

radioactive material within the State of Texas.

§289.113. *Standards for Protection Against Radiation.*

(a) The Texas Department of Health adopts by reference Part 21, Standards for Protection Against Radiation, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in May 1987.

(b) (No change.)

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

Issued in Austin, Texas, on April 17, 1987.

TRD-8703378

Robert A. Maclean M.D.  
Deputy Commissioner  
for Professional  
Services  
Texas Department  
of Health

Effective date: May 8, 1987

Proposal publication date: December 12, 1987

For further information, please call

(512) 835-7000.

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**TITLE 31. NATURAL  
RESOURCES AND  
CONSERVATION**

**Part III. Texas Air Control  
Board**

**Chapter 115. Control of Air  
Pollution from Volatile  
Organic Compounds**

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

**★31 TAC §115.191**

The Texas Air Control Board (TACB) adopts an amendment to §115.191, with-out changes to the proposed text published in the December 26, 1986, issue of the *Texas Register* (11 TexReg 5123).

The amendment involves only a revision of the compliance deadline for automobile and light-duty truck coating from December 31, 1986, to December 31, 1987. General Motors Corporation (GM) petitioned for this rule change to have time to construct an alternate control system for the topcoat and final repair operation.

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 commentor who suggested any changes in the proposal is categorized as against the proposal, while a commentor who agreed with the proposal in its entirety is categorized as being for the proposal.

Three commenters testified concerning the proposed amendment. Those commenting against the proposal were Brandt Mannchen; Larry Prine, Tarrant County Health Department; and the Environmental Protection Agency (EPA). There were no commenters in favor of the proposal.

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

One commenter (Mannchen) expressed concern that it had taken one year from the time of project cancellation by GM to the proposal of the compliance date extension. He contended that this interval represented an excessive amount of time to respond. The proposal to revise the compliance date for automobile and light-duty truck coating was taken before the Regulation Development Committee to request permission to proceed to public hearing on July 11, 1986. At that meeting, EPA noted technical concerns with the proposal. In light of the technical and regulatory complexity of the matter, the committee directed the TACB staff to work with EPA to resolve these differences. By December of 1986, a number of issues were still not resolved and the committee authorized the staff to hold a public hearing. The delay in processing the compliance date extension request, however, has not delayed installation of additional controls at the Arlington facility. Given these facts, the TACB does not feel that the response is untimely.

Two commenters (EPA and Prine) contended that granting the extension was in direct conflict with the state implementation plan (SIP) and the purpose of TACB regulations. EPA asserted that postponement of the compliance date should not be allowed because it represented a relaxation of the existing SIP. Prine stated that TACB regulations were designed to bring ozone concentrations into compliance with national standards and to grant the extension would be inconsistent with that purpose. He also stated that it was very important to maintain controls on GM since the plant is the largest stationary source in Tarrant County.

GM has demonstrated that the company is attempting to comply with Regulation V emissions limits as expeditiously as possible, considering the fact that it was forced to cancel a major ongoing project which would have enabled the plant to meet the reduced emission limits in Regulation V in conjunction with production of a new car model and develop an alternative compliance plan. In addition, the

alternative compliance plan (add-on incineration), a \$20 million project, was initiated without undue delay. Furthermore, the new compliance deadline is consistent with requirements for other stationary sources included in the revisions to the Tarrant County ozone SIP submitted to EPA in 1985. Approval of GM's request is not projected to have any impact on Tarrant County's ozone attainment status. The new controls being installed by GM are substantially equivalent to the technology the company was originally planning to construct.

One commenter (EPA) asserted that GM has had sufficient time, since 1982, to comply with the provisions of §115.191. EPA stated that the installation of necessary control equipment in August of 1987 would not "be considered implementing reasonably available control equipment as expeditiously as practicable." In an October 20, 1981, policy statement, EPA stated that submittal which postpone final compliance for topcoat operations to the end of 1986 would be approvable in order to allow for further development of coating technology. The statement went on to say that some plants are not likely to achieve final compliance until 1987, and that states should consider such requests in light of individual circumstances.

The section was based on the use of water-borne coating technology which did not develop as EPA expected in some applications and still is not reasonably available for production of adequate, high-quality automobile coatings. The alternative technology of base coat-clear coat was considered feasible at the Arlington plant, but required an entirely different assembly line than the existing lacquer topcoat facility. In October of 1985, GM received a permit to build a paint shop using the new technology at the Arlington plant. However, in January of 1986, adverse marketing projections for the new cars to be built at the plant led to cancellation of the project after a substantial expenditure of funds. Since expansion was economically infeasible, add-on controls were necessary to meet volatile organic compound (VOC) limits for topcoat and final repair. The 20 months at issue here (January of 1986-August of 1987) is not an inappropriate amount of time to design and construct an add-on system of this magnitude. Consequently, the TACB staff has determined that, under the circumstances, GM has acted as expeditiously as practicable.

