amendments to 22 TAC §§281 24, 281 25, 281 28, 281 51, 281 60, 291 17, 291 33, 291 74, 291 75, 291.95, 303 2, 303 3, and Chapter 283, hear a report on the job analysis phase of the implementation of the management-by-objectives system, consider the license renewal process; and discuss old and new business, including reports on office space planning and the internship hours issue, legislative items for the 1985 session, the interpretation of the generic substitution law, and the transfer of prescriptions via computer

Contact: Priscilla Jarvis, 211 East Seventh Street, Suite 1121, Austin, Texas, (512) 478-9827

Filed: March 12, 1984, 2·13 p.m.
TRD-842901

Public Utility Commission of Texas

Friday, March 16, 1984, 9 a.m. The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin According to the agenda summary, the commission will consider final orders in Dockets 4754, 5108, 5115, 5116, 5344, 5403, 5405, 5418, 5427, 5481, 5487, 5499, 5546, 5551, and 5567, a motion for rehearing in Docket 4962—appeal of Southwestern Public Service Company from an ordinance of the City of Lubbock requiring the institution of late payment penalties and deposits, appeal of examiner's orders in Docket 5560—application of Gulf State Utilities Company for authority to change rates, and Docket 5568—application of Texas-New Mexico Power Company for authority to change rates The commission also will meet in executive session to consider pending litigation and personnel matters

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

Filed: March 8, 1984, 3:30 p.m.
TRD-842790

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

Monday, March 19, 1984, 10 a.m. A prehearing conference in Docket 5636—application of Toby Smith Water Company, Inc , for a rate increase within Montgomery County

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

Filed: March 9, 1984, 2·29 p m
TRD-842821

Tuesday, March 20, 1984, 1:30 p.m. A prehearing in Docket 5624—appeal of ABC Wells, Inc , from a rate-making decision of the Board of Aldermen of the Village of Jones Creek

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

Filed: March 8, 1984, 10·33 a m
TRD-842757

Monday, March 26, 1984, 10:30 a.m. A prehearing in Docket 5640—application of Texas Utilities Electric Company for a rate increase

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

Filed: March 12, 1984, 10 08 a m.
TRD-842875

Wednesday, March 28, 1984, 10 a.m. A prehearing conference in Docket 5626—complaint of Valley View Energy Corporation against Central and Southwest Corporation regarding rates for the sale of power

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

Filed: March 9, 1984, 2 29 p.m
TRD-842822

Friday, March 30, 1984, 10 a.m. A prehearing conference in Docket 5611—application of Concho Valley Electric Cooperative, Inc , for an amendment to its certificate of public convenience and necessity for the furnishing and extension of electric service in Tom Green County

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

Filed: March 8, 1984, 2·33 p.m.
TRD-842772

Monday, April 9, 1984, 10 a.m. A prehearing in Docket 5625—complaint of North Belt 28.019 Ltd against Douglas Utility Company

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

Filed: March 13, 1984, 9 12 a m
TRD-842917

Tuesday, April 10, 1984, 1:30 p.m. A rescheduled prehearing conference in Docket 5593—application of Maxwell Water Supply Corporation to amend its certificate of convenience and necessity within Hays and Caldwell Counties The prehearing was originally scheduled for March 8, 1984, as published at 9 TexReg 1289

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

Filed: March 8, 1984, 10 33 a m
TRD-842758

Thursday, May 17, 1984, 10 a.m. A hearing on the merits in Docket 5612—application of Kaufman County Electric Cooperative, Inc., for authority to change rates

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

Filed: March 8, 1984, 2 33 p m
TRD-842773

Thursday, May 24, 1984, 1:30 p.m. A final prehearing conference in Docket 5610—application of General Telephone Company of the Southwest for authority to change rates

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100
TRD-842919

Tuesday, May 29, 1984, 10 a.m. A hearing on the merits in Docket 5610—application of General Telephone Company of the Southwest for authority to change rates

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

Filed: March 13, 1984, 9.12 a m
TRD 842920

Railroad Commission of Texas

Monday, March 19, 1984, 9 a.m. Divisions of the Railroad Commission of Texas will meet in Room 309, 1124 IH 35 South, Austin Divisions, meeting rooms, and agendas follow

The Automatic Data Processing Division will consider and act on the division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters

Contact: Bob Kmetz, P O Drawer 12967, Austin, Texas 78711, (512) 445-1204.

Filed: March 9, 1984, 1:55 p.m.
TRD-842828

The Flight Division will consider and act on the division director's report on division administration, budget, procedures, and personnel matters

Contact: Ken Fossler, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1103

Filed: March 9, 1984, 1 57 p m.
TRD-842829

The Gas Utilities Division will consider various matters falling within the division's regulatory jurisdiction

Contact: Lucia Sturdevant, P O Drawer 12967, Austin, Texas 78711, (512) 475-0461.

Filed: March 9, 1984, 1 56 p m
TRD-842830

The Office of Information Services will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W Schaible, P O Drawer 12967, Austin, Texas 78711

Filed: March 9, 1984, 1 56 p m
TRD-842831

The LP-Gas Division will consider for final adoption §9 40 and the repeal of §9.41 and §9 62, and consider and act on the division director's report on division administration, budget, procedures, and personnel matters

Contact: Thomas D Petru, P O Drawer 12967, Austin, Texas 78711

Filed: March 9, 1984, 1 56 p m
TRD-842832

The Oil and Gas Division will consider various matters falling within the Railroad Commission's oil and gas regulatory jurisdiction

Contact: Liz Nauert, P O Drawer 12967, Austin, Texas 78711, (512) 445-1307

Filed: March 9, 1984, 1 55 p m
TRD-842833

Additions to the above agenda:

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: Madalyn J Girvin, P O Drawer 12967, Austin, Texas 78711, (512) 445-1209

Filed: March 9, 1984, 1 56 p m
TRD-842836

Consideration of an interim order in Oil and Gas Docket 2-81-661—Pend Oreille Oil and Gas Company, to consider amending field rules, determination of productive net acre feet, or alternatively, the productive acreage in the Limes (Wilcox 9900) Field, Live Oak County, also to determine proper classification of specific wells presently classified in the Oakville (Wilcox 9700) field, Live Oak County

Contact: Sandra Buch or Bob Rago, P O Drawer 12967, Austin, Texas 78711, (512) 445-1286 or (512) 445-1363 respectively.

Filed: March 9, 1984, 1 55 p.m.
TRD-842834

Consideration of whether to institute legal action against Reserve Pits, Inc. and Hemispheric Oil and Gas, Inc.

Contact: Glenn Jordan, P O. Drawer 12967, Austin, Texas 78711, (512) 445-1229.

Filed: March 9, 1984, 1.56 p.m.
TRD-842835

The Personnel Division will consider and act on the division director's report on division administration, budget, procedures, and personnel matters

Contact: Herman L Wilkins, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1120

Filed: March 9, 1984, 1·56 p.m.
TRD-842837

The Office of the Special Counsel will consider and act on the division director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lilie, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1186.

Filed: March 9, 1984, 1·57 p.m.
TRD-842838

The Surface Mining and Reclamation Division will consider promulgating regulations applicable to iron ore and iron ore gravel mining and reclamation operations and consider and act on the division director's report on division administration, budget, procedures, and personnel matters

Contact: J Randel (Jerry) Hill, 105 West Riverside Drive, Austin, Texas, (512) 475-8751.

Filed: March 9, 1984, 1 57 p.m
TRD-842839

The Transportation Division will consider various matters falling within the commission's transportation regulatory jurisdiction

Contact: Walter Wendlandt, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1330.

Filed: March 9, 1984, 1 55 p m
TRD-842840

Addition to the above agenda:

Docket 035237A5S—application of Donald H Whirley and Mary Joe Whirley, doing business as D & M Sand and Gravel, to sell SMC Certificate 35237 to J. C Richards, Jr., doing business as Richards and Richards

Contact: Jackye Greenlee, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1330.

Filed: March 9, 1984, 1·55 p.m.
TRD-842841

School Land Board

Tuesday, March 20, 1984, 10 a.m. The School Land Board will meet in Room 831, Stephen F Austin Building, 1700 North Congress Avenue, Austin According to the agenda, the board will approve the previous meeting minutes, consider an application for patent under the Texas Constitution, Article 7, §4A, an application for lease suspension, pooling agreement amendments, pooling applications, a good faith claimant application for Leon County, five proposed land trades—Aransas County, Tom Green County (two trades), Bexar County, and San Patricio County, Coastal public lands easement applications, cabin permit transfer requests, cabin permit rebuilding requests, and cabin permit alteration requests

Contact: Linda K Fisher, 1700 North Congress Avenue, Room 835, Austin, Texas (512) 475-4307

Filed: March 12, 1984, 4.15 p.m
TRD-842911

State Securities Board

Friday, March 23, 1984, 10 a.m. The Securities Commissioner of the State Securities Board will meet at 1800 San Jacinto Street, Austin According to the agenda summary, the commissioner will conduct a hearing to determine whether a cease and desist order should be issued prohibiting the sale of securities issued by Pacific Gold Coins, Inc., and sold or offered for sale by Walter Green, James "Jim" Eglitis, Sheldon Almeida, and John Williams

Contact: Sue B Roberts, 1800 San Jacinto Street, Austin, Texas 78701

Filed: March 8, 1984, 4 03 p.m
TRD-842792

Stephen F. Austin State University

Monday, March 19, 1984, 1 p.m. The Board of Regents of the Stephen F Austin State University will meet in the Chancellor's Room, Dallas Hilton Inn, 5600 North Central Expressway, Dallas According to the agenda, the board will consider improvements to the athletic facilities and a proposed consent decree in pending litigation Carpenter v Stephen F Austin State University

Contact: Dr William R Johnson, P O Box 6078, Nacogdoches, Texas 75962, (409) 569-2201

Filed: March 12, 1984, 10 02 a m.
TRD-842876

Sunset Advisory Commission

Monday and Tuesday, March 26 and 27, 1984, 9 a.m. daily. The Sunset Advisory Commission will meet in Room E, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda summary, the commission will meet on Monday to discuss across-the-board recommendations and hear a presentation of staff reports and public testimony on the State Forester, State Entomologist, the Soil and Water Conservation Board, the Commission for the Deaf, the Occupational Therapy Board, and the Commission on the Aging. It is anticipated that the public hearing will be concluded on Monday, but if not, the commission will consider any remaining testimony on Tuesday.

Contact: Cindy Unsell, John H. Reagan Building, Room 305, 105 West 15th Street, Austin, Texas, (512) 475-1718.

Filed: March 12, 1984, 3.06 p.m.
TRD-842907

Texas Surplus Property Agency

Tuesday, March 27, 1984, 10:30 a.m. The Governing Board of the Texas Surplus Property Agency will meet at 8611 Wallisville Road, Houston. According to the agenda, the board will approve the previous meeting minutes, hear a budget status report and the executive director's report, consider requests for attorney general opinions, and discuss future board meeting sites.

Contact: Marvin J. Titzman, P.O. Box 8120, San Antonio, Texas 78208, (512) 661-2381.

Filed: March 8, 1984, 10.31 a.m.
TRD-842760

Texas State Technical Institute

Sunday and Monday, March 18 and 19, 1 p.m. and 9 a.m. respectively. The Policy Committees and Board of Regents of the Texas State Technical Institute (TSTI) will meet in the conference room, executive offices, TSTI-Waco. According to the agenda summary, the committees and board will discuss budget changes, housing rental rates, board rates, construction projects at TSTI-Harlingen, and lease agreements at TSTI-Waco and TSTI-Amarillo. The committees and board will also meet in executive session to discuss matters relating to personnel and other business.

Contact: Theodore A. Talbot, Texas State Technical Institute, Waco, Texas 76705, (817) 799-3611, ext. 3909.

Filed: March 8, 1984, 10:30 a.m.
TRD-842761

Texas Turnpike Authority

Wednesday, March 21, 1984, 10:30 a.m. The Board of Directors of the Texas Turnpike Authority will meet in the Regency I Room, Executive Inn, 3232 West Mockingbird Lane, Dallas. According to the agenda summary, the authority will consider approval of the December 8, 1983, minutes; ratification of an agreement with the Harris County Toll Road Authority; approval of agreements with the City of Plano, approval of Contract DNT-114, approval of a contract with Galleria, ratification of actions of the Right-of-Way Acquisition Committee meeting of February 27, 1984, approval of authorized offer List 5, purchase of right-of-way parcels, an amendment to the right-of-way acquisition policy, and a construction progress report concerning the Dallas North Tollway extension project, request of the Cities of San Antonio, Austin, and others; and frontage roads for the Dallas North Tollway extension Phase II. The board will also meet in executive session to consider pending or contemplated litigation, personnel matters, and the purchase or value of real property.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: March 9, 1984, 2:28 p.m.
TRD-842823

Veterans Land Board

Wednesday, March 21, 1984, 10 a.m. The General Land Office of the Veterans Land Board (VLB) will meet in Room 831, Stephen F. Austin Building, 17th Street and Congress Avenue, Austin. According to the agenda, the board will approve the February 16, 1984, minutes, consider authorizing the issuance of State of Texas Veterans Bonds, Series 1984-A, and the giving of notice of sale and other action consistent with the sale of additional bonds as the board determines is warranted, consider a master policy for the Veterans Housing Assistance Program's mortgage cancellation insurance; approve lenders for the Veterans Housing Assistance Program, consider forfeiture action of the account of Ray Fred Grooms, deceased, VLB Account 455-99883, and delinquent veterans' accounts, and discuss general business of the board.

Contact: Harmon Lisnow, Stephen F. Austin Building, Room 711, 17th Street and Congress Avenue, Austin, Texas 78701, (512) 475-3766.

Filed: March 12, 1984, 3.14 p.m.
TRD-842908

Texas Water Commission

Tuesday, March 20, 1984, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Items on the agenda include applications for district bonds issues, release from escrow, use of surplus funds, appointment of directors, setting hearing dates for district creations, water quality proposed permits, amendments and renewals, a proposal for decision, cancellation of water use permits, amendments, levee projects, extension of time application, and the filing and setting of a hearing date.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: March 8, 1984, 10.49 a.m.
TRD-842762

Wednesday, March 28, 1984, 9:30 a.m. The Texas Water Commission will meet in Room 124A, Stephen F. Austin Building, 1700 North Congess Avenue, Austin. According to the agenda, the commission will conduct hearings on the following applications.

Application TA-4820 of the R. E. Hable Company for a permit to divert and use 45 acre-feet of water for a three-year period from a private reservoir on an unnamed tributary of Buffalo Creek, tributary of East Fork Trinity River, tributary of the Trinity River, Trinity River Basin, for industrial (highway construction) purposes in Kaufman County.

Application TA-4833 of Natural Gas Pipeline Company of America for a permit to divert and use 39 acre-feet of water for a one-year period from the Mission River, tributary of Mission Bay, tributary of Copano Bay, tributary of Aransas Bay, San Antonio-Nueces Coastal Basin, for industrial (hydrostatic pipeline test) purposes in Refugio County.

Application TA-4834 of Natural Gas Pipeline Company of America for a permit to divert and use 30 acre-feet of water for a one-year period from the Lavaca River, Lavaca River Basin, for industrial (hydrostatic pipeline test) purposes in Jackson County.

Application TA-4835 of Natural Gas Pipeline Company of America for a permit to divert and use 19 acre-feet of water for a one-year period from Arenosa Creek, tributary of Lavaca Bay, tributary of Matagorda Bay, Lavaca-Guadalupe Coastal Basin, for industrial (hydrostatic pipeline) purposes in Victoria County

Application TA-4836 of Natural Gas Pipeline Company of America for a permit to divert and use 53 acre-feet of water for a one-year period from the Nueces River, Nueces River Basin, for industrial (hydrostatic pipeline test) purposes in San Patricio County

Application TA-4837 of Natural Gas Pipeline Company of America for a permit to divert and use 17 acre-feet of water for a one-year period from the San Antonio River, San Antonio River Basin, for industrial (hydrostatic pipeline test) purposes in Refugio County

Application TA-4838 of Natural Gas Pipeline Company of America for a permit to divert and use 30 acre-feet of water for a one-year period from West Mustang Creek, tributary of Mustang Creek, tributary of Navidad River, tributary of Lavaca River, Lavaca River Basin, for industrial (hydrostatic pipeline test) purposes in Jackson County

Application TA-4839 of Natural Gas Pipeline Company of America for a permit to divert and use 19 acre-feet of water for a one-year period from the Colorado River, Colorado River Basin, for industrial (hydrostatic pipeline test) purposes in Wharton County

Application TA-4840 of Natural Gas Pipeline Company of America for a permit to divert and use 64 acre-feet of water for a one-year period from the Aransas River, tributary of Copano Bay, tributary of Aransas Bay, San Antonio-Nueces Coastal Basin, for industrial (hydrostatic pipeline test) purposes in San Patricio County

Application TA-4841 of Natural Gas Pipeline Company of America for a permit to divert and use 16 acre-feet of water for a one-year period from East Mustang Creek, tributary of Mustang Creek, tributary of Navidad River, tributary of Lavaca River, Lavaca River Basin, for industrial (hydrostatic pipeline test) purposes in Wharton County.

Application TA-4842 of Natural Gas Pipeline Company of America for a permit to divert and use 15 acre-feet of water for a one-year period from the Guadalupe River, Guadalupe River Basin, for industrial (hydrostatic pipeline test) purposes in Victoria County.

Application TA-4851 of the R. E Hable Company for a permit to divert and use 30 acre-feet of water for a three-year period from a private reservoir on an unnamed tributary of Mustang Creek, tributary of East Fork Trinity River, tributary of the Trinity River, Trinity River Basin, for industrial (highway construction) purposes in Kaufman County

Application TA-4853 of Richardson Country Club Corporation, doing business as Canyon Creek Country Club, for a permit to divert and use 10 acre-feet of water for a six-month period from Canyon Creek, tributary of Spring Creek, tributary of Rowlett Creek, tributary of the East Fork Trinity River, tributary of the Trinity River, Trinity River Basin, for irrigation purposes in Collin County

Application TA-4856 of the Ennis Company for a permit to divert and use 570 acre-feet of water for a six-month period from the Brazos River, Brazos River Basin, for irrigation (turfgrass crop) purposes in McLennan County

Contact: Mary Ann Hefner, P O Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: March 9, 1984, 1 41 p m.
TRD-842806-842819

Wednesday, March 28, 1984. The Texas Water Commission will meet in Room 118, Stephen F Austin Building, 1700 North Congress Avenue, Austin. Times and agendas follow

10 a.m. Application of River Inn Association of Unit Owners, Inc , for amendment to Certificate of Adjudication 18-1956, application by Gulf Coast Waste Disposal Authority for amendment to Permit 01054 to increase volume of wastewater effluent and quantity pollutants discharged from the Bayport Central Wastewater Treatment Plant, and application by North American Properties, Inc , for proposed Permit 12821-01

Contact: Mary Ann Hefner, P O Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: March 8, 1984, 10:49 a.m
TRD-842763

2 p.m. Application by Rally Car Wash, Inc , for proposed water quality Permit 12783-01 to authorize discharge of treated domestic sewage effluent from a sewage treatment plant to serve a proposed mobile home park in Smith County, application by Northwest Harris County Municipal Utility District 9 for an amendment to Permit 11948-01 to authorize expansion and modification of its existing 0 4 million gallon per day plant to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed average flow of 2 25 million gallons per day

Contact: Mary Ann Hefner, P O Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: March 8, 1984, 11 30 a m.
TRD-842765

Texas Department of Water Resources

Monday, March 19, 1984, 1:30 p.m. The Texas Water Development Board of the Texas Department of Water Resources will meet in Room 118, Stephen F Austin Building, Austin According to the agenda summary, the board will consider the approval of minutes, awarding the sale of $50 million in Texas Water Development Bonds and approval for and use of the official statement, invitation to bidders, and bid form authorizing the issuance of the bonds, selection of a paying agent and a printer for the proposed bond sale, the status of the Development Fund manager's report, grant increases for the Kingsland Municipal Utility District and the Cities of Jacksboro and Cooper, contracts with the Houston-Galveston Area Council and the University of Texas at Austin Research Institute, adoption of a proposed amendment to 31 TAC §329 46, concerning variances in the concentrations of certain hazardous metals for wastewater discharges, and a briefing on the Research and Planning Fund The board will also meet in executive session to discuss litigation.

Contact: Charles E Nemir, P.O. Box 13087, Austin, Texas 78711, (512) 475-3187.

Filed: March 9, 1984, 3 59 p m.
TRD-842851

Texas Water Well Drillers Board

Tuesday, March 20, 1984, 10 a.m. The Texas Water Well Drillers Board will meet in Room A-262, Tarrant County Convention Center, 1111 Houston Street, Fort

Worth. Items on the agenda summary include approval of minutes, discussion with members of the Oklahoma Water Resources Board concerning the development of rules by which Texas and Oklahoma may waive licensing requirements, setting complaints for James B. Bradford, John A. Evans, W. B. Langford, James K. Leonard, and John Jones, doing business as Jack Leonard Irrigation, J. L. Martinez, Jeff Morton, Cal Hernandez, Ed Robinson, Douglas Stowe, Herman Emmet Tatum, Richard Young, and Mark Romine, certification of applicants for registration, applications for driller trainee registration, a briefing on registration of drillers and water well drillers examinations since the last board meeting, and staff reports.

Contact: Jack Overton, P.E., P.O. Box 13087, Austin, Texas 78711, (512) 475-3191.

Filed: March 9, 1984, 3:59 p.m.
TRD-842852

Regional Agencies

Meetings Filed March 8

The Atascosa County Appraisal District, Board of Directors, met at 1010 Zanderson, Jourdanton, on March 15, 1984, at 1:30 p.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson, Jourdanton, Texas, (512) 769-2730.

The Blanco County Central Appraisal District, Board of Directors, met in the Blanco County Courthouse Annex, Johnson City, on March 12, 1984, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Colorado River Municipal Water District, Board of Directors, made an addition to the agenda of a meeting held at 400 East 24th Street, Big Spring, on March 13, 1984, at 10 a.m. Information may be obtained from O. H. Ivie, P.O. Box 869, Big Spring, Texas 79720, (915) 267-6341.

The Concho Valley Council of Governments, Executive Committee, met at 5002 Knickerbocker Road, San Angelo, on March 14, 1984, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666.

The DeWitt County Appraisal District, Board of Directors, met at 103 Bailey Street, Cuero, on March 15, 1984, at 7:30 p.m. Information may be obtained from Wayne K. Woolsey, RPA, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Region XVI Education Service Center, Board of Directors, will meet at the Amarillo Club, Texas American Bank, Tyler at Seventh, Amarillo, on March 22, 1984, at 12:45 p.m. Information may be obtained from Dr. Kenneth M. Laycock, P.O. Box 30600, Amarillo, Texas 79120, (806) 376-5521.

The High Plains Underground Water Conservation District 1, Board of Directors, met in the conference room, 2930 Avenue Q, Lubbock, on March 13, 1984, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Nolan County Central Appraisal District, Board of Directors, met in Suite 305B, Nolan County Courthouse, 100 East Third Street, Sweetwater, on March 14, 1984, at 1:30 p.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421.

The Swisher County Appraisal District, Board of Directors, met in the conference room, 130 North Armstrong, Tulia, on March 15, 1984, at 8 a.m. Information may be obtained from Rose Lee Powell, 130 North Armstrong, Tulia, Texas 79088, (806) 995-3015.

The Taylor County Central Appraisal District, Board of Directors, will meet at 340 Hickory Street, Abilene, on March 21, 1984, at 10 a.m. Information may be obtained from Richard Petree, RPA-RTA, P.O. Box 1800, Abilene, Texas 79604.

The West Central Texas Council of Governments, Private Industry Council, met at American Best Western Inn, 2202 IH 20, Abilene, on March 15, 1984, at 10 a.m. Information may be obtained from Tom Smith, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.
TRD-842771

Meetings Filed March 9

The Region XVII Education Service Center, Board of Directors, will meet at 4000 22nd Place, Lubbock, on April 3, 1984, at 10 a.m. Information may be obtained from Ray Lanier, 4000 22nd Place, Lubbock, Texas 79410, (806) 792-4000.

The South Plains Association of Governments, Executive Committee, met at 3424 Avenue H, Lubbock, on March 13, 1984, at 9 a.m. The board of directors met at the same location on the same day at 10 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 2787, Lubock, Texas 79408, (806) 762-8721.

The Tyler County Tax Appraisal District, Board of Directors, met at 1004 West Bluff, Woodville, on March 13, 1984, at 8 a.m. Information may be obtained from Mark Allen, 1004 West Bluff, Woodville, Texas 75979, (409) 283-3736.
TRD-842824

Meetings Filed March 12

The Bastrop County Appraisal District, Board of Directors, will meet at the commissioner's courtroom, Bastrop County courthouse, 805 Pecan, Bastrop, on March 16, 1984, at 7 p.m. Information may be obtained from Clifton L. Kessler, 705 Spring Street, Bastrop, Texas 78602, (512) 321-4316.

The Cherokee County Appraisal District, Board of Directors, met at 107 East Sixth Street, Rusk, on March 15, 1984, at 2:30 p.m. Information may be obtained from S. R. Danner, P.O. Box 494, Rusk, Texas 75785, (214) 683-2296.

The Texas Community Development Program, Regional Review Committee, will meet in the Deep East Texas Mental Health and Mental Retardation board room, 4101 South Medford, Lufkin, on March 19, 1984, at 1:30 p.m. Information may be obtained from Rhonda Ruckel, P.O. Drawer 1170, Jasper, Texas 75951, (409) 384-5704.

The Region VIII Education Service Center, Board of Directors, will meet at the Mount Pleasant Holiday Inn Restaurant, Highway 271 North, Mount Pleasant, on March 19, 1984, at 8 p.m. Information may be obtained from Scott Ferguson, 100 North Riddle, Mount Pleasant, Texas 75455, (214) 572-8551.

The Heart of Texas Council of Governments, Executive Committee, will meet in the Heart of Texas Council of Governments conference room, 320 Franklin, Waco, on March 22, 1984, at 12:30 p.m. Information may be obtained from Mary McDow, 320 Franklin Avenue, Waco, Texas 76701, (817) 756-6631.

The Hockley County Appraisal District, Board of Directors, will meet at 913 Austin Street, Levelland, on March 19, 1984, at 7

p m Information may be obtained from Keith Toomire, P O Box 1090, Levelland, Texas 79336, (806) 894-9654

The Lower Neches Valley Authority, Board of Directors will meet at the Lower Neches Valley Authority Building, 7850 Eastex Freeway, Beaumont, on March 20, 1984, at 10 30 a m Information may be obtained from J D Nixon, P O Drawer 3464, Beaumont Texas 77704, (409) 892 4011

The Northeast Texas Municipal Water District, Board of Directors, will meet at 1003 Linda Drive, Daingerfield, on March 19, 1984, at 7 p m Information may be obtained from Homer Tanner, P O Box 680, Daingerfield Texas 75638, (214) 645 2241

The Nortex Regional Planning Commission, General Membership Committee will meet in Room 221, Activities Center, 1001 Indiana, Wichita Falls, on March 22, 1984, at noon The North Texas State Planning Region Consortium will meet at the same location on the same day at 1 p m Information may be obtained from Edwin B Daniel, 2101 Kemp Boulevard, Wichita Falls Texas 76309, (817) 322-5281

The Panhandle Regional Planning Commission, Board of Directors, will meet in the first floor conference room, Briercroft Building, Eighth and Jackson Streets, Amarillo, on March 22, 1984, at 1 30 p m Information may be obtained from Polly Jennings, P O Box 9257, Amarillo, Texas 79105, (806) 372-3381

The San Antonio River Industrial Development Authority, Board of Directors, will meet in the San Antonio River Authority conference room, 100 East Guenther Street, San Antonio, on March 21, 1984, at 11 a m Information may be obtained from Fred N Pfeiffer, 100 East Guenther Street, San Antonio, Texas 78204, (512) 227 1373

The San Antonio River Authority, Board of Directors, will meet in the conference room, 100 East Guenther Street, San Antonio, on March 21, 1984, at 2 p m The Board of Trustees of the Employment Retirement Trust will meet at the same location on the same day at 3 30 p m Information may be obtained from Fred N Pfeiffer, P O Box 9284, San Antonio, Texas 78204, (512) 227 1373

The Upshur County Appraisal District, Board of Directors, will meet at the Upshur County Appraisal District office, Trinity and Warren Streets, Gilmer, on March 19, 1984, at 7 p m Information may be obtained from Louise Stracener, P O Box 31, Gilmer, Texas 75644, (214) 843-3041

TRD-842877

Meetings Filed March 13

The Capital Area Planning Countil, Executive Committee, will meet in Suite 100, 2520 IH 35 South, Austin, on March 20, 1984, at 2 p m Information may be obtained from Richard G Bean, 2520 IH 35 South, Austin, Texas 78704, (512) 443-7653

The Grayson Appraisal District, Board of Directors, will meet in the Commissioners Courtroom, Grayson County Courthouse, Sherman, on March 21, 1984, at noon Information may be obtained from Sandra Bolher, 124 South Crockett, Sherman, Texas 75090, (214) 893 9673

The Hays County Central Appraisal District, Board of Directors, will meet at the Dripping Springs Independent School District office, Dripping Springs, on March 19, 1984, at 2 p m Information may be obtained from Ruth Clayton, Hays County Central Appraisal District Courthouse Annex, Third Floor, San Marcos, Texas 78666, (512) 396 4777

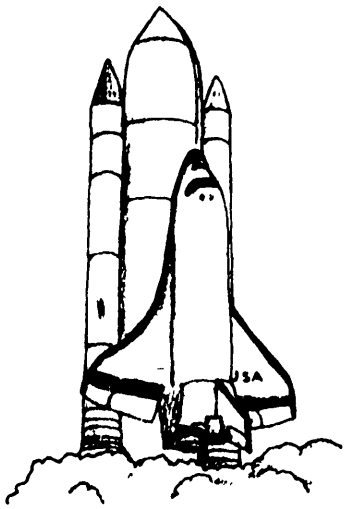
The Houston-Galveston Area Council, Project Review Committee, will meet in the large conference room 3701 West Alabama Street, Houston, on March 20, 1984, at 8 30 a m Information may be obtained from Geraldine McCray, P O Box 22777, Houston, Texas 77027, (713) 627-3200

TRD-842918

The *Register* is required by statute to publish applications to purchase control of state banks (filed by the banking commissioner), notices of rate ceilings (filed by the consumer credit commissioner), changes in interest rate and applications to install remote service units (filed by Texas Savings and Loan commissioner), and consultant proposal requests and awards (filed by state agencies, regional councils of government, and the Texas State Library and Archives Commission)

In order to aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows This often includes applications for construction permits (filed by the Texas Air Control Board), applications for amendment, declaratory ruling, and notices of intent (filed by the Texas Health Facilities Commission), applications for waste disposal permits (filed by the Texas Water Commission), and notices of public hearing

In Addition



Texas Department of Community Affairs

Contract Awards

The Texas Department of Community Affairs (TDCA) announces that the following units of general local government have each been selected as a contract recipient under the Texas Community Development Program, established pursuant to Texas Civil Statutes, Article 4413(201, §4A)

The program area from which each contract will be funded and the proposed amount of funding for each contract is indicated A contract is not effective until executed by the unit of general local government and the executive director of the Texas Department of Community Affairs

Contracts for economic development were awarded to the City of Annona, $145,000), the City of Cooper, $350,000, the City of Kerens, $152,000, the City of LaGrange, $165,000; the City of LaGrulla, $249,400, the City of Lockhart, $200,000, the City of Seagoville, $456,900; and the City of Tulia, $454,000

Issued in Austin, Texas, on March 7 1984

TRD 842729 Douglas C Brown
General Counsel
Texas Department of Community Affairs

Filed. March 7, 1984
For further information, please call (512) 443-4100, ext. 210

Office of Consumer Credit Commissioner

Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1 04, 1 05, 1 11, and 15 02, as amended (Texas Civil Statutes, Articles 5069-1 04, 1 05, 1 11, and 15 02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer[3]/Agricultural/Commercial[4] thru $250,000	Commercial[4] over $250,000
Indicated (Weekly) Rate—Article 1 04(a)(1) 03/19/84-03/25/84	19 00%	19.00%
Monthly Rate - Article 1 04(c)[1] 03/01/84-03/31/84	18 44%	18.44%
Standard Quarterly Rate - Article 1 04(a)(2) 04/01/84-06/30/84	18 27%	18.27%
Retail Credit Card Quarterly Rate—Article 1 11[3] 04/01/84-06/30/84	18.27%	N/A

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer(3)Agricultural Commercial(4) thru $250,000	Commercial(4) over $250,000
Lender Credit Card Quarterly Rate Article 15.02(d)(1) 04/01/84-06/30/84	18.27%	N/A
Standard Annual Rate- Article 1.04(a)(2)(2) 04/01/84-06/30/84	18.27%	18.27%
Retail Credit Card Annual Rate Article 1.11(3) 04/01/84-06/30/84	18.27%	N/A
Annual Rate Applicable to Pre July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 04/01/84-06/30/84	18.00%	N/A
Judgment Rate - Article 1.05, §2 04/01/84-04/30/84	10.00%	10.00%

(1) For variable rate commercial transactions only.
(2) Only for open end credit as defined in Texas Civil Statutes, Article 5069-1.01(f).
(3) Credit for personal, family, or household use.
(4) Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas, on March 12, 1984.

TRD 842869 Sam Kelly
Consumer Credit Commissioner

Filed: March 12, 1984
For further information, please call (512) 475-2111.

Office of the Governor
Consultant Contract Award

The request for and the award of consulting services by the Office of the Governor has been filed in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-11c.

This request for consultant services was published in the December 30, 1983, issue of the *Texas Register* (8 TexReg 5541).

The request for consultant services solicited offers for the delivery of management and systems design in four project areas in the Office of the Governor. These areas are the design and implementation of a telecommunications network for the Texas Review and Comment System (TRACS), further automation and upgrading of the governor's appointments process, upgrading the organizational and management system design, previously initiated within the Office of the Governor, and development of an automated legislative system for tracking and analysis purposes.

The consultant awarded this contract is Peat, Marwick, Mitchell, and Company, 1100 American Plaza, Austin.

The value of this contract will be $145,000, in addition to 30% of the total fee for out of pocket expenses. This contract commenced February 28, 1984, and will terminate June 30, 1984.

Documents expected of the consultant for submittal to the Office of the Governor by June 30, 1984, are a final report for implementation of the TRACS and procedures and policy manuals for the Office of Appointments and the Office of Scheduling.

Issued in Austin, Texas, on March 8, 1984.

TRD 842741 Terry Reed Goodman
Special Assistant
Office of the Governor

Filed: March 8, 1984
For further information, please call (512) 475-4571.

Request for Client Assistance Program Designation

Groups which have expressed an interest in being designated by Governor Mark White for the Client Assistance Program pursuant to recent Rehabilitation Act amendments (Senate Bill 1340) will have an opportunity to present the rationale for their selection before a panel between 9:30-10:30 a.m. on March 15, 1984, in Room 503-G, Sam Houston Building, 201 East 14th Street, Austin.

Issued in Austin, Texas, on March 9, 1984.

TRD-842820 Terry Reed Goodman
Special Assistant
Office of the Governor

Filed: March 9, 1984
For further information, please call (512) 475-6156.

Texas Department of Health
Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the following table. 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
Denison	Conway Oil Company	05-3553	Denison	0	02/16/84

Elgin	Rk Compa	06 3555	Elgin	0	02/21/84
Throughout Texas	Higgins Roofing	11 3557	Alvin	0	02/21/84
Throughout Texas	Ace Perforators, Inc	12 3559	Odessa	0	02/21/84
Throughout Texas	Fishing Tools, Inc	08 3556	Corpus Christi	0	02/17 84
Throughout Texas	Malley Bartos & Company	05 3552	Dallas	0	02 21 84
Winona	Gibraltar Wastewaters Inc	07 3558	Winona	0	02/21 84

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Alvin	E I du Pont de Nemours and Company	11 3363	Alvin	1	02 17 84
Amarillo	Amarillo Laboratory of Pathology	01 1249	Amarillo	11	02 22 84
Athens	Lakeland Medical Center	07 2470	Athens	9	02 22 84
Austin	ASONA Instruments Inc	06 2788G	Austin	10	02 27 84
Bellville	Bellville General Hospital	11 3295	Bellville	4	02 22 84
Brownwood	Brownwood Regional Hospital Inc	04 2322	Brownwood	10	02 25 84
Cleburne	Johnson County Memorial Hospital	05 2039	Cleburne	6	02 14 84
Dallas	Doctors Hospital	05 1366	Dallas	22	02/16 84
Dallas	Dallas Memorial Hospital	05 2408	Dallas	7	02/22 84
Dallas	Central Medical Laboratory	05 2549	Dallas	2	02/22 84
Dublin	Dublin Hospital	05 3221	Dublin	3	02 16 84
El Paso	Louis Alpern M D	03 2928	El Paso	1	02 25 84
Fort Worth	Northwest Hospital	05 3015	Fort Worth	5	02/22 84
Houston	The University of Texas System Cancer Center	11 466	Houston	28	02/22 84
Houston	Kelsey Seybold Clinic	11 391	Houston	27	02/16/84
Houston	Valco Instruments Company Inc	11 2584G	Houston	9	02 17 84
Houston	University of St Thomas	11 460	Houston	11	02 25 84
Humble	Northeast Medical Center Hospital	11 2412	Humble	12	02 25/84
Lewisville	Lewisville Memorial Hospital	05 2739	Lewisville	5	02 22 84
McAllen	Rio Grande Cancer Treatment Center	08 2205	McAllen	18	02 21/84
Pasadena	Pasadena Bayshore Hospital Inc	11 153	Pasadena	32	02/16 84
Pasadena	David Arnold Greenspan M D	11 1537	Pasadena	5	02 21 84
Pasadena	ICI Americas Inc	11 2216	Pasadena	12	02 17 84
Richmond	Polly Ryon Memorial Hospital	11 2406	Richmond	4	02 22 84
San Antonio	Nuclear Pharmacy Inc	09 2033	San Antonio	26	02 16 84
San Antonio	Lutheran General Hospital	09 2007	San Antonio	7	02 16 84
Texarkana	Wadley Regional Medical Center	07 2486	Texarkana	6	02 22 84
Texas City	Amoco Oil Company	11 254	Texas City	27	02 17 84
Throughout Texas	GEO Vann Inc	11 1671	Houston	8	02 16 84
Throughout Texas	Standard Perforators of Abilene, Inc	04 1703	Abilene	7	02 21 84
Throughout Texas	The Sabine Mining Company	07 3422	Hallsville	1	02 16 84
Throughout Texas	State Dept of Highways and Public Transportation	6o 197	Austin	27	02 17 84
Throughout Texas	Geo Log Inc	05 1944	McKinney	27	02 17 84
Throughout Texas	Sonic Surveys Inc	11 2622	Houston	2	02 21 84
Throughout Texas	Otis Engineering Corporation	05 3428	Dallas	1	02 17 84
Throughout Texas	Technical Survey Company	12 1893	Andrews	16	02 17 84
Throughout Texas	Flame Industries Inc	11 2726	Humble	3	02 17 84
Throughout Texas	Conam Inspection Division Nuclear Energy Service, Inc	11 478	Houston	52	02 16 84
Throughout Texas	Apollo Perforators Inc	12 3020	Odessa	5	02 27 84
Throughout Texas	Southern Technical Services	11 2683	Lake Jackson	10	02 27 84
Throughout Texas	Bystest Inc	06 1989	Austin	12	02 27 84
Throughout Texas	Houston Lighting and Power	11 2063	Houston	24	02 27 84
Throughout Texas	ATEC Associates Inc	05 2645	Dallas	7	02 27 84

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Conroe	Medical Center Hospital	11 2421	Conroe	7	02 21 84
Del Rio	Val Verde Memorial Hospital	09 1967	Del Rio	4	02 16 84
Graham	Graham Magnetics Inc	04 1647	Graham	5	02 21 84
Lubbock	Nuclear Pharmacy Inc	02 2737	Lubbock	16	02/25 84
Throughout Texas	Southwest Research Institute	09 775	San Antonio	28	02 21 84
Waco	Texas State Technical Institute	06 1926	Waco	11	02 14 84

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment, the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment, the issuance of the license(s) will not be inimical to the health and safety of the public or the environment, and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county, and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756.

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 March 9, 1983

TRD-842795 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed March 9, 1984
For further information, please call (512) 835-7000

Public Hearing

A hearing will be held to consider Application 1610 of Lakeside Landfill to operate a proposed Type IV (brush, construction-demolition wastes, and rubbish only) disposal site to be located within the northeast part of Houston, adjacent to the south side of U S Highway 90 (McCarty Drive) and immediately west of Greens Bayou, in Harris County

The hearing will be held at 9 a m on Tuesday, April 17, 1984, in the Knights of Columbus Hall, 5309 Oates Road, Houston

Issued in Austin, Texas, on March 6, 1984

TRD 842796 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: March 9, 1984
For further information, please call (512) 458-7271.

Texas Health Facilities Commission

Applications Accepted for Amendment, Declaratory Ruling, and Notices of Intent

Notice is hereby given by the Texas Health Facilities Commission of applications accepted as of the date of this publication In the following list, the applicant is listed first, file number second, the relief sought third, and a description of the project fourth DR indicates declaratory ruling, AMD indicates amendment of previously issued commission order, CN indicates certificate of need; PFR indicates petition for reissuance, NIE indicates notice of intent to acquire major medical equipment, NIEH indicates notice of intent to acquire existing health care facilities, NIR indicates notice of intent regarding a research project, NIE/HMO indicates notice of intent for exemption of HMO-related project, and EC indicates exemption certificate

Should any person wish to become a party to any of the above-stated applications, that person must file a proper request to become a party to the application within 15 days after the date of this publication of notice If the 15th day is a Saturday, Sunday, state or federal holiday, the last day shall be extended to 5 p m of the next day that is not a Saturday, Sunday, state or federal holiday. A request to become a party should be mailed to the chair of the commission at P O Box 50049, Austin, Texas 78763, and must be received at the commission no later than 5 p.m on the last day allowed for filing of a request to become a party

The contents and form of a request to become a party to any of these applications must meet the criteria set out in 25 TAC §515 9 Failure of a party to supply the necessary information in the correct form may result in a defective request to become a party

Jewell Enterprises, a Texas general partnership, Arlington
AN84-0301-134
NIEH—Request for a declaratory ruling that a certificate of need is not required for Jewell Enterprises to acquire by purchase Western Hills Nursing Center, an existing 118 bed ICF nursing facility located in Abilene, from Beverly Enterprises, Inc

Summit Care-Texas, Inc , a Texas corporation, Burbank, California
AN84-0229-132
NIEH—Request for a declaratory ruling that a certificate of need is not required for Summit Care-Texas, Inc , to acquire by purchase Geras Nursing Home, an existing 101-bed ICF nursing facility located in Mount Pleasant, from Geras Nursing Home, Inc

AMISUB for Park Plaza Hospital, Houston
AH82-1227-289A(122383)
CN/AMD—Request for an amendment of Certificate of Need AH82-1227-289, which authorized the certificate holder to conduct an extension and renovation program involving 152,587 square feet of new construction and 28,443 square feet of renovation The certificate holder requests an increase in new construction from 152,587 to 176,321 square feet and an increase in renovation from 28,443 to 38,633 square feet

Medical 21 Corporation, Dallas
AS84-0302-145
NIEH—Request for a declaratory ruling that a certificate of need is not required for Medical 21 Corporation to acquire by purchase Los Ebanos Surgicenter, an existing ambulatory surgical facility located in Brownsville, from Los Ebanos Surgicenter Partnership

William Preston Gray and Florence Gray, San Antonio
AN84-0301-141
NIEH—Request for a declaratory ruling that a certificate of need is not required for William Preston Gray and Florence Gray to acquire by lease County Care Center, an existing 102 bed nursing facility with 66 ICF and 36 personal care beds, located in Devine, from Beverly Enterprises, a California corporation

Los Ebanos Surgicenter, Inc., a wholly-owned subsidiary of Surgicare Corporation, Houston
AS84-0302-144
NIEH--Request for a declaratory ruling that a certificate of need is not required for Los Ebanos Surgicenter, Inc., to acquire by purchase Los Ebanos Surgicenter, an existing ambulatory surgical facility located in Brownsville, from Los Ebanos Surgicenter Partnership

Amistad Nursing Home, Inc., a Texas corporation, Uvalde
AN84-0306-148
NIEH--Request for a declaratory ruling that a certificate of need is not required for Amistad Nursing Home, Inc., to acquire by lease Uvalde Nursing Center, an existing 122 bed ICF nursing facility located in Uvalde, from Beverly Enterprises-Texas, Inc.

Summit Care-Texas, Inc., Burbank, California
AN84-0229-133
NIEH--Request for a declaratory ruling that a certificate of need is not required for Summit Care-Texas, Inc., to acquire 100% of the leasehold interest in Northaven, an existing 208-bed nursing facility with 144 ICF and 64 nonparticipating beds located in Dallas, from Doctors Nursing Center Foundation, Inc.

Doctor's Nursing Center Foundation, Inc., Dallas
AN80-1028-002A(030184)
CN/AMD--Request for an extension of the completion deadline from July 31, 1984, to February 28, 1985, in Certificate of Need AN80-1028-002, which authorized the certificate holder to construct and operate a 65,000-square foot, one-story addition to the present 52,000-square foot facility for the addition of 70 private pay and 55 skilled nursing beds, and the replacement of 40 existing beds

Issued in Austin, Texas, on March 12, 1984

TRD-842871 Judith Monaco
Assistant General Counsel
Texas Health Facilities Commission

Filed: March 12, 1984
For further information, please call (512) 475-6940.

Texas Department of Human Resources
Corrections of Errors

A proposed rule submitted by the Texas Department of Human Resources contained an error as published in the March 6, 1984, issue of the *Texas Register* (9 TexReg 1331). Subsection (e) should read

(e) A facility that does not submit a cost report and does not provide written notification of the intent not to submit the report is subject to vendor hold of the facility's reimbursement.

An adopted rule submitted by the Texas Department of Human Resources contained an error as published in the March 6, 1984, issue of the *Texas Register* (9 TexReg 1362). The effective date of the document should be March 20, 1984.

Lamb County Appraisal District
Meeting Notice

Notice is given that on March 22, 1984, a special called joint meeting of the Lamb County Appraisal District Board of Directors and Board of Review will be held at 7:30 p.m., in the Lamb County Electric Willie Room, 2415 South Phelps, Littlefield.

Requests for attendance will be mailed to all taxing entities.

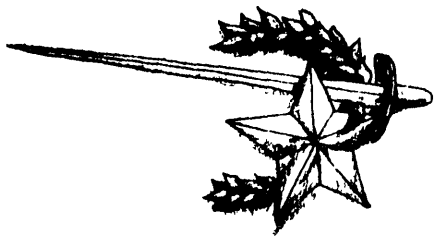
The purpose of the meeting is to explain the 1984 work plan and to provide the opportunity for each entity to ask questions and offer input.

No official action is contemplated.

Issued in Littlefield, Texas, on March 6, 1984.

TRD 842739 Jack Samford
Chief Appraiser
Lamb County Appraisal District

Filed: March 8, 1984
For further information, please call (806) 385-6474.



Public Utility Commission of Texas
Consultant Contract Award

This consultant contract award is filed under the provisions of Texas Civil Statutes, Article 6252-11c. The consultant proposal request was published in the January 13, 1984, issue of the *Texas Register* (9 TexReg 359).

Description of Project. The project will identify current and future information requirements of the commission, identify alternatives for meeting those requirements, and provide a final written report on the recommended long-range information systems plan.

Name and Address of the Consultant. The consultant selected is Ernson, Hermann, Blackmarr, and Harris, One Turtle Creek Village, Suite 606, Dallas, Texas 75219.

Total Value and Dates of Contract. The term of this contract began March 5, 1984, and shall terminate on June 1, 1984, and will not exceed $30,000.

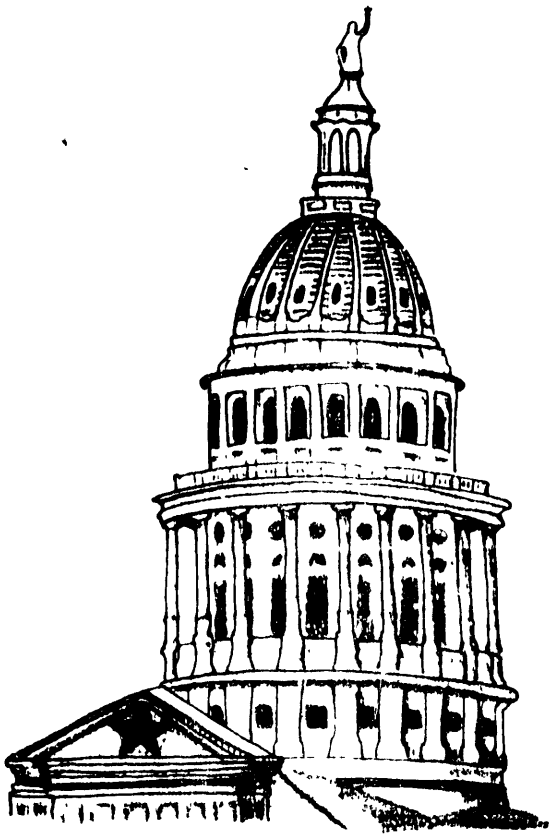
Due Dates of Documents. All drafts and reports prepared by the consultant under this contract shall be sub-

mitted upon completion throughout the period of performance of this contract

Issued in Austin, Texas, on March 7, 1984

TRD-842764 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 8, 1984
For further information, please call (512) 458-0100



Correction of Error

An adopted rule submitted by the Public Utility Commission of Texas contained an error as published in the February 17, 1984, issue of the *Texas Register* (9 TexReg 1016). Section 23.45(c)(1) should read

(1) Every deferred payment plan entered into due to the customer's inability to pay the outstanding bill in full shall provide that service will not be discontinued if the customer pays current bills and a reasonable amount of the outstanding bill and agrees to pay the balance in reasonable installments until the bill is paid.