One commenter (EPA) argued that the appropriate means of extending a compliance date in the federally-approved Texas SIP was with an enforcement instrument rather than through a SIP revision. The extension of the compliance date addresses state requirements only and will not be submitted to EPA as a proposed SIP revision. On January 16, 1987, the board adopted Order 87-01 for the Arlington plant to provide EPA with an enforcement

instrument. The order includes a compliance schedule for the installation of incinerators on the first topcoat booth and first topcoat bake oven, and requires that emissions testing of the incinerators be accomplished according to a specified schedule to demonstrate performance. The installation and proper operation of this equipment will provide emission controls equivalent to the water-borne coating technology limits specified in Regulation V. Board Order 87-01 was submitted to EPA on January 20, 1987, to satisfy federal requirements for an enforcement instrument.

One commenter (Prine) contended that if GM is not directed to comply with the existing regulation, then, the company should be required to pay a fine to reimburse enforcement agencies for expended resources. The only present means of compliance is to shut down the GM plant. While the TACB is authorized to levy administrative penalties for GM's continued operation, the staff believes that penalties are unwarranted given the technology-forcing nature of the section, the present inability to comply directly, and the reasonableness of the controls proposed. In any event, such penalties are paid into the General Revenue Fund and are not available for reimbursement to enforcement agencies.

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

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

Issued in Austin, Texas, on April 15, 1987.

TRD-8703374 Allen Ell Bell  
Executive Director  
Texas Air Control Board

Effective date: May 8, 1987  
Proposal publication date: December 26, 1986  
For further information, please call  
(512) 451-5711, Ext. 353.

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 12. Child Nutrition Program

##### Child Care Food Program

★40 TAC §12.3, §12.25

The Texas Department of Human Services

(DHS) adopts amendments to §12.3 and §12.25, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 725).

The justification for amending the sections is to specify that contractors are ineligible for the Child Care Food Program in certain circumstances involving the presence in facilities of convicted persons.

The amendments are intended to improve program operations by ensuring a safer environment for children in facilities that receive program benefits.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

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

Issued in Austin, Texas, on April 16, 1987.

TRD-8703330 Marlin W. Johnston  
Commissioner  
Texas Department  
of Human Services

Effective date: May 25, 1987  
Proposal publication date: March 3, 1987  
For further information, please call  
(512) 450-3766.

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### Chapter 48. Community Care for Aged and Disabled Minimum Standards

★40 TAC §48.8901

The Texas Department of Human Services (TDHS) adopts an amendment to §48.8901, concerning minimum standards for adult foster care, in its community care for aged and disabled chapter, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 726).

The amendment is justified to allow provision of services to more adult foster care clients by implementing less stringent certification requirements. As a result of the change in requirements, the number of potential adult foster care providers may increase.

The amendment will function by allowing adult foster care homes to be certified for up to four clients, including private pay clients, without licensure from the Texas Department of Health (TDH). The amendment also changes the square footage requirements for single and multiple occupancy rooms in adult foster care

homes to be consistent with those in the TDH minimum licensing standards for personal care homes.

The department received comments from the Texas Adult Home Providers' Association and the Adult Foster Home Providers' Association during the comment period. Both commenters favored adoption of the proposed amendment.

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

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

Issued in Austin, Texas, on April 16, 1987.

TRD-8703331 Marlin W. Johnston  
Commissioner  
Texas Department  
of Human Services

Effective date: June 1, 1987  
Proposal publication date: March 3, 1987  
For further information, please call  
(512) 450-3766.

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### Chapter 73. Civil Rights Subchapter OO. Administrative Fraud Disqualification Hearings

★40 TAC §73.4003

The Texas Department of Human Services (DHS) adopts the repeal of §73.4003, without changes to the proposed text published in the February 6, 1987, issue of the *Texas Register* (12 TexReg 410).

The justification for repealing §73.4003 is to replace the section with a new section in DHS's rule Chapter 79, entitled "Legal Services", that more closely conforms to federal regulations.

The repeal of §73.4003 will function by enabling DHS to adopt new §79.2003, entitled "Determination and Disposition of Intentional Program Violations", in this issue of the *Texas Register*. The new section cites federal regulations to include violations in the Aid to Families with Dependent Children, Food Stamp, and Medicaid Programs.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal