

# TEXAS REGISTER

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How to Use the Texas Register

Information Available. The 10 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Open Meetings - notices of open meetings.

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

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative 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 the 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 19 (1994) is cited as follows: 19 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 "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Texas Administrative Code

The Texas Administrative Code (TAC) is the official compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC. West Publishing Company, the official publisher of the TAC, releases cumulative supplements to each printed volume of the TAC twice each year.

The TAC volumes are arranged into Titles (using

Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 1-800-328-9352.

The Titles of the TAC, and their respective Title numbers are:

- 1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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

1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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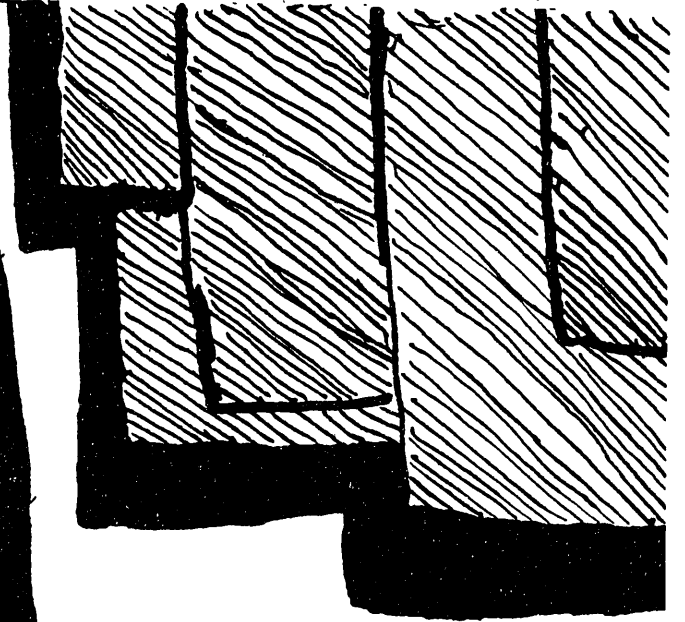
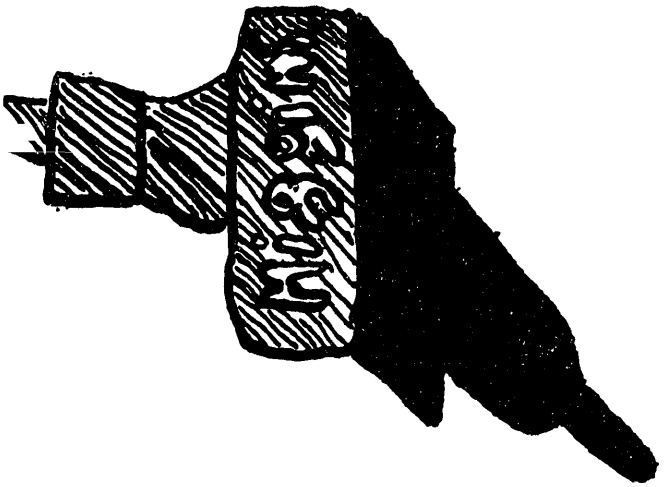
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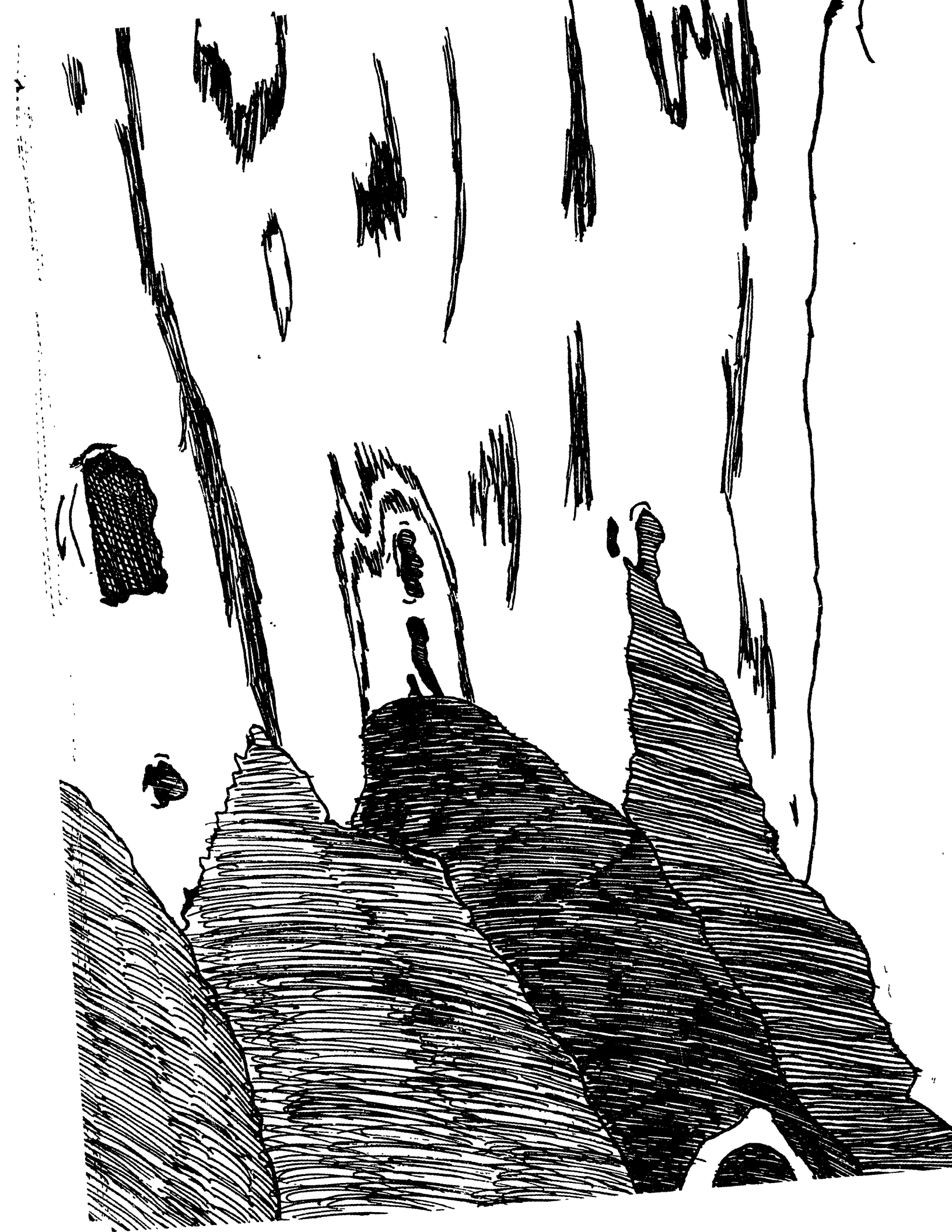
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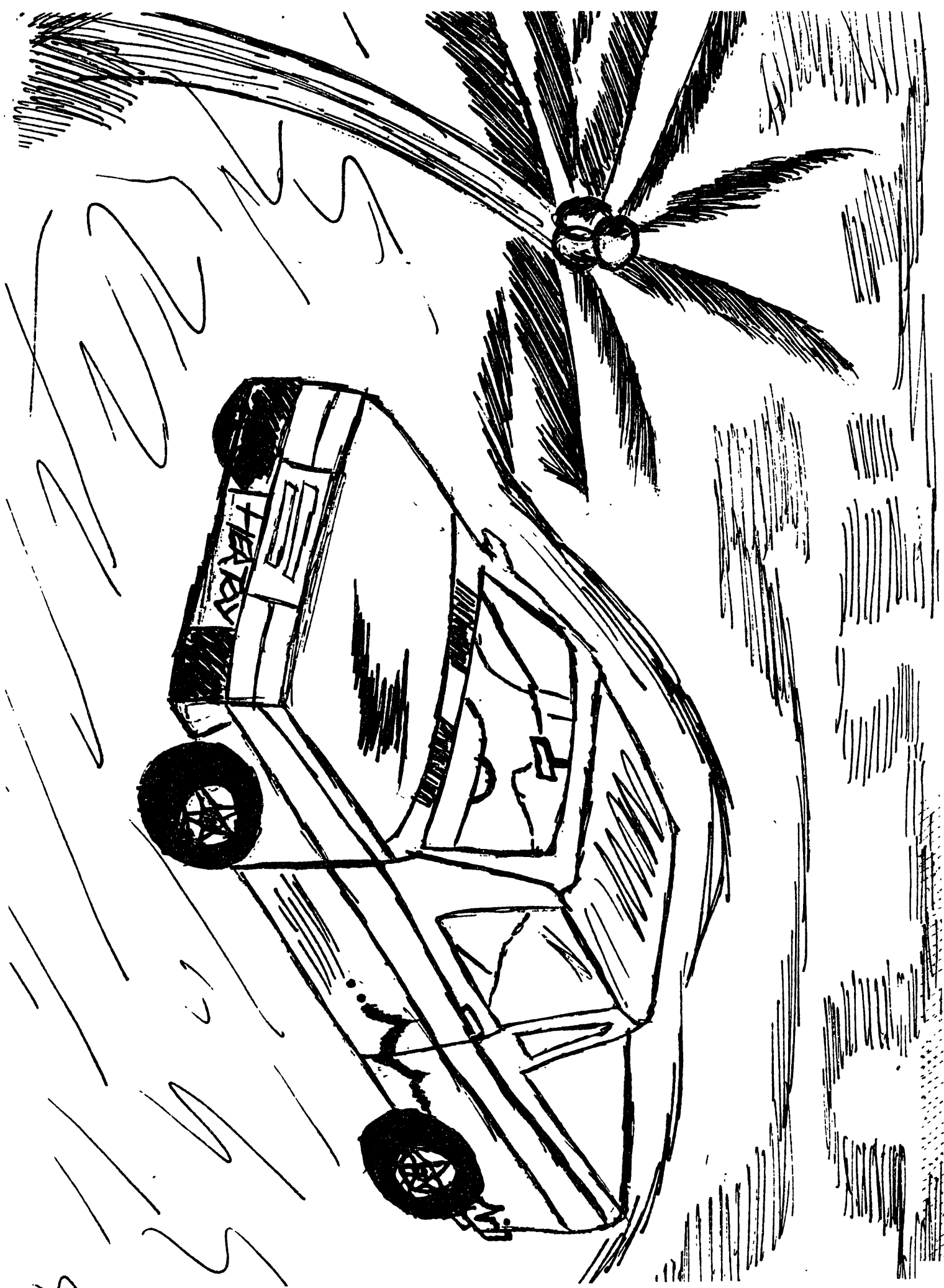
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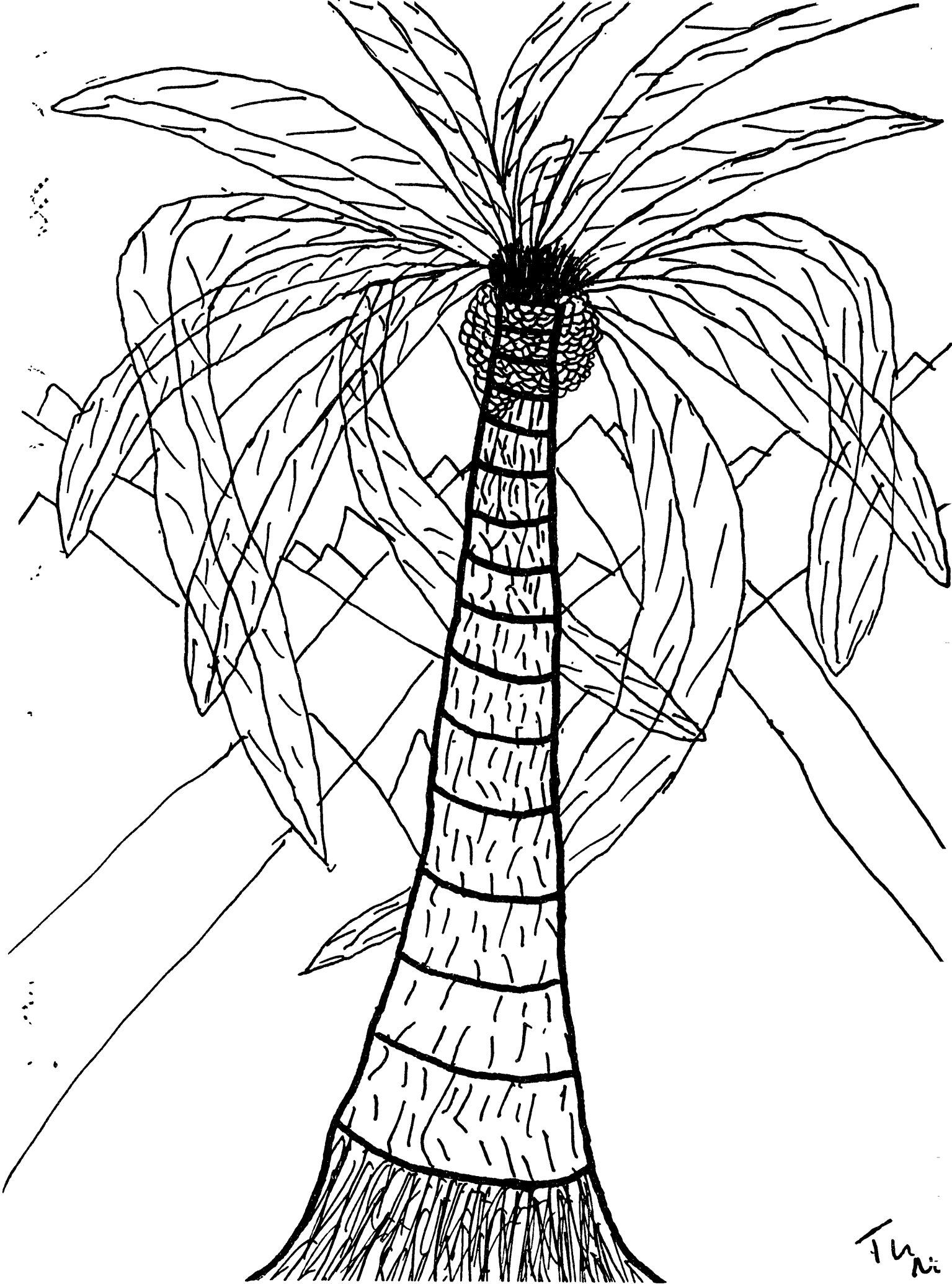
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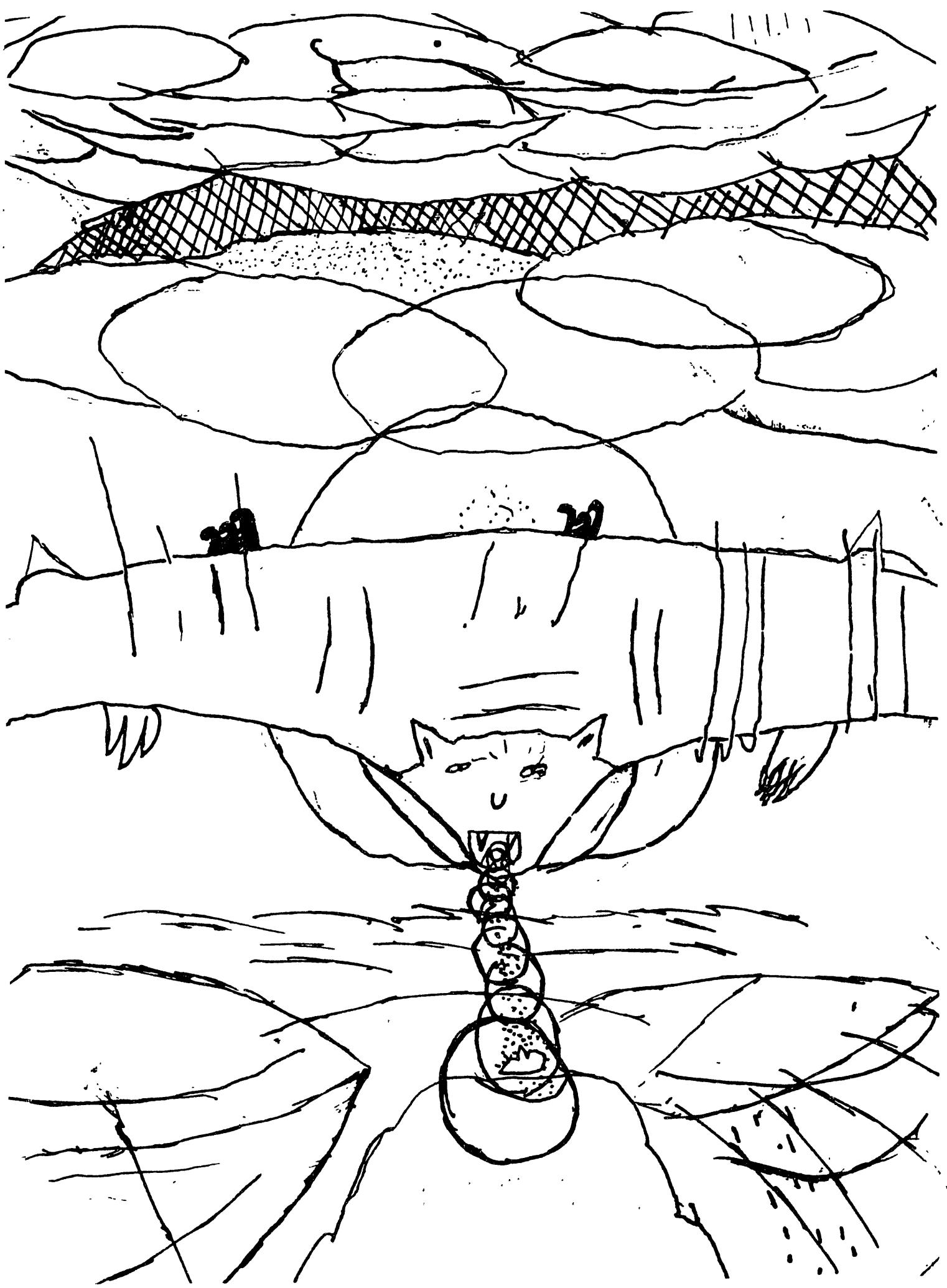


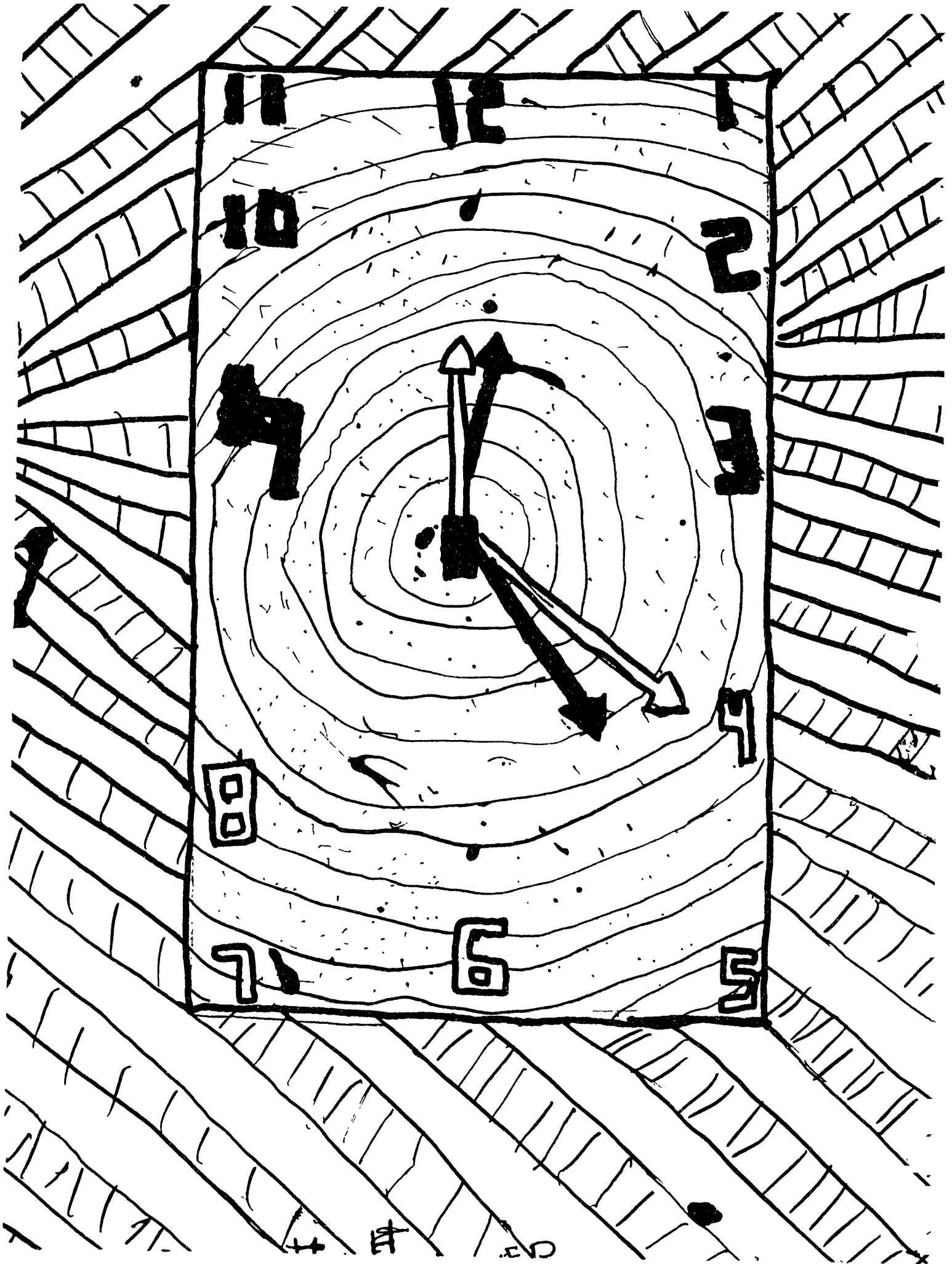




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# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Texas Ethics Commission

### Opinions

**AOR-230.** The Texas Ethics Commission has been asked to determine what a candidate, officeholder, or political committee may do with a political contribution from an anonymous source.

**AOR-231.** The Ethics Commission has been asked to consider the reporting requirements applicable to a political committee that files with the Federal Election Commission as well as with the Texas Ethics Commission. The specific question is whether the committee must report all of its political expenditures or only political expenditures in connection with Texas campaigns or measures.

**AOR-232.** The Texas Ethics Commission has been asked to consider the following two questions:

May a legislator use the work time of state employees, state-owned equipment, or state-purchased supplies to prepare and mail (a) congratulatory letters to parents upon the birth of a child and/or (b) certificates to students upon graduation from high school or college.

May a legislator use political contributions to purchase, prepare and mail (a) congratulatory letters to parents upon the birth of a child and/or (b) certificates to students upon graduation from high school or college.

**AOR-233.** The Texas Ethics Commission has been asked to consider whether a particular bumper sticker suggests that a candidate is an incumbent when in fact the candidate is not. The bumper sticker contains the candidate's name in large type. Under the name in smaller type are the words "A Needed Change for the BETTER." In the top right corner, in even smaller letters, is the office the candidate is seeking. The word "for" does not precede the office.

**AOR-234.** The Ethics Commission has been asked to consider whether a brochure that lists the duties of a justice of the peace and that bears the name, address, and phone number of a specific justice of the peace is political advertising for purposes of §255.003 of the Election Code. The office of the justice of the peace distributes the brochure routinely, and the justice of the peace hands out the brochure when he speaks at meetings.

**AOR-235.** Whether the "revolving door" provisions of Government Code, Chapter 572.054, apply where an individual previously employed by a regulatory agency to perform public relations services in connection with an issue subsequently seeks to perform such services for a private foundation.

The Texas Ethics Commission is authorized by the Government Code, Chapter 571, Subchapter D, §1.29, to issue advisory opinions in regard to the following statutes: (1) the Government Code, Chapter 572, Subchapter D; (2) Government Code, Chapter 302; (1) Government Code, Chapter 305; (3) Election Code, Title 15; (5) Penal Code, Chapter 36; and (6) Penal Code, Chapter 39.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

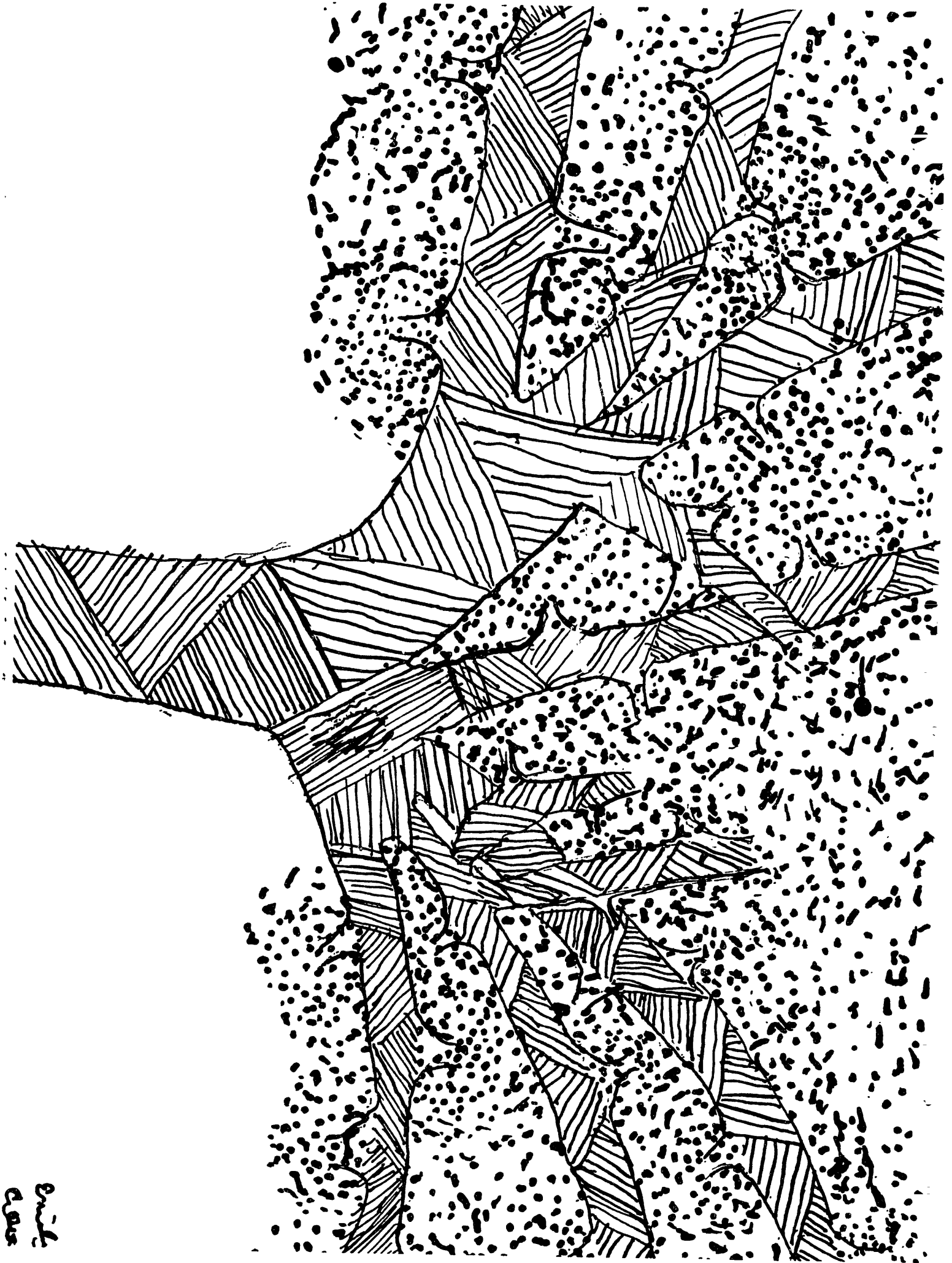
Issued in Austin, Texas, on April 18, 1994

TRD-9439497

Sarah Woelk  
Director, Advisory Opinions  
Texas Ethics Commission

Filed: April 20, 1994





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# PROPOSED RULES

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

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

## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 62. Career Counseling Services

- 16 TAC §§62.1, 62.10, 62.20, 62.21, 62.30, 62.40, 62.60, 62.70-62.73, 62.80-62.82, 62.90-62.92, 62.94

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

The Texas Department of Licensing and Regulation proposes the repeal of §§62.1, 62.10, 62.20, 62.21, 62.30, 62.40, 62.60, 62.70-62.73, 62.80-62.82, 62.90-62.92, and 62.94, concerning career counseling services. These sections are being repealed to allow for the adoption of edited, renumbered, and reorganized sections.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Brush 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 will be clarification of rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to James D. Brush II, Director, Policies and Standards Division, P.O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5221a-8, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action

necessary to assure compliance with the intent and purposes of the Act.

The repeals affect Texas Civil Statutes, Article 5221a-8.

§62.1. *Authority.*

§62.10. *Definitions.*

§62.20. *Certificate of Authority Requirements.*

§62.21. *Certificate of Authority Application Process.*

§62.30. *Exemptions.*

§62.40. *Security Requirements.*

§62.60. *Responsibilities of the Department.*

§62.70. *Responsibilities of the Certificate Holder.*

§62.71. *Responsibilities of the Certificate Holder-Prohibited Acts.*

§62.72. *Responsibilities of the Certificate Holder-Consumer Complaints.*

§62.73. *Responsibilities of the Certificate Holder-Advertising.*

§62.80. *Fees-Original Certificate of Authority.*

§62.81. *Fees-Renewal Certificate of Authority.*

§62.82. *Fees-Duplicate Certificate of Authority.*

§62.90. *Sanctions-Administrative Sanctions.*

§62.91. *Sanctions-Penalty/Fine.*

§62.92. *Sanctions-Injunctive Relief and Civil Penalty.*

§62.94. *Sanctions-Revocation or Suspension Because of a Criminal Conviction.*

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 April 19, 1994.

TRD-9439401

Jack W. Garrison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 463-7357

- ◆ ◆ ◆  
• 16 TAC §§62.1, 62.10, 62.20, 62.21, 62.40, 62.60, 62.70, 62.71, 62.80, 62.90, 62.91

The Texas Department of Licensing and Regulation proposes new §§62.1, 62.10, 62.20, 62.21, 62.40, 62.60, 62.70, 62.71, 62.80, 62.90, and 62.91, concerning career counseling services. The new sections are being proposed to clarify, edit, renumber and reorganize existing rules that are proposed for repeal.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the new sections. The effect on state government for the first five-year period the sections are in effect will be an estimated increase in revenue of \$2,925 per year for fiscal years 1994-1998. There will be no effect on local government.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of

rules. The cost for compliance for small businesses will be an additional \$75 required for the annual renewal of the certificate of authority. The anticipated economic cost to persons who are required to comply with the sections as proposed is an additional \$75 for the annual renewal of the certificate of authority.

Comments on the proposal may be submitted to James D. Brush II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 5221a-8 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

The new rules affect Texas Civil Statutes, Articles 5221a-8, 9100, 8252-13c.

**§62.1. Authority.** These rules are promulgated under the authority of the Texas Career Counseling Services Act, Texas Civil Statutes, Article 5221a-8 and the Texas Department of Licensing and Regulation Act, Texas Civil Statutes, Article 9100.

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

The Act—The Career Counseling Services Act, Texas Civil Statutes, Article 5221a-8.

Arbitration—A legal process in which two or more persons agree to let an impartial person or panel decide their dispute.

Arbitration organization (qualified)—A business, recognized by the department, whose credentials (education, training, and experience) indicate it is qualified to provide arbitration service to the public.

**§62.20. Certificate of Authority Requirements.**

(a) Each career counseling service location must have a certificate of authority. A certificate of authority is not assignable or transferable.

(b) A certificate of authority is valid for one year from the date issued and must be renewed annually.

(c) A certificate of authority allows a career counseling service to operate for compensation in the State of Texas.

**§62.21. Certificate of Authority Application Process.**

(a) An initial application must contain:

(1) the name, address and telephone number of each operator if different from the owner;

(2) the street address, county, mailing address and telephone number of the principal location of the career counseling service;

(3) the name, address and telephone number of each owner;

(4) the assumed name under which the career counseling service is to operate;

(5) a current financial statement prepared by a certified public accountant;

(6) the required bond or assignment of security; and

(7) the required fee.

(b) A renewal application must contain:

(1) any changes in information provided on the initial application or subsequent renewal applications;

(2) the current department certificate of authority number;

(3) a current financial statement prepared by a certified public accountant; and

(4) the appropriate renewal fee.

(c) Both initial and renewal applications shall include a statement indicating the owner has read and is familiar with the provisions of the Act and these rules.

(d) Before a certificate of authority can be issued or renewed for anyone using an assumed name they must have first complied with the Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 36. If the career counseling service is incorporated, compliance with the Texas Business Corporation Act, §2.05, is also required. Proof of the career counseling service's compliance with the statutes cited is required on the application.

(e) If the applicant is a corporation, both initial and renewal applications shall include a certification that the corporation is in good standing with the State Comptroller's Office and the Secretary of State's Office.

(f) No initial or renewal certificate of authority application will be considered filed until the department has received the written application form, a current financial statement prepared by a certified public accountant, bond or assignment of security, and all applicable fees.

(g) If a career counseling service certificate of authority is not renewed before it expires, it may be renewed by submitting a renewal application, payment of

the renewal fee and late fee. This submittal must be postmarked before midnight of the 30th day following the certificate expiration date.

**§62.40. Security Requirements.**

(a) Before a certificate of authority is issued, the owner must obtain and file with the department a surety bond on a form provided by the department and payable to the State of Texas.

(b) The bond shall be continuous and shall provide for the issuing company to give the department 30 days' written notice prior to cancellation.

(c) An owner may deposit a cash performance alternative of \$10,000 for each business location in lieu of the bond. The cash performance alternative shall be an irrevocable assignment of security issued by a national or state bank, or savings and loan association, subject to the express approval of the commissioner. Forms for filing an assignment of security shall be provided by the department upon request.

(d) The surety bond or assignment of security shall be maintained in full during the entire time the certificate of authority is in effect.

**§62.60. Responsibilities of the Department.**

(a) All career counseling services holding a certificate of authority shall receive notice from the department regarding renewal no later than 60 days prior to the expiration of their current certificate of authority.

(b) The department shall issue a certificate of authority to applicants who comply with all provisions of the Act and department rules.

(c) The department shall recognize, in writing, a qualified arbitration organization.

**§62.70. Responsibilities of the Certificate Holder.**

(a) Each career counseling service owner must notify the department of any changes in information regarding the location or ownership of the career counseling service. The notification must be received by the department no later than 30 days after the change occurs.

(b) If any of the information that appears on the face of the career counseling service's certificate of authority changes, the career counseling service must obtain a duplicate certificate of authority showing the correct information.

(c) Each career counseling service must display a notice in the main office of

the service that states the name, mailing address, and telephone number of the department and indicates that a complaint may be referred to the department. In addition, a rubber stamp or sticker may be used to convey the information on:

- (1) a sign prominently displayed in each place of business;
- (2) any written contract for services; or
- (3) any bill for services.

#### §62.71. Responsibilities of the Certificate Holder—Consumer Complaints.

(a) The career counseling service is to maintain records of each written complaint, such records shall note:

- (1) date and time written complaint received;
- (2) date, time, and method of response (within 48 clock hours);
- (3) written documentation of complaint and resolution facts;
- (4) date complaint resolved or date client selects arbitration;
- (5) arbitrator's determinations and recommended settlement; and
- (6) date resolved.

(b) The career counseling service is responsible for payment of the arbitrator's service fee.

#### §62.80. Fees—Original Certificate of Authority.

- (a) The fee for an initial certificate of authority is \$125.
- (b) The annual fee for a renewal is \$125.
- (c) A late fee of \$50 will be charged if the completed renewal application is received after expiration of the current certificate but is postmarked before midnight on the 30th day after the certificate expired.
- (d) A \$25 fee will be charged for issuing a duplicate certificate of authority.

§62.90. Sanctions—Administrative Sanctions/Penalties. If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may institute proceedings to impose administrative sanctions and/or recommend administrative penalties in accordance with Texas Civil Statutes, Article 9100, and Chapter 60 of this title (relating to Texas Commission of Licensing and Regulation).

§62.91. Sanctions—Revocation, Suspension or Denial because of a Criminal Conviction. Pursuant to Texas Civil Statutes, Article 6252-13c, the commissioner, after a hearing, may suspend, revoke, or deny an existing certificate of authority, or disqualify a person from receiving a certificate of authority, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved with the certificate of authority. The commissioner may also, after hearing, suspend, revoke, or deny a certificate of authority because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

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 April 19, 1994

TRD-9439402

Jack W. Garison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 463-7357

## Chapter 63. Personnel Employment Services

- 16 TAC §§63.1, 63.10, 63.20, 63.21, 63.30, 63.40, 63.60, 63.70, 63.71, 63.80-63.82, 63.90-63.94

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

The Texas Department of Licensing and Regulation proposes the repeal of §§63.1, 63.10, 63.20, 63.21, 63.30, 63.40, 63.60, 63.70, 63.71, 63.80-63.82, 63.90-63.94, concerning personnel employment services. These sections are being repealed to allow for the adoption of edited, renumbered, and reorganized sections.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Brush also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be clarification of rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to James D. Brush II, Director, Policies and Standards Division, P.O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5221a-7, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

The repeals affect Texas Civil Statutes, Article 5221a-7.

#### §63.1. Authority.

#### §63.10. Definitions.

#### §63.20. Certificate of Authority Requirements.

#### §63.21. Certificate of Authority Application Process.

#### §63.30. Exemptions.

#### §63.40. Security Requirements.

#### §63.60. Responsibilities of the Department.

#### §63.70. Responsibilities of the Certificate Holder—General.

#### §63.71. Responsibilities of the Certificate Holder—Prohibited Acts.

#### §63.80. Fees—Original Certificate of Authority.

#### §63.81. Fees—Renewal Certificate of Authority.

#### §63.82. Fees—Duplicate Certificate of Authority.

#### §63.90. Sanctions—Administrative Sanctions.

#### §63.91. Sanctions—Injunctive Relief and Civil Penalty.

#### §63.92. Sanctions—Criminal Penalty

#### §63.94. Sanctions—Revocation or Suspension Because of a Criminal Conviction.

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 April 19, 1994.

TRD-9439399

Jack W. Garrison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 463-7357

- ◆ ◆ ◆
- 16 TAC §§63.1, 63.10, 63.20, 63.21, 63.40, 63.60, 63.70, 63.80, 63.81, 63.82, 63.90, 63.91

The Texas Department of Licensing and Regulation proposes new §§63.1, 63.10, 63.20, 63.21, 63.40, 63.60, 63.70, 63.80, 63.81, 63.82, 63.90, and 63.91, concerning personnel employment services. The new sections are being proposed to clarify, edit, renumber and reorganize existing rules that are being proposed for repeal.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the new sections. The effect on state government for the first five-year period the sections are in effect will be an estimated in revenue of \$25,000 per year for fiscal years 1994-1998. There will be no effect on local government.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of rules. The cost for compliance for small businesses will be an additional \$50 required for the annual renewal of the certificate of authority. The anticipated economic cost to persons who are required to comply with the sections as proposed is an additional \$50 for the annual renewal of the certificate of authority.

Comments on the proposal may be submitted to James D. Brush II, Director, Policies and Standards Division, P.O. Box 12157, Austin, Texas 78711.

The new sections proposed under Texas Civil Statutes, Article 5221a-7, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

The new rules affect Texas Civil Statutes, Articles, 5221a-7, 9100, and 6252-13c.

**§63.1. Authority.** These rules are promulgated under the authority of the Personnel Employment Services Act, Texas Civil Statutes, Article 5221a-7, and the Texas Department of Licensing and Regulation Act, Texas Civil Statutes, Article 9100.

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

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

**Commission**—The Commission of Licensing and Regulation.

**Permanent employment**—Any employment lasting more than 30 days.

**§63.20. Certificate of Authority Requirements.**

(a) Each personnel employment service location must have its own certificate of authority. A certificate of authority is not assignable or transferable.

(b) A certificate of authority is valid for one year from the date issued.

(c) A person may not own or operate a personnel employment service in the State of Texas on an applicant fee basis unless the person holds a certificate of authority issued under the Act.

**§63.21. Certificate of Authority Application Process.** A person desiring to operate a personnel employment service must apply annually on a form provided by the department.

**§63.40. Security Requirements.**

(a) Before a certificate of authority is issued, the owner must file with the department a surety bond in the amount of \$5,000 issued by a company authority to do business in the State of Texas, on a form provided by the department.

(b) The bond shall be continuous and shall provide for the issuing company to give the department 30 days' written notice prior to cancellation.

(c) One bond is sufficient for multiple location if the bond indicates each location covered.

(d) An owner may deposit a cash performance alternative of \$5,000 in lieu of the bond. The cash performance alternative shall be an irrevocable assignment of security issued by a national or state bank or savings and loan bank or savings and loan association, subject to the express approval of the commissioner. Each assignment or cash deposit shall remain in effect for a period of two years after expiration, cancellation or revocation of the certificate of authority. Forms for filing an assignment of security shall be provide by the department.

(e) The surety bond or assignment of security shall be maintained in full during the entire time the certificate of authority is in effect and for an additional two years thereafter.

**§63.60. Responsibilities of the Department.** The department shall send a renewal notice of later than 60 days prior to

the expiration of the current certificate of authority.

**§63.70. Responsibilities of the Certificate Holder—General.**

(a) Each personnel employment service owner must notify the department of any changes in information regarding the location or ownership of the personnel employment service. The notification must be received by the department no later than 30 days after change occurs.

(b) If any of the information that appears on the face of the personnel employment service's certificate of authority changes, the personnel employment service must obtain a duplicate certificate of authority showing the correct information.

(c) Each personnel employment service shall provide service recipients with access to the name, mailing address, and telephone number of the department for purposes of directing complaints to the department. A rubber stamp or sticker may be used to convey the information. The notification shall be included on:

(1) a sign prominently displayed in the place of business;

(2) any written contract for services; or

(3) any bill for services.

(d) The department may inspect all records, books, and documents, whether paper or electronic, pertaining to the agency's operation.

(e) A copy of the signed contract must be given to the service recipient.

**§63.80. Fees—Original Certificate of Authority.** The fee for an initial certificate of authority is \$100.

**§63.81. Fees—Renewal Certificate of Authority.**

(a) The annual fee for a renewal certificate of authority is \$100.

(b) A \$50 late fee will be charged if the completed renewal application is received after expiration of the current certificate but is postmarked before midnight of the 30th day after the certificate expired.

**§63.90. Sanctions—Administration Sanctions.** If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may institute proceedings to impose administrative sanctions and/or recommend administrative penalties in accordance with Texas Civil Statutes, Article 9100, and Chapter 60 of this title (relating to Texas Commission of Licensing and Regulation).



**§63.91. Sanctions-Revocation Suspension, or Denial because of a Criminal Conviction.** Pursuant to Texas Civil Statutes, Article 6252-13c, the commissioner, after a hearing, may suspend, revoke, or deny an existing certificate of authority, or disqualify a person from receiving a certificate of authority, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in operating a personnel employment service. The commissioner may also, after hearing, suspend, revoke or deny a certificate of authority because of a person's felony probation revocation, parole revocation or revocation of mandatory supervision.

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 April 19, 1994.

TRD-9439400

Jack W. Garson  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 463-7357

## TITLE 22. EXAMINING BOARDS

### Part XII. Board of Vocational Nurse Examiners

#### Chapter 235. Licensing

#### Application for Licensure

##### • 22 TAC §235.3

The Board of Vocational Nurse Examiners proposes new §235.3, concerning Application for Licensure. The new rule is strictly for renumbering purposes in order to adopt another rule.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the section.

Mrs. Bronk also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be no public benefit. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H. P., Executive Director, Board of Vocational Nurse Ex-

aminers, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

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

**235.3. Qualifications for Licensure by Examination.** The vocational/practical nurse shall:

(1) have successfully completed an approved program for educating vocational/practical nurses;

(2) have at least two years of high school education or its equivalent (equivalency to be established by General Education Development Equivalency Test); and

(3) have passed the examination given by the Board of Vocational Nurse Examiners.

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 April 14, 1994.

TRD-9439379

Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: May 27, 1994

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

#### Application for Licensure

##### • 22 TAC §235.4

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

The Board of Vocational Nurse Examiners proposes the repeal of §235.4, concerning Application for Licensure. The repeal is necessary for renumbering purposes and to adopt a new §235.4.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mrs. Bronk 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 will be no public benefit. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H. P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

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

**§235.4. Qualifications for Licensure by Examination.**

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 April 14, 1994.

TRD-9439378

Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: May 27, 1994

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

## Part XIV. Texas Optometry Board Chapter 275. Continuing Education

### • 22 TAC §275.1

The Texas Optometry Board proposes an amendment to §275.1, concerning continuing education. A valid exemption from continuing education requirements, under §275.1, can be exercised by an individual who submits proof that the licensee has suffered a serious or disabling illness or physical disability which prevented the licensee from complying with the 16-hour educational requirement. Because some licensees who fall within that category would prefer to obtain education through correspondence or multi-media courses, in lieu of requesting an exemption, this rule serves to allow that process, lifting a requirement of four years on correspondence courses, set out by §275.2.

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

Ms. Ewald also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that licensees will be able to obtain the required education to assure competency in examinations administered to the general public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 9101 Burnet Road, Suite 214, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 4552, §2.14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

#### §275.1. General Requirements.

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

(c) Licensees who have not complied with the education requirements may not be issued a renewal license unless such person is entitled to an exemption under the Act, §4.01B(a). The following persons are exempt:

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

(3) a licensee who submits proof satisfactory to the board that the licensee suffered a serious or disabling illness or physical disability which prevented the licensee from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; provided, however, that in lieu of claiming the exemption, a licensee who has submitted the requisite proof of illness or disability may elect to obtain the education requirements by correspondence or multi-media courses sponsored, monitored, or graded by colleges of optometry; or

(4) (No change.)

(d)-(f) (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 April 18, 1994.

TRD-9439380  
Lois Ewald  
Executive Director  
Texas Optometry Board

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 835-1938

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 98. HIV and STD Control

##### Subchapter C. Texas HIV Medication Program

##### General Provisions

##### • 25 TAC §98. 101, §98.105

The Texas Department of Health (department) proposes amendments to §98.101 and §98.105, concerning the Texas HIV Medication Program.

The sections implement the provisions of the "Communicable Disease Prevention and Control Act," Health and Safety Code, Chapter 85, Subchapter C, §85.063, concerning the Texas HIV Medication Program. The program assists hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV-related conditions. Generally, the sections cover purpose, eligibility for participation, and medication coverage. The amendments expand the eligibility criteria for Zidovudine, Didanosine, Zalcitabine, SMZ-TMP, and Fluconazole.

Anita Martinez, Chief of Staff Services, Disease Control and Prevention Associateship, Texas Department of Health, has determined that for the first five-year period the section will be in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering the section as proposed.

Ms. Martinez also has determined that for each year of the first five-year period the section is in effect, the public benefit anticipated as a result of enforcing the section will be to expand the eligibility criteria for Zidovudine, Didanosine, Zalcitabine, SMZ-TMP, and Fluconazole to treat HIV program participants. There is no anticipated economic cost to small or large businesses to comply with the sections as proposed; no anticipated cost for individuals affected by this proposal; and no effect on local employment.

Comments on the proposal may be submitted to Charles E. Bell, M.D., Chief, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78758. Comments will be accepted for 30 days after publication of the proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §85.063, which provides the Texas Board of Health with the authority to adopt rules concerning a Texas HIV Medication Program; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

This amendment affects the Health and Safety Code, Chapter 85.

#### §98.101. Purpose and Scope.

(a) Purpose. These sections will implement the provisions of the Texas HIV Medication Program (program) as authorized by the Communicable Disease Prevention and Control Act, Health and Safety Code, §§85.061-85.066. The program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in obtaining

medications that have been shown to be effective in reducing hospitalizations due to [indicated by the Food and Drug Administration for the treatment of] HIV-related conditions and approved by the Texas Board of Health for program coverage.

(b) (No change.)

§98.105. Drug-specific eligibility criteria. A person is eligible for:

(1) Zidovudine, Didanosine, and Zalcitabine if he or she is younger than 18 years of age and has a diagnosis of HIV infection; or has a positive HIV antibody test and is classified in Group III or IV according to the Centers of Disease Control (CDC) classification system, or pending available funding classified in Group I or II with a CD4 cell count of 500 or less;

(2) Pentamidine for inhalation solution, sulfamethoxazole-trimethoprim (DS) tablets, and sulfamethoxazole-trimethoprim suspension if he or she is diagnosed with HIV infection and a CD4 cell count of 200 or less; or constitutional symptoms such as thrush or unexplained fever greater than 100.5F for greater than two weeks and children under the age of 13 with the following clinical indicators:

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

(3) Didanosine if he or she has advanced HIV infection and is intolerant of zidovudine therapy of who have demonstrated significant clinical or immunological deterioration during zidovudine therapy.]

(3)[(4)] Erythropoietin if he or she soon would be or is currently transfusion dependent, has a hematocrit less than or equal to 25%, and has endogenous serum erythropoietin levels equal to or less than 500 mU/mL;

(4)[(5)] Immune Globulin Intravenous (Human) if he or she is diagnosed with HIV infection and is younger than 18 years of age;

(5)[(6)] Fluconazole if he or she has [an] established cryptococcal [infection] meningitis or candida esophagitis and for prophylaxis after diagnosis. The total amount to be expended on this drug is up to \$350,000, then pending available funding;

(6)[(7)] Acyclovir for the treatment of acute herpetic infections and chronic suppressive therapy for the treatment of recurrent disease;

(8) Zalcitabine in combination with zidovudine is indicated for the treatment of adult patients with advanced HIV infection (CD4 cell count less than or equal to 300) who have demonstrated significant clinical or immunologic deterioration;]

(7)(9) IV Pentamidine for children 13 years of age or younger for the treatment of PCP and prophylaxis against PCP in HIV-infected children;

(8)(10) Interferon-Alpha for the treatment of disseminated Kaposi's sarcoma in HIV-infected persons with T-Cell counts over 500. The total amount to be expended on this drug is up to \$122,600. The requesting physician must complete a form to be returned to the program which will allow the program to evaluate the benefits of providing this medication;

(9)(11) Amphotericin-B for the treatment of patients with progressive, and potentially fatal disseminated fungal infections. The total amount to be expended on this drug is up to \$46,200. The requesting physician must complete a form to be returned to the program which will allow the program to evaluate the benefits of providing this medication;

(10)(12) Atovaquone for the oral treatment of acute mild to moderate Pneumocystis carinii Pneumonia (PCP) in patients who are intolerant to sulfamethoxazole-trimethoprim (SMZ-TMP);

(11)(13) Rifabutin for the prevention of disseminated mycobacterium avium complex disease in patients with a CD4 cell count of 100 or less. The total amount to be expended on this drug is up to \$100,000, then pending available funding; and[.]

(12)(14) Itraconazole for the treatment of Blastomycosis and Histoplasmosis.

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 April 18, 1994.

TRD-9439371

Susan K. Steeg  
General Counsel, Office of  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 458-7500



## TITLE 28. INSURANCE

### Part II. Texas Workers' Compensation Commission

#### Chapter 110. Required Notices of Coverages

##### Subchapter B. Employer Notices

###### • 28 TAC §110.110

The Texas Workers' Compensation Commission proposes new §110.110, concerning requirements for a governmental entity awarding a contract for a building or construction project, and for persons providing services on a building or construction project for a governmental entity. The Texas Labor Code, §406.096, requires workers' compensation insurance coverage for all persons providing services on a building or construction project for a governmental entity. The commission is aware that this statutory requirement is not being met, and this rule is designed to achieve compliance and to implement a recordkeeping process which will enable oversight of compliance. The rule does this by placing requirements on the governmental entity and on contractors and other persons providing services on a project. These requirements include coverage, certificates of coverage, posted notices of coverage, and notification of changes in coverage status.

The rule defines terms which apply to governmental entity building or construction projects and sets up a clear procedure for governmental entities and contractors that bid for building and construction projects to follow in complying with the requirements of the Texas Labor Code, §406.096. It also defines "persons who provide services on a project" who are subject to the statutory requirement of coverage, and sets forth their requirements to comply with the statute and the rule. The rule puts persons on notice that providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other person providing services on the project to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The rule requires a governmental entity to timely obtain certificates of coverage, retain them for the duration of the project plus three years, and provide them to the commission upon request and to others entitled to them by law. It also requires the governmental entity, as a prerequisite to awarding a contract, and as part of the contract, to require that the contractor: provide coverage and certificates of coverage for the contractor's employees; timely obtain and provide the governmental entity all required certificates of coverage for all persons providing services on the project; retain certificates of coverage on file for the duration of the project and for three years thereafter; notify the governmental entity in writing by certified mail or personal delivery,

within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; post notices on each project site; and contractually require persons with whom it contracts to do the same, with the certificates of coverage to be provided to the person for whom they are providing services. The rule also sets out the language to be included in bid specifications and in contracts awarded by a governmental entity and the information required to be in the posted notice to employees. It further establishes a method for obtaining the certificates from persons providing services on the project and providing them to the governmental entity.

It requires a contractor awarded a building or construction contract to: provide workers' compensation coverage to the contractor's employees for the duration of the project; file a certificate of coverage of the contractor's employees with the governmental entity prior to being awarded a contract; obtain and provide to the governmental entity, certificates of coverage from each other person with whom it has contracted to provide services on the project, prior to that person beginning work on the project; obtain and provide new certificates of coverage shown on the current certificate ends during the duration of the project; retain all certificates of coverage for the duration of the project and for three years thereafter; notify the governmental entity of material changes in coverage; contractually require each other person with whom it contracts to provide a certificate of coverage; and post notices on each project site.

All other persons providing services on a project have the same requirements as a contractor, with the exception of posting notice and with the exception that the certificate of coverage is given to the person for whom they contracted to provide services on the project. The rule uses the term "persons providing services on the project" in lieu of the statutory term "subcontractor" because the term "subcontractor" as used in the statute (§406.096) and in this rule is broader than standard industry usage. The use of the different terminology will prevent confusion.

This rule is based on the provisions of the Texas Labor Code, §406.096 and §402.061.

Janet Chamness, chief of budget, has determined that for the first five-year the new rule is in effect there will be no or minimal fiscal implications, beyond those addressed by the legislative fiscal analysis, to the state or local governments as a result of enforcing or administering this rule. The rule imposes on political subdivisions some recordkeeping requirements implied by the statutory requirements.

The rule does not create any duty or burden on anyone which the law does not establish and the procedure the rule sets out has to be followed by businesses (contractors and other persons providing services on governmental entity building and construction projects) large and small alike, so the effect on the largest and smallest businesses will be the same.

Ms. Chamness also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be to ensure the existence of workers' compensation insurance coverage for all persons providing services on building or construction projects for governmental entities, as is required by statute; documentation of coverage for all persons who provide any service on building or construction projects for governmental entities; less confusion about where liability for injuries rests, and fewer lawsuits against governmental entities for injuries suffered on building or construction projects for the governmental entities.

There are no or minimal anticipated economic costs to individuals who are required to comply with the rule as proposed, beyond those addressed by the legislative fiscal note on the bill. Again, the rule imposes on contractors and persons providing services on the project, some recordkeeping requirements implied by the statutory requirements. The cost of posting notice of coverage will be minimal.

Written comments on the proposal will be accepted for at least 30 days after publication of this document in the *Texas Register* and may be submitted to Elaine Crease, Office of the General Counsel, Mail Stop #4D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

The new rule is proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and §406.096, which establishes requirements for governmental entities, contractors, and subcontractors ("persons providing services on the project") regarding workers' compensation coverage for workers on public building or construction projects.

The code affected by this rule is Texas Labor Code, §402.061 and §406.096.

#### *§110.110. Reporting Requirements for Building or Construction Projects for Governmental Entities.*

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this rule shall have the meaning defined in the Texas Labor Code, if so defined.

(1) Certificate of coverage ("certificate")—A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees (including those subject to a coverage agreement) providing services on a project, for the duration of the project.

(2) Building or construction—Has the meaning defined in the Texas Labor Code, §406.096(e)(1).

(3) Contractor—A person bidding for or awarded a building or construction project by a governmental entity.

(4) Coverage—Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).

(5) Coverage agreement—A written agreement on form TWCC-81, form TWCC-82, form TWCC-83, or form TWCC-84, filed with the Texas Workers' Compensation Commission which establishes a relationship between the parties for purposes of the Workers' Compensation Act, pursuant to the Texas Labor Code, Chapter 406, Subchapters F and G as one of employer/employee and establishes who will be responsible for providing workers' compensation coverage for persons providing services on the project.

(6) Duration of the project—Includes the time from the beginning of work on the project until the work on the project has been completed and accepted by the governmental entity.

(7) Persons providing services on the project ("subcontractor" in the Act, §406.096)—Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes but is not limited to independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. "Services" includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project.

(8) Project—Includes the provision of all services related to a building or construction contract for a governmental entity.

(b) Providing or causing to be provided a certificate of coverage pursuant to this rule is a representation by the insured that all employees of the insured who are providing services on the project are covered by workers' compensation coverage, that the coverage is based on proper reporting of classification codes and payroll amounts, and that all coverage agreements have been filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other person

providing services on the project to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(c) A governmental entity that enters into a building or construction contract on a project shall:

(1) include in the bid specifications, all the provisions of subsection (d) of this rule, using the language required by paragraph (7) of this subsection;

(2) as part of the contract, using the language required by paragraph (7) of this subsection, require the contractor to perform as required in subsection (d) of this section;

(3) obtain from the contractor a certificate of coverage for each person providing services of the project, prior to that person beginning work on the project;

(4) obtain from the contractor a new certificate of coverage showing extension of coverage:

(A) before the end of the current coverage period, if the contractor's current certificate of coverage shows that the coverage period ends during the duration of the project; and

(B) no later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project;

(5) retain certificates of coverage on file for the duration of the project and for three years thereafter;

(6) provide a copy of the certificates of coverage to the commission upon request and to any person entitled to them by law; and

(7) use the following language for bid specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation: Article \_\_\_\_ Workers' Compensation Insurance Coverage.

(A) Definitions: Certificate of coverage ("certificate")—A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project. Duration of the project—includes the time from the beginning of the work on the

project until the contractor's/person's work on the project has been completed and accepted by the governmental entity. Persons providing services on the project ("subcontractor" in §406.096) -includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project.

(B) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

(C) The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

(D) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

(E) The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(i) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(ii) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

(F) The contractor shall retain all required certificates of coverage for the duration of the project and for three years thereafter.

(G) The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

(H) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

(I) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(i) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all of its employees providing services on the project, for the duration of the project;

(ii) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(iii) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(iv) obtain from each other person with whom it contracts, and provide to the contractor :

(I) a certificate of coverage, prior to the other person beginning work on the project; and

(II) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(v) retain all required certificates of coverage on file for the duration of the project and for three years thereafter;

(vi) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the

person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(vii) contractually require each person with whom it contracts, to perform as required by clauses (i)-(vii) of this subparagraph, with the certificates of coverage to be provided to the person for whom they are providing services.

(J) The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

(d) A contractor shall:

(1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

(2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

(3) provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

(4) obtain from each person providing services on a project, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for three years thereafter,

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

(7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30-point bold type and text in at least 19-point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the commission on the sample notice, without any additional words or changes. **REQUIRED WORKERS' COMPENSATION COVERAGE** "The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee." "Call the Texas Workers' Compensation Commission at \_\_\_\_\_ to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage." ; and

(8) contractually require each person with whom it contracts to provide services on a project, to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

(C) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(D) obtain from each other person with whom it contracts, and provide to the contractor:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage

period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(E) retain all required certificates of coverage on file for the duration of the project and for three years thereafter;

(F) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(G) contractually require each other person with whom it contracts, to perform as required by subparagraphs (A)-(G) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

(e) A person providing services on a project, other than a contractor, shall:

(1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

(2) provide a certificate of coverage as required by its contract to provide services on the project, prior to beginning work on the project;

(3) provide the person for whom it is providing services on the project, prior to the end of the coverage period shown on its current certificate of coverage, a new certificate showing extension of coverage, if the coverage period shown on the certificate of coverage ends during the duration of the project;

(4) obtain from each person providing services on a project under contract to it, and provide as required by its contract:

(A) a certificate of coverage, prior to the other person beginning work on the project; and

(B) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for three years thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, of any change that materially affects the provision of coverage of any per-

son providing services on the project and send the notice within 10 days after the person knew or should have known of the change; and

(7) contractually require each other person with whom it contracts to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to it prior to that other person beginning work on the project;

(C) provide, prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(D) obtain from each other person under contract to it to provide services on the project, and provide as required by its contract:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the contract;

(E) retain all required certificates of coverage on file for the duration of the project and for three years thereafter;

(F) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(G) contractually require each person with whom it contracts, to perform as required by subparagraphs (A)-(G) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

(f) If any provision of this rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to this

end the provisions of this rule are declared to be severable.

(g) This rule is applicable for building or construction contracts awarded by a governmental entity on or after September 1, 1994.

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 April 19, 1994.

TRD-9439416

Susan Cory  
General Counsel  
Texas Workers'  
Compensation  
Commission

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 440-3700

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 101. General Rules

##### • 30 TAC §101.28

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

The Texas Natural Resource Conservation Commission (TNRCC) proposes the repeal of §101.28, concerning the collection of fees based on the reporting requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) (for Asbestos) promulgated in 40 Code of Federal Regulations Part 61, Subpart M.

The proposed repeal of §101.28 is necessitated by the transfer of responsibility for NESHAP Subpart M as it relates to asbestos demolition/renovation to the Texas Department of Health (TDH) from the TNRCC. Legislative authority for the transfer of asbestos responsibility to the TDH is mandated by House Bill 1680, 73rd Legislature, 1993. The purpose of the asbestos fee rule was to fund the investigation and oversight of the asbestos demolition/renovation activities in the state. With the passing of the responsibility from the TNRCC to the TDH, it would be inappropriate for the TNRCC to continue to collect asbestos fees. The TDH plans to assume all NESHAP Subpart M responsibilities that relate to asbestos demolition/renovation effective September 1, 1994, and will adopt a fee rule of its own to fund the continuing asbestos program.

Stephen Minick, division of budget and planning, has determined that for the first five-

year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Minick 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 will be in the efficient transfer of fee assessment responsibilities to the TDH. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

A public hearing on this proposal will be held at 10:00 a.m. on May 18, 1994, in Room 201S of the TNRCC central office, Air Quality Planning Division, 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TNRCC staff member will be available to discuss the proposal and answer questions at 9:30 a.m., prior to the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin through May 27, 1994.

Material received by the TNRCC Regulation Development Section by 4:00 p.m. on May 27, 1994, will be considered by the Commission prior to any final action on the proposal. Copies of the proposal are available at the central office of the TNRCC located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. Please mail written comments to the Regulation Development Section, Office of Air Quality Planning, P.O. Box 13087, Austin, Texas 78711-3087. For further information contact Al Langley at (512) 239-1549.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

The repeal is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA. The repeal implements House Bill 1680, 73rd Legislature, 1993, which transfers all NESHAP Subpart M responsibilities that relate to asbestos demolition/renovation to the TDH.

##### *§101.28. Asbestos Notification Fees.*

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 April 11, 1994

TRD-9439475

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: July 27, 1994

For further information, please call (512) 239-0615

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter F. Motor Vehicle Sales Tax

##### • 34 TAC §3.77

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

The Comptroller of Public Accounts proposes the repeal of §3.77, concerning refunds and payments made under protest. The section is being repealed so that a substantially revised section dealing with the same subject matter can be adopted.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that there will be no cost or benefit to the public from the repeal of this rule. This repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

##### *§3.77 Refunds and Payments Made Under Protest*

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 April 18, 1994

TRD-9439357

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: May 27, 1994



For further information, please call: (512) 463-4028

◆ ◆ ◆  
• 34 TAC §3.89

The Comptroller of Public Accounts proposes an amendment to §3.89, concerning sales of house trailers. The section is amended to delete mobile offices from the definition of motor vehicles as provided by the 73rd Legislature, 1993.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code, §151.308 and §152.001.

§§3.89. *Sales of House Trailers. (Texas Tax Code §152.001, §152.003).*

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

(1) Bunkhouse—A house trailer designed to be used as a sleeping place for a group or crew but not as a single-family residence.

(2) House trailer—A vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and to be drawn by a motor vehicle. Included in this definition are "travel trailers," "park models," and "bunkhouses[," and "mobile offices]." This definition does not include "mobile offices," "manufactured housing" as defined in the Texas Housing Standards Act (Texas Civil Statutes, Article 5221f), or "portable buildings" and "prefabricated buildings" as defined in §3.306 of this title (relating to Sales of Portable Buildings, Prefabricated Buildings, and Readybuilt Homes).

(3) Installation or set-up charges—Include charges for spotting, plac-

ing, leveling, blocking, anchoring, and connecting electricity, plumbing, and other utilities, and may include a charge for installing underskirting, awnings, and steps.

(4) Its own structure—The house trailer is built on a permanent chassis with wheels, axle(s), and a towing device.

(5) Mobile office—A house trailer designed to be used as an office, sales outlet, or work place[, or for other commercial use].

(6) Travel trailer or park model—A house trailer designed to be used as a dwelling and less than eight body feet in width and 40 body feet in length in the traveling mode, and which is less than 320 square feet when installed or erected on site.

(b) Loss of identity.

(1) A house trailer is presumed to be permanently affixed and an improvement to real property which loses its identity as a motor vehicle if:

(A) it is attached so that it cannot be reasonably reconstructed and made operational for highway use; or

(B) it is attached or installed in a manner which meets all governmental standards (if any) for the installation, including zoning regulations, building codes, federal regulations and other requirements applicable to the land on which it is located; and it is either:

(i) installed on land owned by the purchaser if the purchaser intends to incorporate the trailer as a permanent fixture to the land; or

(ii) installed on land leased to the purchaser if the lease contract provides that improvements to the land become the property of the lessor.

(3) A house trailer is presumed to be temporarily affixed to the real property and remains a motor vehicle if:

(A) the owner of the trailer only has permission to use the land but no contractual right to do so; or

(B) the owner of the trailer has a contractual right to use the land and also has the right to remove the trailer at any time or upon the termination of the contract.

(c) Application of the motor vehicle sales tax.

(1) A retail sale of a house trailer is a taxable sale of a motor vehicle. Motor vehicle sales tax is due on the total sales price including all accessories attached at the time of sale.

(2) Transportation charges prior to the sale are taxable.

(3) Transportation charges after the sale (transportation from the place of sale to the set-up site) and installation or set-up charges are not subject to tax.

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 April 18, 1994.

TRD-9439355

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 463-4028

◆ ◆ ◆  
• 34 TAC §3.90

The Comptroller of Public Accounts proposes an amendment to §3.90, concerning motor vehicles purchased for use outside of Texas. The section is being amended to include an exemption certificate as provided by the 73rd Legislature, 1993. The rule adopts the certificate by reference.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule as proposed.

Comments on the proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code, §152.092.

§3.90. *Motor Vehicles Purchased for Use Outside of Texas. (Texas Tax Code §152.092, §152.028).*

(a) Motor vehicle sales tax exemption.

(1) A motor vehicle purchased in Texas intended for use exclusively outside of Texas is exempt from the motor vehicle sales tax.



(2) A vehicle exempt under this section may not be operated within Texas for any purpose other than its being driven out of the state.

(3) A purchaser claiming an exemption from motor vehicle sales tax because the vehicle is purchased for use exclusively outside of Texas must issue to the seller a Texas Motor Vehicle Tax Exemption Certificate as described in subsection (e) of this section.

(4)(3) The registration of a motor vehicle in Texas will be considered conclusive proof that the vehicle is for use within Texas. A claim that a vehicle registered in Texas was purchased with the intent to operate it exclusively outside of the state will be denied. Valid one-trip permits or buyers' cardboard tags are not considered registration within Texas for purposes of this section.

(b) Seller's responsibility.

(1) The seller of a motor vehicle must keep complete records of every sale at retail and must provide the purchaser an Application for Texas Certificate of Title/Motor Vehicle Tax Statement [a seller, donor, or trader's affidavit] and any other documents necessary to register the vehicle in Texas. The seller is not relieved of this responsibility even though the vehicle is not registered or titled in Texas.

(2) The seller must also retain properly executed Texas Motor Vehicle Sales Tax Exemption Certificates. A certificate must be obtained at the time the transaction occurs; a certificate completed after that time is invalid. An exemption certificate will be valid if the seller received it in good faith from a purchaser and the certificate is properly completed.

(c) Use tax.

(1) Motor vehicle use tax is due on any motor vehicle that was purchased tax-free under the provisions of this section and is later used within the State of Texas.

(2) Payment of the use tax is the obligation of the person operating the vehicle in this state.

(3) The use tax rate is the rate in effect at the time the motor vehicle is brought back into the state and is imposed on the original purchase price, less credit for any legally imposed tax previously paid to another state by the purchaser or operator.

(4) The tax is due within 20 working days after the date the vehicle is first returned to Texas.

(5) The purchaser must retain records showing the total consideration originally paid for the vehicle and

documenting the amount of any tax previously paid to another state.

(d) Vehicles which never enter Texas.

(1) The Texas motor vehicle sales tax will not be due if a motor vehicle is sold by a Texas seller but the vehicle is delivered from one out-of-state location directly to the purchaser at another out-of-state location.

(2) The seller will be responsible for retaining sufficient records showing from and to where the vehicle was delivered.

(e) Content of a Texas Motor Vehicle Sales Tax Exemption Certificate. The exemption certificate must show:

(1) the name and address of the purchaser;

(2) a description of the vehicle being purchased (including the vehicle identification number, make of vehicle, and year model);

(3) the signature of the purchaser and the date; and

(4) the name and address of the seller.

(f) Form of a Texas Motor Vehicle Sales Tax Exemption Certificate. The comptroller adopts the certificate by reference. Copies are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, Tax Administration Division, 111 West 6th Street, Austin, Texas 78701-2913. Copies may also be requested by calling toll-free number 1 (800) 252-5555. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1 (800) 248-4099 toll free. In Austin, the local TDD number is 463-4621).

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 April 18, 1994.

TRD-9439356  
Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 463-4028

◆ ◆ ◆  
Subchapter S. Interstate Motor  
Carrier Sales and Use Tax

• 34 TAC §3.443

The Comptroller of Public Accounts proposes an amendment to §3.443, concerning imposition and tax after effective date for interstate

motor carrier sales and use tax. The amendment is necessary because of changes in certain definitions made by the 73rd Legislature, 1993.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code, §157.001.

§3.443. Imposition of Tax after Effective Date. (Texas Tax Code §§151.001, 151.101, 151.102).

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

(1) Interstate motor vehicle.

(A) A motor vehicle which:

(i) could be registered on an apportioned basis if it were registered in a state or province that is a member of the International Registration Plan;

(ii) is operated in two or more states or provinces, and

(iii) either:

(I) has a gross vehicle weight in excess of 26,000 pounds;

(II) has three or more axles; or

(III) is used in combination with a trailer or semitrailer, when the gross weight of the combination exceeds 26,000 pounds.

(B) Charter buses are interstate motor vehicles if they meet the requirements specified in subparagraph (A)(i) and (ii) of this paragraph.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439359

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 463-4028



• 34 TAC §3.444

The Comptroller of Public Accounts proposes an amendment to §3.444, concerning computation of the proportioned tax - interstate motor vehicles. The amendment is necessary because of changes in certain definitions made by the 73rd Legislature, 1993.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code, §157.001.

§§3.444. *Computation of the Proportioned Tax-Interstate Motor Vehicles. (Texas Tax Code §§157.001, 157.101, 157.102).*

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

(1) Interstate commercial motor vehicle—A motor vehicle other than a motorcycle or passenger car which:

(A) is designed or used primarily for the transportation of persons or property;

(B) operates in two or more states or provinces; and

(C) has fuel supply tanks of 60 gallons or more; or

(C) Any motor vehicle which is operated in two or more states and which has actually been registered on an apportioned basis under the International Registration Plan is also an interstate motor vehicle.

(2) Lease—An agreement by an owner of a motor vehicle, trailer, or semitrailer to give to another for longer than 180 days under a single agreement exclusive use of the vehicle without a driver for consideration.

(3)[(2)] Purchase—A lease of, or a transfer of title to, a motor vehicle, trailer, or semitrailer for consideration [Includes a lease of a motor vehicle without a driver for a period exceeding 180 days].

(4)[(3)] Semitrailer—A vehicle of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle. For the purposes of the Tax Code, §157.001(7), effective September 1, 1991, "semitrailer" includes dollies, jeeps, stingers, auxiliary axles, and converter gears.

(5)[(4)] Trailer—A vehicle designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

(6)[(5)] Truck-tractor—A motor vehicle which is designed or used primarily for drawing other vehicles and which is constructed so as to be able to carry a part of the weight of the vehicle and the load being drawn.

(b) Effective date—proportioned tax. Any interstate motor vehicle, trailer or semitrailer which is operated by a motor carrier who is a resident, domiciled, or doing business in Texas and which was purchased in Texas or which was first brought into Texas before January 1, 1982, will not be subject to the interstate motor carrier tax. The burden of proving that an interstate motor vehicle, trailer or semitrailer was used in Texas before January 1, 1982, is upon the motor carrier making the claim. A vehicle "first brought into Texas" includes those entering Texas for the first time ever, and those entering Texas for the first time:

(1) after a change in ownership or lease contract; or

(2) while they are operated by a different motor carrier.

(c) Effective date—contracts. The tax imposed by the Tax Code, §157.102(d) and (e), will be due only upon those contracts entered into after December 31, 1981.

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

(D) any motor vehicle which is operated in two or more states and which has actually been registered on an apportioned basis under the International Registration Plan is also considered to be an "interstate motor vehicle."

(2) Interstate motor vehicle.

(A) A motor vehicle which:

(i) could be registered on an apportioned basis if it were registered in a state or province that is a member of the International Registration Plan;

(ii) is operated in two or more states or provinces; and

(iii) either:

(I) has a gross vehicle weight in excess of 26,000 pounds;

(II) has three or more axles; or

(III) is used in combination with a trailer or semitrailer, when the gross weight of the combination exceeds 26,000 pounds.

(B) Charter buses are interstate motor vehicles if they meet the requirements specified in paragraph (2)(A)(i) and (ii) of this subsection.

(C) Any motor vehicle which is operated in two or more states and which has actually been registered on an apportioned basis under the International Registration Plan is also considered to be an interstate motor vehicle.

(3) Interstate truck-tractor—A truck-tractor which is operated in two or more states or provinces.

(4) Lease—An agreement by an owner of a motor vehicle, trailer, or semitrailer to give to another for longer than 180 days under a single agreement exclusive use of the vehicle without a driver for consideration.

(5)[(4)] Owner-operator—A motor carrier who leases, rents, or otherwise provides a motor vehicle for the use of others and who, in the regular course of business, also provides, procures, or arranges for, directly, indirectly, or by course of dealing, a driver or operator for the vehicle.

(6)[(5)] Preceding year—The period of 12 consecutive calendar months immediately prior to January [September] 1 or to any calendar quarter that is consistently used.

(7)[(6)] Purchase—A lease of, or a transfer of title to, a motor vehicle, trailer, or semitrailer for consideration [Includes a lease of a motor vehicle without a driver for a period exceeding 180 days].

(8)[(7)] Total miles—The mileage of all interstate truck-tractors and interstate commercial motor vehicles which were operated in Texas and which were:

(A) owned by the motor carrier;

(B) leased to the carrier without a driver and for a time period exceeding 180 days;

(C) leased to the carrier by an owner-operator; or

(D) leased by the carrier to another pursuant to a trip-lease agreement.

(9)[(8)] Trip-lease agreement—A lease of a vehicle with a driver on a single-trip basis.

(10)[(9)] Truck-tractor—A motor vehicle which is designed or used primarily for drawing other vehicles and which is constructed so as to be able to carry a part of the weight of the vehicle and the load being drawn.

(b) Computation of the proportioned tax.

(1) Divide the carrier's total miles operated in Texas during the preceding year by the carrier's total miles operated everywhere during the preceding year.

(2) Multiply the purchase price of each interstate motor vehicle purchased in Texas or first brought into Texas during the reporting period by the current tax rate, and that result by the percentage calculated in paragraph (1) of this subsection. A vehicle "first brought into Texas" includes those entering Texas for the first time ever, and those entering Texas for the first time:

(A) after a change in ownership or lease contract; or

(B) while they are operated by a different motor carrier.

(c) Credit for tax paid to another state. If the motor carrier has previously paid any legally imposed sales or use tax to another state upon a motor vehicle subject to tax under subsection (b) of this rule, a deduction or credit may be taken in accordance with the Tax Code, §157.102(a)(3). In computing the proportioned credit allowed, credit may not be taken for sales or use tax previously paid to Texas or another state in

excess of the current tax rate multiplied by the purchase price of any vehicle.

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 April 18, 1994.

TRD-9439380

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 463-4028

◆ ◆ ◆  
• 34 TAC §3.445

The Comptroller of Public Accounts proposes an amendment to §3.445, concerning computation of the proportioned tax—trailers and semitrailers. The amendment is necessary because of changes in certain definitions made by the 73rd Legislature, 1993.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule as proposed

Comments on the proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Tax Code, §157.001.

§3.445. *Computation of the Proportioned Tax—Trailers and Semitrailers.*

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

(1) Interstate commercial motor vehicle—A motor vehicle other than a motorcycle or passenger car which:

(A) is designed or used primarily for the transportation of persons or property;

(B) operates in two or more states or provinces; and

(C) has fuel supply tanks of 60 gallons or more; or

(D) any motor vehicle which is operated in two or more states and which has actually been registered on an apportioned basis under the International Registration Plan is also considered to be an "interstate motor vehicle."

(2) Interstate motor vehicle.

(A) A motor vehicle which:

(i) could be registered on an apportioned basis if it were registered in a state or province that is a member of the International Registration Plan;

(ii) is operated in two or more states or provinces; and

(iii) either:

(I) has a gross vehicle weight in excess of 26,000 pounds;

(II) has three or more axles; or

(III) is used in combination with a trailer or semitrailer, when the gross weight of the combination exceeds 26,000 pounds.

(B) Charter buses are interstate motor vehicles if they meet the requirements specified in paragraph (2)(A)(i) [(3)(A)(i)] and (ii) of this subsection.

(C) Any motor vehicle which is operated in two or more states and which has actually been registered on an apportioned basis under the International Registration Plan is also considered to be an "interstate motor vehicle."

(3) Interstate truck-tractor—A truck-tractor which is operated in two or more states or provinces.

(4) Lease—An agreement by an owner of a motor vehicle, trailer, or semitrailer to give to another for longer than 180 days under a single agreement exclusive use of the vehicle without a driver for consideration.

(5)[(4)] Owner-operator—A motor carrier who leases, rents, or otherwise provides a motor vehicle for the use of others and who, in the regular course of business, also provides, procures, or arranges for, directly, indirectly, or by course

of dealing, a driver or operator for the vehicle.

(6)[(5)] Preceding year—The period of 12 consecutive calendar months immediately prior to January [September] 1 or to any calendar quarter that is consistently used.

(7)[(6)] Purchase—A lease of, or a transfer of title to, a motor vehicle, trailer, or semitrailer for consideration [Includes a lease of a motor vehicle without a driver for a period exceeding 180 days].

(8)[(7)] Total miles—The mileage of all interstate truck-tractors and interstate commercial motor vehicles which were operated in Texas and which were:

(A) owned by the motor carrier;

(B) leased to the carrier without a driver and for a time period exceeding 180 days;

(C) leased to the carrier by an owner-operator; or

(D) leased by the carrier to another pursuant to a trip-lease agreement.

(9)[(8)] Trip-lease agreement—A lease of a vehicle with a driver on a single-trip basis.

(10)[(9)] Truck-tractor—A motor vehicle which is designed or used primarily for drawing other vehicles and which is constructed so as to be able to carry a part of the weight of the vehicle and the load being drawn.

(11)[(10)] Truck-tractor ratio—The total number of truck-tractors operated in Texas during the reporting period divided by the total number of truck-tractors operated everywhere during the same reporting period.

(b) Computation of the proportioned tax—Method 1.

(1) Divide the carrier's total miles operated in Texas during the preceding year by the carrier's total miles operated everywhere during the preceding year.

(2) Multiply the purchase price of all trailers and semitrailers purchased during the reporting period by the current tax rate, and that result by the percentage calculated in paragraph (1) of this subsection.

(3) Multiply the amount calculated in paragraph (2) of this subsection by the truck-tractor ratio.

(c) Computation of the proportioned tax—Method 2.

(1) If a motor carrier can prove that the tax liability for the number of trailers and semitrailers which were actually purchased in Texas or first brought into Texas during the reporting period is less than the amount computed using the method described in subsection (b) of this section, the motor carrier may use the following method:

(A) divide the carrier's total miles operated in Texas during the preceding year by the carrier's miles operated everywhere during the preceding year.

(B) multiply the purchase price of each trailer and semitrailer that was purchased in Texas or first brought into Texas during the reporting period by the current tax rate, and that result by the percentage calculated in subparagraph (A) of this paragraph.

(2) If the motor carrier elects to use this method, it will be held responsible for maintaining records which are separate from its records for interstate motor vehicles and interstate commercial motor vehicles and which detail the movements of all trailers and semitrailers purchased during the reporting period.

(3) Tax must be paid on any trailers or semitrailers which are first brought into Texas during a subsequent reporting period.

(4) A vehicle "first brought into Texas" includes those entering Texas for the first time ever, and those entering Texas for the first time:

(A) after a change in ownership or lease contract, or

(B) while they are operated by a different motor carrier.

(d) Credit for tax paid to another state. If the motor carrier has previously paid any legally imposed sales or use tax to another state upon a vehicle subject to tax under subsection (b) or (c) of this section, a deduction or credit may be taken in accordance with the Tax Code, §157.102(a) (3) or §157.102(c)(1)(D). In computing the proportioned credit allowed, credit may not be taken for sales or use tax previously paid to Texas or another state in excess of the current tax rate multiplied by the purchase price of any vehicle.

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 April 18, 1994.

TRD-9439354

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 463-4028

◆ ◆ ◆  
The Comptroller of Public Accounts proposes new §3.77, concerning refunds and payments under protest of motor vehicle tax, to replace existing §3.77, which is being repealed. The new section is necessary to inform sellers and purchasers of the procedure to obtain refunds of tax paid in error.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the new section may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The new section implements the Tax Code, §§111, 112, and 152.

*§3.77. Refunds and Payments Under Protest. (Texas Tax Code §§111.104, 111.105, 111.107, 111.108, 111.201, 111.203, 111.207, 112.051, 112.052.)*

(a) Tax paid to state. Any person, his attorney, assignee, executor, or administrator may request from the comptroller a refund of any tax that he has remitted to the state but that was not due.

(1) The refund request must be made within:

(A) four years from the date on which the tax was due and payable; or

(B) six months after a determination for the periods for which refund is claimed becomes final; or

(C) six months after any determination would have become final had payment not been made before the due date.

(D) a claim for refund of an amount paid pursuant to a deficiency determination is timely for all transactions included in the deficiency determination if made in accordance with subparagraph (B) or (C) of this paragraph. A claim for refund for items not included in a deficiency determination must be made in accordance with subparagraph (A) of this paragraph.

(2) Before the expiration of the statute of limitations, the comptroller and a taxpayer may agree in writing to an extension of the statute of limitations.

(3) An extension applies only to the periods specifically mentioned in the agreement. Any assessment or refund request pertaining to periods for which limitations have been extended must be made prior to the expiration date of the agreement. Following expiration of the agreement, the statute of limitations applies to subsequent assessments and refund requests as if no extension had been authorized.

(4) The request for refund must be made in writing and must state the specific grounds upon which the claim is founded. The request must also indicate the period for which the claimed overpayment was made.

(5) In determining the statute of limitations for filing a refund claim, the time during which an administrative proceeding is pending before the comptroller for the same period is not counted. A taxpayer may not file a claim for the same transaction and for the same time period as a refund claim previously denied.

(6) Failure to file a claim within the limitation prescribed by this section constitutes a waiver of any demand against the state on account of the overpayment.

(b) Tax paid to county tax assessor-collector. Tax paid to the county tax assessor-collector should be recovered in the same manner as prescribed in subsection (a) of this section. The written refund request should include a copy of the receipt issued by the county tax assessor-collector for payment of taxes and the taxpayer's social security number or federal employers identification number.

(c) Tax paid to seller. A person who remits tax to a seller rather than to a county tax assessor-collector or directly to the state may not request from the comptroller a refund of any tax that the person has remitted to a seller but contends was not due. The tax must be recovered from the seller.

(1) A written request for a refund must be directed to the seller and must state the specific grounds upon which the

claim is founded. The written request should be retained by the seller to document the reason tax was refunded.

(2) After the seller has refunded or, with the purchaser's written consent, credited the tax to the account of the purchaser, the seller may then seek reimbursement from the state in accordance with the procedures outlined in subsection (a) of this section or take a credit on the seller's next return in the amount refunded or credited to the account of the purchaser.

(d) Payments under protest.

(1) Payment made to a county tax assessor-collector.

(A) If, pursuant to the authority of the Tax Code, §112.051, motor vehicle sales and use taxes are paid under protest to a county tax assessor-collector, the protest payment to the tax assessor-collector must be accompanied by a written letter of protest that sets out in detail each and every ground or reason why the taxpayer contends that the assessment is unlawful or unauthorized. Immediately upon receipt of the protest payment and written protest, a copy of the protest letter must be sent to the comptroller by the tax assessor-collector together with a copy of the tax receipt showing that tax was paid. If the taxpayer fails to submit to the county tax assessor-collector the letter of protest at the time of payment, the tax should be remitted normally by the tax assessor-collector.

(B) The payment of taxes under protest to a county tax assessor-collector is limited to those taxes that the tax assessor-collector is authorized to receive.

(C) It is the duty of the county tax assessor-collector to transmit the full amount of all motor vehicle sales and use taxes paid under protest to the state treasurer. The tax assessor-collector shall transmit these protest payments to the state treasurer daily and the tax assessor-collector must inform the treasurer in writing that such taxes were paid under protest.

(2) Payment made to the comptroller. A written letter of protest that sets out fully and in detail each and every ground or reason why the taxpayer contends that the assessment is unlawful or unauthorized must accompany the payment. If the payment and letter of protest do not accompany one another, the payment will be deemed not to have been made under protest.

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 April 18, 1994.

TRD-9439358

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: May 27, 1994

For further information, please call: (512) 463-4028

◆ ◆ ◆  
**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

**Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification**

**Subchapter D. Admission, Transfer, and Discharge Rights**

**• 40 TAC §19.302**

The Texas Department of Human Services (DHS) proposes an amendment to §19.302, concerning transfer and discharge, in its Long-Term Care Nursing Facility Requirements rule chapter. The purpose of the amendment is to avoid inappropriate discharges of individuals from nursing facilities. Under normal discharge procedures, individuals being discharged have the right to appeal and remain in the facility during the appeal period. However, if a nursing facility discharges an individual as a danger to the health and/or safety of other residents, the individual loses his right to appeal before being discharged and is discharged as soon as practicable without being allowed to remain in the facility during the appeal period.

To avoid inappropriate discharges, DHS is proposing to add a new step in this process. This step requires the facility to notify DHS when it contemplates discharging a resident as a danger to the health and/or safety of other residents.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Raiford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be additional protection of the right of nursing facility residents to remain in the facility. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Questions about the content of the proposal may be directed to Susan Syler at (512) 450-3111 in DHS's Institutional Programs Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-217, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendment implements the Human Resources Code, §§22.001-22.024 and 32.001-32.042.

§19.302. *Transfer and Discharge.*

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

(e) Timing of the notice.

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

(4) When an immediate involuntary transfer or discharge as specified in subsection (b)(3) or (4) of this section is contemplated, unless the discharge is to a hospital, the facility must:

(A) immediately call the staff of the Quality Assurance Review and Investigations Section of the Texas Department of Human Services' (DHS's) state office to report their intention to discharge; and

(B) submit the required physician documentation regarding the discharge.

(f) Contents of the notice. For nursing facilities, the written notice specified in subsection (d) of this section must include the following:

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

(4) a statement that the resident has the right to appeal the action as outlined in DHS's [the] Fair Hearings, Fraud, and Civil Rights Handbook [of the Texas Department of Human Services] by requesting [submitting a written request for] a hearing through [to] the Medicaid eligibility worker at the local DHS office within 10 days;

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

(g)-(k) (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 April 11, 1994.

TRD-9439414

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Proposed date of adoption: July 1, 1994

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

◆ ◆ ◆  
Subchapter G. Resident Assessment

• 40 TAC §19.604

The Texas Department of Human Services (DHS) proposes an amendment to §19.604, concerning Preadmission Screening and Annual Resident Review (PASARR), in its Long-Term Care Nursing Facility Requirements rule chapter. The purpose of the amendment is to establish a single point of entry and comprehensive assessment system for individuals who seek nursing facility admission. To achieve this, and to ensure that individuals and their legal guardians are informed of alternate placement options, DHS is conducting a Long-Term Care Assessment Pilot Project. Under the direction of the Health and Human Services Commission (HHSC), DHS, with assistance from the Texas Department on Aging (TDOA), and the Texas Department of Mental Health and Mental Retardation (TXMHMR), has developed a preadmission screening process that is being pilot-tested in Lubbock, Tarrant, Wise, Smith, Gregg, Bell, Cameron, Hidalgo, Lamar, Bowie, Potter, Randall, and Harrison counties.

The pilot project is testing the concept of a "one-stop" assessment procedure for individuals seeking long-term care services. To accomplish this, all individuals seeking nursing facility admissions in the pilot areas must contact the Long-Term Care Assessment office to initiate an assessment. The project staff, consisting of an intake worker and a registered nurse, conduct the intake screening and the subsequent assessment, if appropriate. Financial eligibility for Medicaid assistance is referred to an eligibility specialist.

Burton F. Railford, commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Railford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be that persons seeking nursing facility admission will receive a comprehensive assessment by a registered nurse and be advised of available services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Questions about the content of the proposal may be directed to Marc Gold at (512) 450-3174 in DHS's Institutional Policy Sec-

tion. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-068, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendment implements the Human Resources Code, §§32.001-32.042.

§19.604. *Preadmission Screening and Annual Resident Review (PASARR).*

(a) (No change.)

(b) Preadmission Screenings.

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

(6) Long-Term Care Assessment Pilot Project. Beginning March 1994, DHS is conducting the Long-Term Care Assessment Pilot Project in counties approved by the Texas Board of Human Services. All Medicaid eligible/Medicaid applicants in pilot-site locations who seek admission to a nursing facility must contact the local DHS office to arrange for a long term-care assessment. This assessment meets PASARR requirements stated in this section and meets medical necessity requirements stated in §19.1601 of this title (relating to Medical Necessity (MN) and Utilization Review (UR)). Nursing facilities located in the pilot-project locations may not admit new residents until a final PASARR determination and/or medical necessity has been made by the long-term care assessor.

(c)-(h) (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 April 11, 1994.

TRD-9439413

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Proposed date of adoption: July 1, 1994

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

# WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

## TITLE 22. EXAMINING BOARDS

### Part XXXII. State Committee of Examiners for Speech-Language Pathology and Audiology

#### Chapter 741. Speech-Language Pathologists and Audiologists

##### Subchapter A. Introduction

###### • 22 TAC §741.2

The State Committee of Examiners for Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of repeal to §741.2, concerning the introduction. The text of the emergency repeal to §741.2 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1883). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439348

Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

The State Committee of Examiners for Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of new §741.2, concerning the introduction. The text of the emergency new §741.2 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1883). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439349

Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

##### Subchapter C. The Practice of Speech-Language Pathology and Audiology

###### • 22 TAC §741.41

The State Committee of Examiners for Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of amendment to §741.41, concerning the practice of speech-language pathology and audiology. The text of the emergency amendment to §741.41 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1883). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439350

Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

##### Subchapter D. Academic Re- quirements for Examination and Licensure for Speech- Language Pathologists

###### • 22 TAC §741.61

The State Committee of Examiners for Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of repeal to §741.61, concerning the academic requirements for examination and licensure for speech-language pathologists. The text of the emergency repeal to §741.61 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1883). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994

TRD-9439351

Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

###### • 22 TAC §§741.61, 741.62, 741.65, 741.66

The State Committee of Examiners for Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of new §§741.61, 741.62, 741.65, and 741.66, concerning the academic requirements for examination and licensure for speech-language pathologists. The text of the emergency new §§741.61, 741.62, 741.65, and 741.66 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1883). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439352

Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

##### Subchapter E. Academic Re- quirements for Examination and Licensure for Audiolo- gists

###### • 22 TAC §741.81

The State Committee of Examiners for Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of repeal to §741.81, concerning the academic requirements for examination and licensure for audiologists. The text of the emergency repeal to §741.81 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1883). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439353

Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236



of new §§741.81, 741.82, and 741.85-741.87, concerning the academic requirements for examination and licensure for audiologists. The text of the emergency new §§741.81, 741.82, and 741.85-741.87 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1884). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439340      Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

## Subchapter F. Application Procedures

### • 22 TAC §741.103

The State Committee of Examiners for Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of repeal to §741.103, concerning the application procedures. The text of the emergency repeal to §741.103 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1884). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439341      Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

The State Committee of Examiners for Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of new §741.103, concerning the application procedures. The text of the emergency new §741.103 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1884). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439342      Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

has withdrawn the emergency effectiveness of repeal to §741.143, concerning licensing. The text of the emergency repeal to §741.143 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1884). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439343      Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

The State Committee of Examiners for Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of new §741.143, concerning licensing. The text of the emergency new §741.143 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1884). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439344      Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

## Subchapter I. License Renewal

### • 22 TAC §741.162

The State Committee of Examiners for Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of amendment to §741.162, concerning license renewal. The text of the emergency amendment to §741.162 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1884). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439345      Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of repeal to §741.181, concerning the fees and late renewal penalties. The text of the emergency repeal to §741.181 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1884). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439347      Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

The State Committee of Examiners for Speech-Language Pathology and Audiology has withdrawn the emergency effectiveness of new §741.181, concerning the fees and late renewal penalties. The text of the emergency new §741.181 appeared in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1884). The effective date of this withdrawal is April 13, 1994.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439346      Gene R. Powers, Ph.D.  
Chairperson  
State Committee of  
Examiners for Speech-  
Language Pathology  
and Audiology

Effective date: April 13, 1994

For further information, please call: (512)  
458-7236

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 98. HIV and STD Control

#### Subchapter C. Texas HIV Medication Program

#### General Provisions

### • 25 TAC §98.101, §98.105

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed amendment to §98.101, §98.105, which appeared in the April 1, 1994, issue of the *Texas Register* (19 TexReg 2266). The effective date of this withdrawal is April 18, 1994.



Issued in Austin, Texas, on April 18, 1994.

TRD-9439370      Susan K. Steeg  
                         General Counsel  
                         Texas Department of  
                         Health

Effective date: April 18, 1994

For further information, please call: (512)  
459-7236

◆            ◆            ◆



# ADOPTED RULES

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

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

## TITLE 16. ECONOMIC REGULATIONS

### Part I. Railroad Commission of Texas

#### Chapter 1. Practice and Procedure

##### Subchapter B. Pleadings

###### • 16 TAC §1.27

The Railroad Commission of Texas adopts an amendment to §1.27, relating to motions, and new §1.30, relating to interim rulings and appeals of interim rulings. New §1.30 is adopted with changes to the proposed text as published in the October 29, 1993, issue of the *Texas Register* (18 TexReg 7511). The amendment to §1.27 is adopted without changes to the proposed text as published in the October 29, 1993, issue of the *Texas Register* (18 TexReg 7511), and will not be republished. The amendment to §1.27 deletes the last two sentences in §1.27(b), relating to appeals of staff rulings; all procedural information about appeals of interim rulings is now in one rule, new §1.30. The new rule describes the procedures for filing interim appeals from interim rulings in commission proceedings, the procedure by which an appeal is scheduled for commission consideration, and the status of an appeal in the absence of a written commission order ruling on it.

Two separate timetables are prescribed in new §1.30. For gas utility rate cases, parties must file an appeal within five days of the examiner's ruling; replies must be filed within ten days of the date of the examiner's ruling, and if, within 20 days of the date of the examiner's ruling, there is no signed written order of the commission ruling on the appeal, then on the 21st day after the examiner's ruling, the appeal is deemed denied and any granted stay is lifted. Because of the statutory deadlines in gas utility rate cases, the deadlines for filing an appeal and any replies to the appeal are very short, but are extended for Saturdays, Sundays, or holidays.

In all proceedings other than gas utility rate cases with statutory deadlines, parties must file an appeal within ten days of an interim ruling; replies must be filed within ten days of the date the appeal is filed; and if, within 45 days of the date the appeal was filed, there is no signed written order of the commission

ruling on the appeal, then on the 46th day after the appeal is filed, the appeal is deemed denied and any granted stay is lifted.

No groups or associations filed comments regarding the proposed amendment and new rule. Approximately six weeks after the close of the comment period, three individuals filed written comments opposing new §1.30. Despite their late filing, the commission fully considered their comments, as more fully set forth in the following paragraphs.

All comments opposed the five-day time period for filing an appeal in proposed new §1.30(c)(1) as being too short and therefore inadequate to prepare appeal pleadings that fully address the merits of the appeal or do justice to complex issues, particularly when combined with the provision which would not extend the times for Saturdays, Sundays, and holidays. One comment observed that under certain circumstances, a party could have zero days to appeal an adverse examiner's ruling. The commission agrees that the five-day time period combined with the provision which does not extend the times for Saturdays, Sundays, and holidays could unduly compress the time for filing an appeal, and has therefore removed the language in proposed new §1.30(c)(1) which prevented the filing times from being extended for Saturdays, Sundays, and holidays. The commission disagrees, however, with comments which suggest longer times for filing pleadings in appeals of interim orders in cases with statutory deadlines because those deadlines are inflexible, and has added language requiring the appealing party to effect in-hand service of the appeal on all other parties on the same day the appeal is filed at the commission.

Regarding the provision in new §1.30(c)(1) that an appeal is deemed denied unless acted upon within 20 days, one comment observed that the 20-day period could expire before the commission has had a chance to meet, thus depriving it of the opportunity to deliberate and vote. This comment also questioned the manner in which a commissioner requests that an appeal be added to an open meeting conference agenda, pointing out that, depending on the content, such a request could be prohibited *ex parte* communication. Further, this comment stated that particularly when an appeal involves a claim of privilege, a written indication should be placed in the record that the appeal was denied by the commission and the date on which the denial is deemed to have occurred.

The commission's response to this comment is multi-fold. First, the commission is not required to consider all appeals of interim orders which may be filed, and must retain the discretion to decide which appeals merit commission consideration. Second, a commissioner's request that a particular item be placed on an open meeting conference agenda, without more, is not a prohibited *ex parte* communication. Third, not all *ex parte* communications regarding a contested case are prohibited. Finally, without agreeing that prohibited *ex parte* communications already have occurred or would ever occur, the commission has added language in new §1.30(d) clarifying two things: first, that upon receipt of an appeal in a contested case—not just those filed in proceedings brought or conducted under Texas Civil Statutes, Article 6053, §1(b) or Article 1446e, §§3.05, 5.02(c) or 5.08—the examiner will schedule the appeal for consideration by the commission at an open meeting conference and give proper notice; and second, that at its discretion and upon the request of any one commissioner, the commission may consider an appeal on or after the day following the day the response to the appeal is due. This will enable the commission, if it desires, to consider the appeal for any purpose. However, if the commission does not sign a written order ruling on the appeal within the time periods specified in §1.30(c)(1) or (2), then the appeal is deemed denied and any granted stay is lifted.

One comment stated that the "deemed denied" provisions of proposed new §1.30 are inappropriate when an appeal is taken from a discovery order invading the various recognized privileges. The commission disagrees with this comment because, as stated previously, the commission simply is not required to consider every appeal of an interim ruling, and must retain the discretion to decide which appeals are worthy of commission consideration. For example, if the appeal is frivolous or made only for purposes of delaying the proceedings or if the examiner has ruled correctly, there is no purpose served by having the commission consider and deny appeals from such orders. Such a procedure would not be a wise use of the commission's time, and would be inefficient.

Further, the "deemed denied" provisions give the parties and the examiner some certainty in contested case proceedings. The commission always has discretion to consider an appeal, but it also retains the right to consider and decide at a later time any issue raised in

an appeal that has been denied by operation of law. If a party files an appeal of an interim ruling, under the current practice, there is no deadline by which the commission must decide whether to hear the appeal. Should each commissioner individually decide that the appeal should not be heard (for whatever reason), it is not placed on an open meeting conference agenda. However, the only information which the parties and the examiner have is that no commissioner has requested that the appeal be placed on an open meeting conference agenda for consideration. The appeal issue is carried with the merits of the case and is decided when the examiner presents the case for final decision. When the appeal issue is the jurisdiction of the commission, however, it may be very difficult for the examiner to move the proceedings toward a hearing on the merits without some procedural finality on that fundamental, threshold legal issue. Under new §1.30, the absence of a commission order ruling on an appeal is deemed to be a denial, so that there is constructively a decision on the jurisdiction issue for purposes of determining that the case should go forward, but the commission may, in its discretion, consider that question with the merits of the case. Specific language to that effect has been added to the text of the adopted rule to clarify the commission's practice.

Another comment suggested the need to reconcile the provisions of §1.30 with other commission general rules of practice and procedure relating to certain types of rulings and the persons authorized to make those rulings, specifically §§1.27(b), 1.85(d) and 1.121(d). The comment pointed out that §1.27(b) refers to motions filed prior to the presentation of a contested case to the commission, and provides that such motions are to be ruled on by the appropriate director or the examiner. In §1.85, the legal division director or examiner may issue a commission to take a deposition; the examiner may issue protective orders and orders compelling discovery responses; and orders imposing sanctions may be issued by the commission, the legal division director, or the examiner. Finally, §1.121 refers to both the presiding examiner and the examiner. The comment states that proposed new §1.30 appears to refer only to an examiner's ruling; that this is particularly suggested in §1.30(c)(1) although certainly implied in §1.30(c)(2). The commission's response is that new §1.30 is intended to apply to interim rulings on motions filed prior to the presentation of a contested case to the commission, whether those rulings are made by an examiner, a legal division assistant director, or the legal division director, and to apply to discovery orders issued pursuant to §1.85. The commission has added the necessary clarifying language in §1.30(a).

Another comment concerned the interaction of new §1.30 with §1.126, and recommended that the six enumerated items in §1.126 be made specifically subject to interlocutory appeal, and that an examiner assigned to hear a case be empowered to act on a motion addressed to any of the six listed categories of dispositive motions. The commission's response is first, that §1.126 cannot be amended in this rulemaking proceeding be-

cause it was not noticed for amendment in the proposal, and second, that because a ruling on a motion falling within one of the six categories listed in §1.126 in fact disposes of a contested case without a hearing, those motions are inappropriate for an examiner to rule on. The current practice is for the legal division director to rule on motions to dismiss contested cases based on withdrawal of a petition (pursuant to §1.126(3)), and for the examiner to prepare a proposal for decision recommending grant or denial of a motion to dismiss a contested case for any of the five remaining reasons and submit it to the commission for final determination.

A further comment suggested making new §1.30 applicable to rulings made during hearings. The commission's response is that by its terms new §1.30 is applicable to rulings, other than evidentiary rulings, made during a hearing. Evidentiary rulings are carried with the merits of the case, and claimed error must be properly preserved.

Finally, one comment noted that whatever statutory time constraints may (or may not) apply in the context of certain gas utility cases arising under Texas Civil Statutes, Article 1446e, §§3.05 or 5.08, it was difficult to understand the need for shorter appeal times for gas utility matters arising under Texas Civil Statutes, Article 6053, §1(b) or Article 1446e, §5.02(c). The commission's response is that the 185-day statutory time period for the commission to consider gas utility matters arising under Texas Civil Statutes, Article 1446e, §§3.05 and 5.08 is not discretionary; further, Texas Civil Statutes, Article 6053, §1(b) and Article 1446e, §5.02(c) establish 210-day statutory time periods for the commission to consider certain gas utility ratesetting matters. Because there is no mechanism for extending the finite time periods for completing cases brought under these statutory provisions, the commission simply does not have the luxury of allowing extensive time to consider appeals in these cases. As previously mentioned, however, the commission has given some additional time in the filing deadlines by removing the language in proposed new §1.30(c)(1) which would have prevented the filing times from being extended for Saturdays, Sundays, and holidays.

The commission made one change to make the mechanics of §1.30(c)(1) and (2) consistent. The change provides that if there is no signed written order of the commission ruling on an appeal within the time periods specified in either §1.30(c)(1) or (2), then the appeal is deemed denied and any granted stay is lifted. The proposed rule had provided that if there were no commission order granting an appeal in whole or in part within the time periods specified in either §1.30(c)(1) or (2), then the appeal was deemed denied and any granted stay lifted. The commission added language to §1.30(c)(1) to clarify that if within 20 days of the date of the interim ruling, there is no signed written order of the commission ruling on the appeal, then on the 21st day after the interim ruling, the appeal is deemed denied and any granted stay is lifted.

The only other change made was to reformat new §1.30(d).

The amendment is adopted under Texas Government Code, §2001.004, which requires the commission to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 18, 1994.

TRD-9439434      Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: May 11, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-7008

◆      ◆      ◆  
• 16 TAC §1.30

The new section is adopted under Texas Government Code, §2001.004, which requires the commission to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

*§1.30. Interim Rulings and Appeals of Interim Rulings.*

(a) Relief through interim ruling. Prior to presentation of a contested case to the commission, a party may seek, through an examiner, legal division assistant director, or legal division director, as appropriate, relief through interim ruling, but that ruling shall not be considered of the same nature as a final decision. An interim ruling shall not be subject to exceptions or motions for rehearing. For purposes of this section, the term interim ruling includes orders issued pursuant to §1.85 of this title (relating to Discovery Orders).

(b) Evidentiary rulings. An evidentiary ruling by an examiner is not an interim ruling and is not appealable to the commission pending the issuance by the examiner of a proposal for decision.

(c) Appeal of interim ruling.

(1) In all proceedings brought or conducted under Texas Civil Statutes, Article 6053, §1(b) or Article 1446e, §§3.05, 5.02(c) or 5.08, any party aggrieved by an interim ruling may appeal that ruling to the commission by filing a written appeal within five days of the date the interim ruling is signed or stated in the record; such appeal may seek a stay of the interim ruling. The appealing party shall make in-hand service of the appeal on all other parties on the same day the appeal is filed at the commission. Pending action on the appeal of the interim ruling, the Director of the Legal Division may grant a stay of the interim ruling. Any response to an appeal

must be filed within ten days of the date the interim ruling is signed or stated in the record. If, by the 20th day after the date the interim ruling is signed or stated in the record, the commission has not signed a written order ruling on the appeal, then on the 21st day after the date the interim ruling is signed or stated in the record, the appeal is deemed denied and any granted stay is lifted.

(2) In all proceedings other than those brought or conducted under Texas Civil Statutes, Article 6053, §1(b) or Article 1446e, §§3.05, 5.02(c) or 5.08, any party aggrieved by an interim ruling may appeal that ruling to the commission by filing a written appeal within ten days of the date the interim ruling is signed or stated in the record; such appeal may seek a stay of the interim ruling. Any response to an appeal must be filed within ten days of the date the appeal is filed. Pending action on the appeal of the interim ruling, the director of the Legal Division may grant a stay of the interim ruling. If, by the 46th day after the date the appeal was filed the commission has not signed a written order ruling on the appeal, then the appeal is deemed denied and any granted stay is lifted.

(d) Procedure on appeal. The commission may, in its discretion, consider and rule on an appeal on or after the day following the day the response to the appeal is due. A commission order on an appeal from an interim ruling shall not be subject to motions for rehearing pending issuance of the Proposal for Decision and signing of the commission's Order. Any issue in an appeal that has been deemed denied by operation of law may be raised again in exceptions to the proposal for decision. Appeals and replies to appeals shall be filed as all other pleadings in proceedings, with the examiner through Docket Services—Legal Division. When an appeal is filed, the examiner shall:

(1) upon the request of any one commissioner, immediately schedule the appeal for consideration by the commission at an open meeting, and shall cause proper notice to be given;

(2) forward to each commissioner a copy of the appeal along with a cover memorandum which shall show the date the appeal was filed; the date replies are due; and the date on which the appeal will be deemed denied if no commission action is taken; and

(3) forward to each commissioner a copy of all replies to appeals of interim rulings which may be filed, and of any stay of the interim ruling granted by the director of the Legal Division.

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 18, 1994.

TRD-9438483

Mary Rose McDonald  
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Railroad Commission of  
Texas

Effective date: May 11, 1994

Proposal publication date: October 29, 1993

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## Chapter 7. Gas Utilities Division

### Substantive Rules

#### • 16 TAC §7.42

The Railroad Commission of Texas adopts an amendment to §7.42 relating to gas utility tax, without changes to the proposed text as published in the January 18, 1994, issue of the *Texas Register* (19 TexReg 317). The commission adopts the amendment to conform the rule to statutory changes to Texas Civil Statutes, Article 6060, adopted during the 1993 regular legislative session and the 1991 first called session. The amendment also corrects nomenclature in the rule.

The amendment makes the interest rate 12% per annum, simple interest, for delinquencies occurring on or after January 1, 1994; the interest rate on delinquent taxes pending during the period from September 1, 1991, to December 31, 1993, 12% per annum, compounded monthly; and the interest rate on delinquent taxes pending during the period prior to September 1, 1991, 10% per annum, simple interest. In addition, the amendment changes a reference to "section (b) of this rule" to "subsection (b) of this section."

No comments on the proposal were received.

The amendment is adopted under Texas Civil Statutes, Article 6060, which authorize the commission to adopt rules necessary to administer Article 6060 and to collect and enforce the taxes specified therein.

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 18, 1994.

TRD-9438443

Mary Rose McDonald  
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Railroad Commission of  
Texas

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For further information, please call: (512) 463-7022

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 18, 1994.

## Chapter 9. Liquefied Petroleum Gas Division

### Subchapter A. General Appli- cability and Requirements

#### • 16 TAC §§9.3, 9.4, 9.15

The Railroad Commission of Texas adopts amendments to §§9.3, 9.4, and 9.15, relating to LP-gas report forms, categories of licensees, and registration of LP-gas transport, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7339).

The commission adopts the amendments to implement provisions of House Bill 2007, 73rd Legislature, 1993, which clarify and expand certain sections of the Texas Natural Resources Code relating to the regulation of the LP-gas industry.

Amended §9.3 adds a new form, LPG Form 995, Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance, to implement the statutory change allowing a state agency or institution, county, municipality, school district, or other governmental subdivision to substitute self-insurance for required coverage relating to general liability, workers' compensation, and/or motor vehicle liability insurance; and changes the titles of existing LPG Forms 996A and 996B to add the phrase "or Alternative Accident/Health Insurance" to implement the statutory change allowing accident/health insurance policies to be substituted for workers' compensation coverage.

Amended §9.4 adds subsection (b) to clarify that original manufacturers of new motor vehicles powered by LP-gas or subcontractors of those manufacturers are exempt from the LP-gas licensing requirements, but that they must comply in all other respects with the LP-Gas Safety Rules. The description of Category O licensees, testing laboratories, is amended to add the testing of LP-gas motor or mobile fuel systems, transfer systems, and transport systems. The testing may include reconnecting and repair.

Section 9.15 is amended by adding language to clarify that vehicles subject to registration requirements include bobtail trucks, semitrailers, other motor vehicles equipped with LP-gas cargo tanks, trailers, or other motor vehicles used principally for transporting LP-gas in portable containers. Finally, a chart is added to make it easier to determine what requirements apply to registrants; the chart reflects the addition of a \$50 transfer fee, authorized by House Bill 2007.

The amendments are adopted under the Texas Natural Resources Code, §113.051 (Vernon Supplement 1992), which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The amendments implement the Texas Natural Resources Code, §§113.081, 113.082, 113.097, and 113.131, as amended by House Bill 2007, 73rd Legislature, 1993.

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 11, 1994.

TRD-9439442

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Railroad Commission of  
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Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512)  
463-6949

## Subchapter B. Basic Rules

The Railroad Commission of Texas adopts the repeal of §§9.31, 9.32, 9.34-9.37, 9.39-9.54, 9.56-9.62, 9.66, 9.69, and 9.70, concerning odorizing gases; report of odorization; examination of containers; sale of unassembled containers; appurtenances and equipment; requirements for construction of containers; field welding; manufacturer's nameplate and markings on ASME containers; retroactivity; safety relief valves; setting of relief valves; construction and marking of safety relief valves; adjustment and repair of relief valves; installation of pressure relief valves; filling density; transfer of liquid; venting gas or liquid prohibited; minimum design working pressure; maximum vapor pressure and container working pressure; employee instructions and consumer instructions; proper purging of LP-gas containers or cylinders; hose specifications; sales to unlicensed individuals; connecting container to unapproved piping; filling unapproved containers prohibited; filling unsafe containers; purchase of non-approved containers; report of LP-gas incident/accident; removal from LP-gas service; maximum capacity of LP-gas storage containers; grounding and electrical fields, and maintenance, and new §§9.151, 9.152, 9.154-9.157, 9.159-9.174, 9.176-9.182, 9.186, 9.189, and 9.190, concerning the same subject matter, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7345).

The commission adopts the repeals and new rules simultaneously to renumber the rules to allow for future expansion, and to clarify certain rules to provide consistency and continuity.

The commission received no comments on the proposed repeals or the proposed new rules.

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

- 16 TAC §§9.31, 9.32, 9.34-9.37, 9.39-9.54, 9.56-9.62, 9.66, 9.69, 9.70

The repeals implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439443

Mary Ross McDonald  
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Railroad Commission of  
Texas

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Proposal publication date: October 22, 1993

For further information, please call: (512)  
463-6949

- 16 TAC §§9.151, 9.152, 9.154-9.157

The new sections are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

The new sections implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439484

Mary Ross McDonald  
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Texas

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Proposal publication date: October 22, 1993

For further information, please call: (512)  
463-6949

- 16 TAC §§9.63-9.65, 9.67, 9.68

The Railroad Commission of Texas adopts the repeal of §§9.63-9.65, 9.67, and 9.68 relating to uniform protection standards, uniform safety requirements, LP-gas storage dis-

talce requirements, LP-gas storage protection, and approved gauging devices, without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7229).

The commission adopts the repeal of §9.53 because the language in this section is included in both new §9.183, relating to uniform protection standards, and §9.654, relating to protection of valves and accessories. The repeal of §9.64 is adopted because the language in this section is included in both new §9.184, relating to uniform safety requirements, and new §9.654, relating to protection of valves and accessories. The commission adopts the repeal of §9.65 because the language in this section is included in new §9.185, relating to LP-gas storage or installation distance requirements. The repeal of §9.67 is adopted because the language in this section is included in new §9.187, relating to LP-gas storage protection. The commission adopts the repeal of §9.68 because the language in this section is contained in new §9.188, relating to approved gauging devices. The repeals are adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeals implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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.

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TRD-9439444

Mary Ross McDonald  
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Effective date: June 1, 1994

Proposal publication date: October 19, 1993

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The Railroad Commission of Texas adopts the repeal of §§9.72-9.74 and 9.76-9.79, concerning markings on containers, requalification requirement, installation of containers, container valves and accessories, filling of Department of Transportation containers, repair of containers, and examination of containers, and new §§9.302-9.304 and

9.306-9.309, concerning the same subject matter, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7353).

The commission adopts the repeals and new rules simultaneously to renumber the rules to allow for future expansion, and to clarify certain rules to provide consistency and continuity.

No groups or associations made comments on the proposed repeals or the proposed new rules.

One individual made comments regarding two proposed new rules. The first comment recommended deleting §9.303(e) entirely because the requirement for examination of containers at the time of refilling is covered in proposed new §9.309, relating to examination of containers. The commission disagrees with this recommendation and declines to make the suggested change because this proposal was for renumbering only; no substantive changes were noticed.

The second comment suggested adding paragraph (3) to §9.309(c), to read as follows: "(3) Where a container is rejected under this section, but a licensee is not the owner, the container maybe returned to its owner with a tag of suitable indication of its rejection for service." Again, the commission disagrees with the comment and declines to make the suggested change because this proposal was for renumbering only; no substantive changes were noticed.

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

### Subchapter C. Division I

#### • 16 TAC §§9.72-9.74, 9.76-9.79

The repeals implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439445 Mary Ross McDonald  
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Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

The new sections are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

#### • 16 TAC §§9.302-9.304, 9.306-9.309

The new sections implement Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439485 Mary Ross McDonald  
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Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

#### • 16 TAC §9.80

The Railroad Commission of Texas adopts the repeal of §9.80, relating to use of containers in buildings, without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7230).

The commission adopts the repeal because the language in this section has been included in new §9.185, relating to LP-gas storage or installation distance requirements. The repeal is adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeal implements the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439446 Mary Ross McDonald  
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Effective date: June 1, 1994

Proposal publication date: October 19, 1993

For further information, please call: (512) 463-6949

### Subchapter D. Division II

The Railroad Commission of Texas adopts the repeal of §§9.91, 9.93, 9.96, 9.97, 9.102-9.104, 9.107, 9.109, and 9.110, concerning container valves and accessories, relief valves on underground containers, regulator relief valves, protection against flooding, containers installed underground, reinstallation of underground containers, skid tanks, protection of tank and accessories, venting regulators, and draining condensate, and new §§9.451, 9.453, 9.456, 9.457, 9.462-9.464, 9.467, 9.469, and 9.470, concerning the same subject matter, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7357).

The commission adopts the repeals and new rules simultaneously to renumber the rules to allow for future expansion, and to clarify certain rules to provide consistency and continuity.

No groups or associations made comments on the proposed repeals or the proposed new rules

One individual made a comment regarding proposed new §9.469, suggesting that the phrase "regulator relief valve" in the last sentence be changed to "regulator vent." The commission disagrees with this recommendation and declines to make the suggested change because this proposal was for renumbering only; no substantive changes were noticed.

The repeals are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

#### • 16 TAC §§9.91, 9.93, 9.96, 9.97, 9.102-9.104, 9.107, 9.109, 9.110

The repeals implement Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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.

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TRD-9439447 Mary Ross McDonald  
Assistant Director, Legal  
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Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

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The new sections are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

- 16 TAC §§9.451, 9.453, 9.456, 9.457, 9.462-9.464, 9.467, 9.469, 9.470

The new sections implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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.

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TRD-9439486 Mary Ross McDonald  
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For further information, please call: (512) 463-6949

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• 16 TAC §§9.101, 9.106, 9.112

The Railroad Commission of Texas adopts the repeal of §§9.101, 9.106, and 9.112, relating to containers installed aboveground; painting; and mounting of containers, without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7230).

The commission adopts the repeal of §§9.101, 9.106, and 9.112 because the language in these sections has been included in new §9.184, relating to uniform safety requirements. The repeals are adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeals implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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.

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TRD-9439448 Mary Ross McDonald  
Assistant Director, Legal  
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Proposal publication date: October 19, 1993

For further information, please call: (512) 463-6949

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**Subchapter E. Division III**

- 16 TAC §§9.122, 9.124, 9.125, 9.129, 9.133, 9.135

The Railroad Commission of Texas adopts the repeal of §§9.122, 9.124, 9.125, 9.129, 9.133, and 9.135, relating to installation of containers; painting; lettering; container valves and pressure gauges; loading area; and bulkheads and emergency shutoff valves, without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7231).

The commission adopts the repeal of §§9.122, 9.124, 9.125, and 9.133 because the language in these sections has been included in new §9.184, relating to uniform safety requirements. The repeal of §9.129 is adopted because the language in this section has been included in new §9.188, relating to approved gauging devices. The commission adopts the repeal of §9.135 because the language in this section has been included in new §9.187, relating to LP-gas storage protection. The repeals are adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeals imple-

ment the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439449 Mary Ross McDonald  
Assistant Director, Legal  
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Railroad Commission of  
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For further information, please call: (512) 463-6949

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**Subchapter F. Division IV**

- 16 TAC §§9.139, 9.143, 9.145-9.155, 9.157-9.170

The Railroad Commission of Texas adopts the repeal of §§9.139, 9.143, 9.145-9.155, and 9.157-9.170, concerning applicability of Subchapter F; labels; pressure gauge; piping and fittings; transfer of liquids; manifest; mounting of transfer equipment; securing of portable containers; mounting containers; electrical equipment and lighting; liquid level gauging devices; truck containers and semi-trailer containers; baffles; testing requirements; exhaust system; extinguishers required; maintenance of equipment; protection against contamination; lighted materials prohibited; protection against collisions; parking of liquefied petroleum gas transports; filling containers on highways, roads, streets, or alleys; issuance of LPG Form 4 decal; painting; lettering; delivery of inspection report to licensee; and inspection of cargo containers, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7345), and adopts new §§9.651, 9.655, 9.657-9.667, and 9.669-9.682, concerning the same subject matter, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7360).

The commission adopts the repeals and new rules simultaneously to renumber the rules to allow for future expansion, and to clarify certain rules to provide consistency and continuity.

No groups or associations made comments on the adoption of the repeals or new rules.

One individual made a comment regarding proposed new §9.663(b), proposing deletion of U-bolts as prohibited mounting bolts on the basis that if hardened U-bolts are used to attach spring sets to the axles, they should be adequate for mounting containers on a frame. The commission disagrees with this recommendation and declines to make the suggested change because this proposal was for renumbering only; no substantive changes were noticed.



The repeals are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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.

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TRD-9439450      Mary Ross McDonald  
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Railroad Commission of  
Texas

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Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

◆      ◆      ◆  
• 16 TAC §§9.651, 9.655,  
9.657-9.667, 9.669-9.682

The new sections are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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.

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TRD-9439487      Mary Ross McDonald  
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Railroad Commission of  
Texas

Effective date: May 11, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

◆      ◆      ◆  
• 16 TAC §§9.141, §9.142

The Railroad Commission of Texas adopts the repeal of §9.141 and §9.142, relating to protection of safety relief valves and protection of valves and accessories, without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7231).

The commission adopts the repeal of §9.141 because the language in this section is included in new §9.653, relating to protection of safety relief valves. The repeal of §9.142 is adopted because the language in this section is included in new §9.654, relating to protection of valves and accessories. The repeals are adopted to reorganize and renumber existing rules which will permit incorporation of

new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeals implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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.

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TRD-9439451      Mary Ross McDonald  
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Texas

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For further information, please call: (512) 463-6949

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Subchapter G. Division V

The Railroad Commission of Texas adopts the repeal of §§9.172-9.189, concerning containers; safety relief valves; protection of valves and fittings; container appurtenances; vapor and liquid service valves; gauging devices; carburetion equipment; motor fuel vaporizers; regulators; automatic shut-off devices; fuel filters; hose specifications, hose connections and flexible connectors; installation of containers and container appurtenances; interior container installation; pipe and hose installation; school bus, mass transit, and special transit vehicle installations; use of extra liquid outlet on motor fuel containers; and auxiliary engines—general provisions for vehicle mounting, and new §§9.752-9.769, concerning the same subject matter, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7361).

The commission adopts the repeals and new rules simultaneously to renumber the rules to allow for future expansion, and to clarify certain rules to provide consistency and continuity.

No groups or associations made comments on the proposed repeals or the proposed new rules.

One comment suggested deleting §9.764(c); relettering subsequent subsections (d) and (e) as (c) and (d), respectively; and adding the following language to subsection (b): "No part of the container or its appurtenance shall extend above the highest elevation of the

vehicle, proper." The reason for this suggested change is that the location for containers is addressed fully in §9.764(a) and (b), and that the added language would simplify and convey the intent of all three paragraphs. The commission disagrees and declines to make the suggested change because this proposal was for renumbering only; no substantive changes were noticed. In addition, these requirements are the same as National Fire Prevention Association (NFPA) Pamphlet 58 standards.

The repeals are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

◆      ◆      ◆  
• 16 TAC §§9.172-9.189

The repeals implement Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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.

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TRD-9439452      Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

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Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

◆      ◆      ◆  
• 16 TAC §§9.752-9.769

The new sections are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439488      Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

• 16 TAC §9.190, §9.191

The Railroad Commission of Texas adopts the repeal of §9.190 and §9.191, relating to filling of motor fuel and mobile fuel containers and identification labels, without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7248)

The commission adopts the repeal of §9.190 because the language in this section has been included in new §9.184, relating to uniform safety requirements. The repeal of §9.191 is adopted because the language in this section has been included in new §9.771, relating to identification labels. The repeals are adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe

No comments were received regarding adoption of the repeals

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeals implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994

TRD-9439453 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date June 1, 1994

Proposal publication date October 19, 1993

For further information, please call (512) 463-6949



Subchapter I. Division VII

The Railroad Commission of Texas adopts the repeal of §§9.210, 9.211, 9.213, 9.214, 9.216, 9.217, 9.219, and 9.221-9.224, concerning low pressure-high pressure piping, piping installation identification tag, corrosion protection, piping layout, drainage and drips, piping support, joint compound, cap outlets, pressure test of piping, specifications for approved piping materials, and joining of high pressure piping, and new §§9.951, 9.952, 9.954, 9.955, 9.957, 9.958, 9.960, and 9.962-9.965, concerning the same subject matter. New §9.960 is adopted with changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7369). New §§9.951, 9.952, 9.954, 9.955, 9.957, 9.958, and 9.962-9.965 are

being adopted without changes and will not be republished.

The commission adopts the repeals and new rules simultaneously to renumber the rules to allow for future expansion, and to clarify certain rules to provide consistency and continuity

No groups or associations made comments on the proposed repeals or the proposed new rules.

One comment suggested adding the following language to §9.952(a) after the last sentence: "(Note: This is not intended to prohibit the installation of piping by a person on his premises as provided for in §9.177 of this title)." The commission disagrees and declines to make the suggested change because this proposal was for renumbering only; no substantive changes were noticed.

Another comment suggested that §9.955(c) be amended to delete the sentence which reads: "When a recessed wall furnace is installed, the test specified in §9.963 of this title (relating to Pressure Test of Piping) shall be used." The comment stated that the language is redundant because §9.963 describes pressure testing requirements without regard to which type of appliance is installed. Also, with the deletion of that sentence from §9.955(c), the section would then relate only to conditions for installing piping in walls, rather than including provisions for pressure testing. The commission disagrees and declines to make the suggested change because this proposal was for renumbering only; no substantive changes were noticed.

Finally, a comment suggested rewording the last sentence of §9.960 to read: "Joint compound, where used, shall be applied only on the male thread of the pieces joined." The commission agrees that this wording clarifies the rule requirement, and has made the suggested change

The repeals are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public

• 16 TAC §§9.210, 9.211, 9.213, 9.214, 9.216, 9.217, 9.219, 9.221-9.224

The repeals implement Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439454 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949



• 16 TAC §§9.951, 9.952, 9.954, 9.955, 9.957, 9.958, 9.960, 9.962-9.965

The new sections are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

The new sections implement Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.960. Joint Compound. Joint compound for use with LP gas piping shall be of an approved type resistant to the action of LP-gases. Joint compound, where used, shall be applied only on the male thread of the pieces joined.

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 11, 1994.

TRD-9439489 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-7008



• 16 TAC §§9.212, 9.215, 9.218, 9.220

The Railroad Commission of Texas adopts the repeal of §§9.212, 9.215, 9.218, and 9.220, relating to specifications for approved piping materials, joining methods, exterior piping, and bending pipe, without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7248).

The commission adopts the repeals because the language in these sections is included in new §§9.953, 9.956, 9.959, and 9.961, relating to specifications for approved low pressure piping materials, joining methods, exterior piping, and bending pipe. The repeals are adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeals implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439455      Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 19, 1993

For further information, please call: (512) 463-6949

## Subchapter K. Division IX

### • 16 TAC §§9.262, 9.265-9.272, 9.275

The Railroad Commission of Texas adopts the repeal of §§9.262, 9.265-9.272, and 9.275, relating to fuel storage container valves and accessories; installation of LP-gas service station and cylinder filling storage containers; protection of storage containers and fittings; transport truck unloading location; piping, valves, and fittings, pumps and pump accessories; dispensing devices; extinguishers required; cylinder storage; and safety during fueling operations, without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7248).

The commission adopts the repeal of §§9.262, 9.266, 9.267, 9.269, 9.271, and 9.275, because the language in these sections is included in new §9.184, relating to uniform safety requirements. The commission adopts the repeal of §9.265 because a portion of the language in this section is included in new §9.1255, relating to installation of LP-gas service station and cylinder filling storage containers. The repeal of §9.268 is adopted because the language in this section is contained in new §§9.953, 9.956, 9.959, and 9.961, relating to specifications for approved piping systems, joining methods, exterior piping, and bending pipe. The commission adopts the repeal of §9.270 because the language in this section is included in new §§9.1551, 9.1557, 9.1565, 9.1570, and 9.1571, relating to limited use only, cylinder filling prohibited, consumer lists, safety requirements, automatic dispenser installation,

and protection of dispensers.

The repeal of §9.272 is adopted because the language in this section is contained in §9.185 relating to LP-gas storage or installation distance requirements. The repeals are adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeals implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439456      Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 19, 1993

For further information, please call: (512) 463-6949

## Subchapter L. Division X

### • 16 TAC §§9.282-9.284, 9.286, 9.287, 9.289-9.293

The Railroad Commission of Texas adopts the repeal of §§9.282-9.284, 9.286, 9.287, and 9.289-9.293, concerning protection of valves and accessories, labels, piping and fittings, filling containers, mounting and connecting pumps, mounting containers, liquid level gauging devices, baffles, liquefied petroleum vehicle identification, and transportation of LP-gas tractor fuel, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7352), and adopts new §§9.1352-9.1354, 9.1356, 9.1357, and 9.1359-9.1363, concerning the same subject matter without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7372).

The commission adopts the repeals and new rules simultaneously to renumber the rules to allow for future expansion, and to clarify certain rules to provide consistency and continuity.

The commission received no comments on the adoption of the repeals or new rules.

The repeals are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439457      Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: May 11, 1994

Proposal publication date: October 22, 1993

For further information, please call (512) 463-6949

### • 16 TAC §§9.1352-9.1354, 9.1356, 9.1357, 9.1359-9.1363

The new sections are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439490      Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: May 11, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

### • 16 TAC §9.294

The Railroad Commission of Texas adopts the repeal of §9.294, relating to painting, without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7249)

The commission adopts the repeal because the language in this section has been included in new §9.184, relating to uniform safety requirements. The repeal is adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeal implements the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439458 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 19, 1993

For further information, please call: (512) 463-6949

### Subchapter M. Division XI

#### • 16 TAC §§9.301-9.303

The Railroad Commission of Texas adopts the repeal of §§9.301-9.303, relating to fuel storage containers; protection of fuel storage containers and fittings; and cylinder storage, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7352).

The commission adopts the repeals because the language in §9.301 is included in new §9.1451, relating to fuel storage containers; the language in §9.302 is contained in new §9.184, relating to uniform safety requirements; and the language in §9.303 is contained in new §9.185, relating to LP-gas storage or installation distance requirements. The repeals are adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeals implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439459 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

#### • 16 TAC §§9.304-9.308

The Railroad Commission of Texas adopts the repeal of §§9.304-9.308, concerning garaging and use of industrial trucks inside buildings; charging of containers; converting industrial trucks; requirements for construction, original test, and working pressure of ICC or DOT containers; and requirements for construction, test and working pressure of ASME containers, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7355), and adopts new §§9.1454-9.1458, concerning the same subject matter, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7373).

The commission adopts the repeals and new rules simultaneously to renumber the rules to allow for future expansion, and to clarify certain rules to provide consistency and continuity.

The commission received no comments on the adoption of the repeals or new rules.

The repeals are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439460 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: May 11, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

#### • 16 TAC §§9.1454-9.1458

The new sections are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect

or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439482 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: May 11, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

### Subchapter N. Division XII

#### • 16 TAC §§9.321, 9.325, 9.327, 9.329, 9.335, 9.340, 9.385, 9.395

The Railroad Commission of Texas adopts the repeal of §§9.321, 9.325, 9.327, 9.329, 9.335, 9.340, 9.385, and 9.395, relating to limited use only; written instructions and procedures required; cylinder filling prohibited; consumer lists; safety requirements; automatic dispenser installation; protection of manual dispensers; and distance of manual dispensers, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7355).

The commission adopts the repeals because the language in §§9.321, 9.325, and 9.329 is included in new §9.1551, relating to limited use only; training, written instructions and procedures required; the language in §9.327 is included in new §9.1557, relating to containers authorized to be filled by automatic dispensers; the language in §9.335 is contained in new §9.1565, relating to safety requirements; the language in §9.340 is included in new §9.1570, relating to automatic dispenser installation; the language in §9.385 is included in new section §9.1571, relating to protection of dispensers; and the language in §9.395 is included in new §9.185, relating to LP-gas storage or installation distance requirements. The repeals are adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeals implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439461 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

### Subchapter O. Division XIII

The Railroad Commission of Texas adopts the repeal of §§9.400, 9.402-9.407, 9.409-9.415 and 9.417-9.444, concerning applicability of Subchapter O; quality of design and installation of gas systems and equipment; LP-gas container working pressure; maximum container capacities; location and mounting of LP-gas containers; securing of LP-gas containers; shielding of LP-gas containers from heat of internal combustion engine exhaust system components; securing LP-gas container housings; LP-gas container appurtenances; valves for multiple LP-gas container assembly systems; automatic stop fill devices; protection of LP-gas container valves; LP-gas regulators; LP-gas excess flow valves; maximum vapor pressure; gas piping system materials; gas piping design; gas pipe sizing; joint materials; routing and protection of tubing and piping; location of supply connections; LP-gas supply connectors; high-pressure LP-gas connections; low-pressure LP-gas connections; appliance connections; gas shut-off valves; gas inlet cap; prohibiting use of gas piping as electrical ground; gas pipe hangers and supports; testing for gas leakage; gas appliances; venting requirements; installation of internal combustion engine generators; marking of appliances; location of appliances; clearances of heat-producing appliances; sizing and materials of supply ducts; sizing, materials, and openings of return air ducts, air duct joints and seams; air conditioning (other than automotive-type); required information; and required labels and identification plates, and new §§9.1651, 9.1653-9.1658, 9.1660-9.1666 and 9.1668-9.1695, concerning the same subject matter, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7376).

The commission adopts the repeals and new rules simultaneously to renumber the rules to allow for future expansion, and to clarify certain rules to provide consistency and continuity.

The commission received no comments on the proposed repeals. No groups or associations filed comments on the proposed new rules.

One comment regarding §9.1665(a) suggested deleting the phrase "which are accept-

able to the Commission," so that the text would read: "(a) Listed two-stage regulator(s) shall be installed." The commission disagrees with the comment and declines to make the change because this proposal was for renumbering only; no substantive changes were noticed.

Another comment questioned, with regard to §§9.1671 and 9.1693, how sections concerning natural gas piping and air conditioning not operated by LP-gas could be related to the LP-gas Safety Rules. The commission disagrees with the comment and declines to make changes which could be inferred from this comment, because this proposal was for renumbering only; no substantive changes were noticed.

### • 16 TAC §§9.400, 9.402-9.407, 9.409-9.415, 9.417-9.444

The repeals are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeals implement Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439478 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

### • 16 TAC §§9.1651, 9.1653-9.1658, 9.1660-9.1666, 9.1668-9.1695

The new sections are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439479 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

### • 16 TAC §9.408

The Railroad Commission of Texas adopts the repeal of §9.408, relating to venting and labeling of compartments containing LP-gas containers, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7357). The commission adopts the repeal because the language in §9.408 is contained in new §9.1659, relating to venting and labeling of compartments containing LP-gas containers. The repeal is adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeals.

The repeal is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeal implements the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439462 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

### Subchapter P. Division XIV

### • 16 TAC §§9.499-9.506, 9.508, 9.509, 9.514-9.525

The Railroad Commission of Texas adopts the repeal of §§9.499-9.506, 9.508, 9.509, and 9.514-9.525, concerning Subchapter P; MC-300, MC-331 Department of Transportation specification requirements; testing requirements; markings and inspection requirements; mounting of transfer equipment; pressure gauge; thermometers and thermometer wells required; liquid or vapor discharge openings; rear bumper protection; safety relief devices; protection, piping,

valves, and fittings; electrical equipment and lighting, liquid level gauging devices; exhaust system; extinguishers required; manifests; transfer of fuel on highways, streets, or alleys; parking of LP-gas transports and container delivery units; uniform protection standards; inspection of cargo containers; delivery of inspection report to licensee; issuance of LPG Form 4 decal; and container appurtenances and related equipment, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7359), and adopts new §§9.1751-9.1758, 9.1760-9.1762, 9.1766 and 9.1777, concerning the same subject matter, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7387).

The commission adopts the repeals and new rules simultaneously to renumber the rules to allow for future expansion, and to clarify certain rules to provide consistency and continuity.

The commission received no comments on the adoption of the repeals and the new rules.

The repeals are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439481  
Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date May 11, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

◆ ◆ ◆  
• 16 TAC §§9.1751-9.1758,  
9.1760-9.1762, 9.1766-9.1777

The new sections are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439480  
Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: May 11, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

◆ ◆ ◆  
• 16 TAC §§9.510-9.512

The Railroad Commission of Texas adopts the repeal of §§9.510-9.512, relating to protection, piping, valves, and fittings; supports-120 degree arc required; and painting, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7359).

The commission adopts the repeals because the language in §9.510 is included in new §9.1762, relating to protection, piping, valves, and fittings; the language in §9.511 is included in new §9.1763, relating to supports-120 degree arc required; and the language in §9.512 is included in new §9.1764, relating to painting. The repeals are adopted to reorganize and renumber existing rules which will permit incorporation of new provisions concerning public refueling and use of polyethylene pipe.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The repeals implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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 April 11, 1994.

TRD-9439463  
Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

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Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

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Subchapter F. Division IV

• 16 TAC §§9.653, 9.654, 9.656

The Railroad Commission of Texas adopts new §§9.653, 9.654, and 9.656, relating to safety relief valves, valves and accessories, and use of chock blocks. Section 9.656 is adopted with changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7361). Sec-

tion 9.653 and §9.654 are adopted without changes and will not be republished.

The commission adopts the new sections to renumber existing safety rules to allow for future expansion, and to make changes that clarify the intent of the rules. New §9.653 (previously §9.141, relating to protection of safety relief valves) contains the same requirements as the old rule, and only the name of the section is changed. New §9.654 (previously §9.142, relating to protection of valves and accessories) changes the name of the section and adds language to require that valves on any LP-gas transport must be fully closed except during the transfer of LP-gas. New §9.656 consists of language that was previously contained in a rule in Subchapter B, Basic Rules. The requirement for chock blocks is specific to LP-gas transports only.

Texas Propane Gas Association was the only group or association to file comments on the proposed new sections.

Two comments related to §9.656 suggested substituting the word "movement" for "rolling" in the first sentence, so that it would read: "Each LP-gas transport shall carry no fewer than two chock blocks designed to effectively prevent the movement of the transport." The commission agrees that the suggested change clarifies the intent of the section, and the change has been made.

The new sections are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The new sections implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

*§9.656. Use of Chock Blocks.* Each LP-gas transport shall carry no fewer than two chock blocks designed to effectively prevent the movement of the transport. These blocks shall be used any time the transport is parked and during the transfer of LP-gas regardless of the level of the surrounding terrain.

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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## Subchapter G. Division V

### • 16 TAC §9.771

The Railroad Commission of Texas adopts new §9.771, relating to identification labels, with changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7386). The commission adopts the new section, previously §9.191, relating to identification labels, to renumber existing safety rules to allow for expansion, and to change requirements relating to identification tags or labels on vehicles fueled by LP-gas. The new section provides that the background color for "Propane" labels will be royal blue, a change from the current background color of black. Licensees may continue to use supplies of existing labels until they are exhausted or until November 1, 1994. After that time, only labels with the royal blue background may be used.

A new requirement provides that an identification tag or decal must be attached to a vehicle after conversion by a licensee. The

tag or decal must indicate the licensee's name, current license number, and the year and month the conversion was made.

The commission received no comments regarding new §9.771. The commission made one change to the proposed rule: the proposed rule allowed licensees to use supplies of existing labels until exhausted or until March 1, 1994. Because this section is being adopted after March 1, 1994, the new date for using the new royal blue background labels is November 1, 1994.

The new section is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The new section implements the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

### §9.771. Identification Labels

(a) LP-gas may not be introduced into any vehicle powered by LP-gas and designed for regular use on public roadways unless the vehicle is properly identified pursuant to this section. Such vehicles shall be identified by a weather-resistant diamond-shaped label located on an exterior vertical or near-vertical surface on the lower right rear of the vehicle in a manner so as to be readily visible. When LP-gas mobile fuel containers are located in compartments or cabinets which obstruct the view of said containers, such a label shall be placed on the access door of the compartments or cabinets. The label shall be approximately 4 3/4 inches (120 millimeters) long by 3 1/4 inches (83 millimeters) high. The markings shall consist of a border and letters "PROPANE" (letters one inch minimum height centered in the diamond) of silver or white reflective luminous material on a Pantone 2945 C Royal Blue or equivalent background as follows:



**NOTE: This section shall not be applicable to any LP-gas transport.**



Supplies of labels printed with a black background may be exhausted prior to complying with this section. However, in no case shall labels printed with a black background be installed after November 1, 1994.

(b) Upon completion of a vehicle conversion, the licensee making the conversion shall affix to the vehicle an identification tag or decal in a location so as to be readily readable. The tag or decal shall contain letters that indicate the licensee's name, current license number, and the year and month the conversion was done.

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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**Subchapter I. Division VII**

• 16 TAC §§9.953, 9.956, 9.959, 9.961

The Railroad Commission of Texas adopts new §§9.953, 9.956, 9.959, and 9.961, relating to specification for approved low pressure piping materials; joining methods; exterior piping; and bending pipe. Sections 9.953, 9.956, and 9.959 are adopted with changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7369). Section 9.961 is adopted without changes and will not be republished. The commission adopts the new sections to re-number existing sections to allow for future expansion, and for rules concerning use of polyethylene piping for LP-gas installations.

The commission adopts new §9.953 (previously §9.212, relating to specifications for approved piping materials) to indicate that polyethylene pipe or tubing is now an acceptable material for use as low-pressure piping in LP-gas service, subject to the following requirements: The pipe or tubing must comply with "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings," American Society for Testing and Materials (ASTM) D-2513.

Polyethylene fusion fittings must conform to ASTM D-2683, "Specifications for Socket-type Polyethylene (PE) Fittings for Outside Diameter Controlled Polyethylene Pipe," ASTM D-3261, "Specifications for Butt Heat Fusion Polyethylene (PE) Plastic Pipe or Tubing," or ASTM F-1055, "Specifications for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe."

Compression-type mechanical fittings must comply with Category 1 of ASTM D-2513. The requirements also relate to the use of rigid internal tubular stiffener in the mechanical fittings.

Polyethylene pipe or tubing must be marked in compliance with the marking requirements of ASTM D-2513, and include the manufacturer's name or trademark, the standard dimensional ratio of the pipe, the size of the pipe, the designation for polyethylene (PE), the date of manufacture, the designation D-2513, and the word "gas."

When dissimilar metals are joined underground, an insulating fitting must be installed to electrically isolate the different metals from each other.

If cathodic protection is used on piping, insulating fitting(s) must be installed to electrically isolate the cathodically protected underground piping system from all aboveground piping or tubing.

New §9.956 (previously §9.215, relating to joining methods) contains the following requirements for joining of polyethylene pipe or tubing: Joints in polyethylene pipe or tubing must be made by heat-fusion, compression-type mechanical, or factory assembled transition fittings according to manufacturer's instructions. Heat-fusion and factory assembled transition fittings may be used, but compression-type mechanical fittings may not be used on any polyethylene pipe above two-inch Internal Pipe Size.

In addition to meeting other LP-gas certification requirements, a person performing heat-fusion on polyethylene pipe or tubing must be certified by either the commission or an individual or certification school authorized by the commission.

An LPG Form 506, Certification to Perform Heat-Fusion on Polyethylene Pipe or Tubing must be completed and kept in the licensee's files for each person performing heat-fusion. If a certified person does not perform heat-fusion activities for 12 consecutive months, he or she must be re-certified.

Polyethylene fittings must be installed according to the manufacturer's instructions. When making joints in polyethylene pipe or tubing:

the pipe or tubing may not be joined by a threaded or miter joint;

the joint must be designed and installed so that the longitudinal pull-out resistance is at least equal to the tensile strength of the material;

heat-fusion joints must be made in accordance with established and proven procedures to produce joints at least as strong as the material being joined;

heat-fusion joints cannot be made between different densities of polyethylene pipe or tubing;

connections between metallic and polyethylene pipe or tubing can be made only outside, underground, and with transition fittings acceptable for LP-gas service and in compliance with Category 1 of ASTM D-2513.

New §9.959 (previously §9.218, relating to

exterior piping), contains the following requirements relating to polyethylene pipe or tubing and all other exterior piping.

Exterior piping must be installed a minimum of 18 inches underground unless they are under driveways, roads, streets, etc. The depth may be reduced to 12 inches if the piping is under an area that is not subjected to traffic, such as a lawn or bedding area.

Polyethylene pipe or tubing may be used only outside, underground, and for LP-gas low pressure vapor service. The minimum wall thickness of the pipe or tubing is .090 inch, except that pipe or tubing with an outside diameter of .875 (7/8 inch) or less may have a minimum wall thickness of .062 inch. The piping shall include a continuous non-corrosive electrically conductive tracer wire or tape (no aluminum wire or tape) buried four to six inches above polyethylene pipe or tubing not encased in metal pipe in order to facilitate locating the underground pipe or tubing.

Polyethylene pipe or tubing must be laid and backfilled with material that does not contain sharp objects that could cut or puncture the pipe.

All underground pipe or tubing must be installed with clearance from any other underground structure to avoid contact with the structure, allow for maintenance, and protect against damage from the other structures.

The polyethylene pipe or tubing must be designed and installed to minimize thrust forces caused by contraction or expansion of the piping or by external or internal loading.

Valves must be installed to avoid excessive twisting or cutting loads when the valve is operated, and must be recommended for use in polyethylene pipe or tubing and LP-gas service.

Imperfect or damaged pieces of polyethylene pipe or tubing must be replaced.

Polyethylene pipe or tubing systems are limited to vapor service not exceeding 30 psig.

New §9.961 (previously §9.220, relating to bending pipe) contains requirements relating to changes of direction (turns) in pipe or tubing as follows.

Turns in polyethylene pipe or tubing may be made only if the pipe or tubing will not be damaged and the internal diameter of the pipe is not reduced.

Joints may not be located in bends of polyethylene pipe or tubing.

The radius of the inner curve of bends in polyethylene pipe or tubing cannot be less than 25 times the outside diameter of the pipe or tubing.

If the manufacturer of the polyethylene pipe or tubing recommends special bending equipment or procedures, the equipment or procedures recommended must be used.

Texas Propane Gas Association was the only group or association to file comments on the new sections

Two comments suggested two alternative re-organizations of subsections (b) -(d) of new

§9.953 into one subsection on the rationale that they all deal with requirements for polyethylene piping. The commission disagrees with the suggested alternative schemes because they are stylistic changes only, and there is no particular advantage offered by the proposed alternatives.

Three comments regarding new §9.953(a)(3) stated that the proposed design working pressure of 125 psi conflicts with the requirement in new §9.959(i) that polyethylene pipe or tubing is limited to vapor service not exceeding 30 psig, that federal regulations limit polyethylene piping for natural gas service to 100 psi, and that both ratings conflict with the 125 psi requirement in proposed new §9.953(a)(3). The comments further observed that polyethylene pipe typically does not have a design working pressure of 125 psi, and suggested adding an exception which would allow use of polyethylene pipe with a minimum 60 psi design working pressure. The commission agrees with this comment, and has restructured new §9.953(a) to include the exception.

One comment questioned whether the statement in the third sentence of proposed new §9.953(d), "The stiffener shall be free of rough or sharp edges . . ." means that serrations on the stiffener would not be allowed. This comment pointed out that many manufacturers of mechanical fittings machine serrations on their stiffeners. The commission responds that the language "rough or sharp edges" means defects, not manufacturers' intentionally made serrations, which are part of the design.

A comment regarding §9.956(d) suggested adding "factory-assembled anodeless riser" as an acceptable joining method to be consistent with new §9.959(k). The commission agrees and has made the change.

One comment suggested making new §9.956 apply to both fusion and mechanical joints. To do this, new §9.956(g) would be reworded to read "Fittings shall be installed in accordance with the manufacturer's instructions. The following requirement(s) shall be adhered to when making such joints in polyethylene pipe or tubing", the last sentence of proposed new §9.956(g)(3) would become new §9.956(g)(6), and wording would be added to the end of §9.956(g)(5) to read: ". . . except polyethylene gas piping may terminate aboveground, outside of buildings through the use of factory assembled anodeless risers per subsection 9.959(k)." The commission believes that these suggestions add clarity to the rules, and has made the changes in the text of adopted new §9.956.

One comment concerning new §9.956(g)(4) observed that as written, the section would ban butt fusion welding to repair polyethylene pipes of different density. This comment stated that the critical factor is melt index, not density, and therefore the regulations should properly ban butt fusion welding on polyethylene pipes having different melt index ratings. The commission disagrees with this comment, and has made no change to the rule. Another comment concerning new §9.956(g)(4) pointed out that electrofusion is an appropriate heat fusion technique for the joining of dissimilar density materials. The

commission agrees that clarification is needed, and has made the suggested change.

Concerning new §9.959(b), one comment stated that the four-inch distance is arbitrary and restrictive in light of the requirement to use approved risers constructed of coated steel, and that it is equally unnecessary in existing installations which utilize wrapped steel pipe or copper tubing. This comment took the position that the only justification for extra protection should be in instances of risers located on or immediately adjacent to a driveway where vehicles could easily strike the riser regardless of the four-inch distance or any other distance. The commission disagrees with this comment; the specific distance requirement is necessary to cover all types of pipe risers.

There were two comments regarding new §9.959(c). One stated that because the National Fire Protection Association (NFPA) and the federal Department of Transportation (DOT) do not have a specific requirement regarding the depth to which the tracer wire or tape is to be buried above the polyethylene pipe, the commission's rule should say "above the pipe, but not touching" instead of selecting an arbitrary distance (of four to six inches) that no one will be able to comply with, and that cannot be adequately enforced. This comment stated that the requirement is not only unnecessary but adds serious liability questions when the distance is specifically stated. The second comment suggested changing the third sentence in §9.959(c) to read: "Where underground polyethylene pipe or tubing is not encased in metal piping, a continuous, non-corrosive, electrically conductive (tracer) wire or tape shall be used to mark its location. When used, wire must be minimum 14 American Wire Gauge. Aluminum wire or tape is prohibited. Tracer wire or tape must be buried above (but not in contact with) polyethylene pipe or tubing and one end shall be brought aboveground at the building wall or riser and marked so as to be readily identified." The commission disagrees with these comments which would delete the minimum distance requirements for two reasons: first, the four- to six-inch distance requirement is consistent with current DOT requirements stated in an advisory bulletin, and second, performance based standards are more difficult to enforce than specified minimum distances.

The commission makes one change in the third sentence of §9.959(c) to remove the wording "or tape, or tape" and to correct the spelling of the word "gauge," so that the sentence now reads: "A continuous non-corrosive electrically conductive (tracer) wire (minimum American Wire Gauge 14), or tape, excluding aluminum wire or tape, shall be buried four to six inches above any portion of the underground polyethylene pipe or tubing that is not encased in metal pipe to facilitate locating the underground pipe or tubing."

A comment regarding §9.959(g) suggested rewording the third sentence which begins "Valves shall . . ." to read either: "All pressure containing valve shell parts shall be made from materials specified in and qualified to the requirements for pipe and fittings as listed

in ASTM D-2513, "Thermoplastic Gas Pressure Pipe, Tubing and Fittings," or: "Thermoplastic valves must conform to ANSI/ASME B16.40." The commission agrees that rewording clarifies the rule, and has made the change using the alternative language suggested in the comment.

A comment concerning §9.959(h) questioned the definition of the term "imperfect or damaged piece of polyethylene"? The commission's response is to offer a rule of thumb: if the scratch depth is greater than 10% of the pipe wall thickness, then the section should be removed. That rule of thumb has been added to §9.959(h) as an example.

One comment objected to the language in §9.959(k) which, by allowing factory-assembled anodeless risers only, disallows the use of new technology in the area of field-assembled riser systems which place all pressure connections above ground and reduce the total number of connections to two. The commission's response is that is exactly what the rule is intended to do, because of the extreme difficulty of and potential disparity in applying enforcement standards to field-assembled riser systems.

A comment relating to §9.959(l) stated that this provision would not allow a transition fitting to connect underground polyethylene to above ground copper pipe, and that if copper were not completely disallowed by this language there would be no reason to disallow this type of connection or transition. The commission disagrees with the comment, because the rule as written does not prohibit use of copper piping in toto, but simply specifies that copper tubing is not a substitute for a factory-assembled anodeless riser. If the entire piping system is copper, then the riser may be copper as well.

The commission agrees with a comment regarding the wording in proposed new §9.959(m) which was to substitute the word "discharge" for the word "ignition," so that the phrase reads: ". . . reasonable precautions to prevent the buildup and discharge of static electricity shall be taken." The change is made in adopted new §9.959(m).

The new sections are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

The new sections implement the Texas Natural Resources Code, §13.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

#### *§9.953. Specifications for Approved Low Pressure Piping Materials.*

(a) All pipe, tubing, and fittings shall:

(1) be made of one or more of the following materials:

(A) wrought iron or steel;

(B) seamless copper or brass tubing or pipe; or

(C) polyethylene pipe or tubing; and

(2) have a minimum design working pressure of 125 psi, except for polyethylene pipe or tubing, which shall have a minimum design working pressure of 60 psi.

(b) Polyethylene pipe or tubing shall conform to "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings," American Society for Testing and Materials ASTM D-2513.

(c) Polyethylene fusion fittings shall conform to ASTM D-2683, "Specifications for Socket-type Polyethylene (PE) Fittings for Outside Diameter Controlled Polyethylene Pipe," ASTM D-3261 "Specifications for Butt Heat Fusion Polyethylene (PE) Plastic Pipe or Tubing," or ASTM F-1055, "Specifications for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe."

(d) Compression-type mechanical fittings shall comply with Category 1 of ASTM D-2513. Rigid internal tubular stiffener shall be used in conjunction with the fitting to support the pipe. The stiffener shall be flush with the end of the pipe or tubing and shall extend at least to the outside end of the pipe or tubing and at least to the outside end of the compression fitting when installed. The stiffener shall be free of rough or sharp edges and shall not be a forced fit in the polyethylene. Split tubular stiffeners shall not be used. Gasket material in the fitting shall be resistant to the action of LP-gas and be compatible with the polyethylene pipe material.

(e) Polyethylene pipe or tubing shall be marked in full compliance with the product marking requirements of ASTM D-2513 and shall include the manufacturer's name or trademark, the standard dimensional ratio of the pipe, the size of the pipe, the designation polyethylene (PE), the date of manufacture, the designation "ASTM D-2513," and the word "gas."

(f) All valves and valve seats shall be recommended by the manufacturer for use with LP-gas.

(g) All unions including insulating unions shall be of the ground joint type.

(h) When dissimilar metals are joined underground, an insulating fitting shall be installed to electrically isolate the different metals from each other

(i) If cathodic protection is used on piping, insulating fitting(s) shall be installed

to electrically isolate the cathodically protected underground piping system from all aboveground piping or tubing.

#### §9.956. *Joining Methods.*

(a) Wrought iron or steel pipe may be joined by threading, welding, or flanging.

(b) Fittings for copper or brass tubing shall be the flare type.

(c) Copper pipe may be joined with sweat joints using silver solder having a melting temperature of at least 1,000 degrees Fahrenheit.

(d) Joints in polyethylene pipe or tubing shall be made by heat-fusion, compression-type mechanical or factory assembled transition fittings or factory assembled anodeless risers in accordance with the manufacturer's instructions. Compression-type mechanical fittings shall not be used on any polyethylene pipe above two inch Internal Pipe Size (IPS). Heat-fusion and factory assembled transition fittings may be used to make joints in all sizes of polyethylene pipe or tubing.

(e) In addition to other LP-gas certification requirements, prior to performing heat-fusion on polyethylene pipe or tubing, a person must be certified by either the commission or an individual or certification school authorized by the commission. The certification must confirm that the person has a working knowledge of heat-fusion methods and the ability to properly perform the heat-fusion activity.

(f) An LPG Form 506 must be completed and maintained by the employer of a person certified to perform heat-fusion activities and the form must be available for review by a representative of the commission. If a person certified as required by subsection (e) of this section does not perform any heat-fusion activity for 12 consecutive months, that person must be recertified prior to resuming any heat-fusion activities.

(g) Fittings shall be installed in accordance with the manufacturer's instructions. The following requirement(s) shall be adhered to when making such joints in polyethylene pipe or tubing.

(1) Polyethylene pipe or tubing shall not be joined by a threaded or miter joint.

(2) The joint shall be designed and installed so that the longitudinal pull-out resistance of the joint will be at least equal to the tensile strength of the polyethylene piping material.

(3) Heat-fusion joints shall be made in accordance with qualified procedures which have been established and

proven by test to produce gas-tight joints at least as strong as the pipe or tubing being joined.

(4) Electrofusion is the only acceptable method of making heat-fusion joints between different densities of polyethylene pipe or tubing.

(5) Connections between metallic and polyethylene pipe or tubing shall be made only outside, underground, and with transition fittings that are acceptable for LP-gas service and that comply with Category 1 of ASTM D-2513, except polyethylene gas piping may terminate aboveground, outside of buildings through the use of factory assembled anodeless risers in accordance with §9.959(k) of this title (relating to exterior piping).

(6) Joints shall be made with the joining method recommended by the pipe or tubing manufacturer.

#### §9.959. *Exterior Piping.*

(a) All exterior piping including polyethylene pipe or tubing shall be installed with a minimum of 18 inches of cover unless the requirements of subsection (j) of this section apply. The cover may be reduced to 12 inches if external damage to the piping is not likely to result (e.g. piping is under a lawn or bedding area not subjected to traffic). If a minimum of 12 inches of cover cannot be maintained, the pipe or tubing shall be encased in steel pipe or bridged (shielded) or protected against mechanical injury by means of curbs, slabs, substantial posts, or other suitable means.

(b) Exterior piping installed aboveground shall be protected against damage by means of curbs or substantial guard rails. Where risers are installed more than four inches from building walls, protection shall be provided so as to prevent damage to the pipe.

(c) Polyethylene pipe or tubing shall be used outside, underground for LP-gas vapor service only. Polyethylene pipe or tubing for direct burial shall have a minimum wall thickness of .090 inch, except that pipe or tubing with an outside diameter of .875 inch (7/8 inch) or less may have a minimum wall thickness of .062 inch. A continuous non-corrosive electrically conductive (tracer) wire (minimum American Wire Gage 14) or tape, excluding aluminum wire or tape, shall be buried four to six inches above any portion of the underground polyethylene pipe or tubing that is not encased in metal pipe to facilitate locating the underground pipe or tubing. One end of the wire or tape shall be brought aboveground at a building wall or riser, and shall be marked so as to be readily identified.

(d) Polyethylene pipe or tubing

must be laid and back-filled with fill material that does not contain any large or sharp rocks or other objects that could cut or puncture the pipe. Polyethylene pipe or tubing shall be supported along its entire length by properly tamped and compacted soil.

(e) All underground pipe or tubing shall be installed with sufficient clearance from any other underground structure to avoid contact with the structure, to allow maintenance, and to protect against damage from proximity to other structures. In addition, underground polyethylene piping shall be installed with sufficient clearance from, or shall be insulated from, any source of heat to prevent the heat from impairing the serviceability of the pipe.

(f) Polyethylene pipe or tubing shall be installed so as to minimize thrust forces caused by contraction or expansion of the piping or by anticipated external or internal loading. The piping system shall be designed and installed so that each joint will sustain these forces. Note: Polyethylene pipe will expand or contract one inch for every ten degrees Fahrenheit change for every 100 feet of pipe.

(g) Valve(s) in polyethylene pipe or tubing shall be installed so as to protect the pipe or tubing against excessive torsional (twisting) or shearing (cutting) loads when the valve(s) is operated. Valve boxes shall be installed so as to avoid transmitting external loads to the valve, pipe, or tubing. Thermoplastic valves must conform to ANSI/ASME B16.40. Valves in polyethylene pipe or tubing shall have been recommended for LP-gas service by the manufacturer.

(h) Each imperfect or damaged piece of polyethylene pipe or tubing shall be replaced by fusion or mechanical fittings. Repair clamps shall not be used to cover damaged or leaking sections.

(i) Polyethylene pipe or tubing systems shall be limited to vapor service not exceeding 30 psig.

(j) Where underground pipe or tubing is installed beneath driveways, roads or streets, it shall be buried at a depth to prevent damage from vehicular traffic or encased in steel pipe or bridged (shielded).

(k) A factory-assembled anodeless riser shall be installed between polyethylene pipe or tubing installed underground and the aboveground piping or tubing.

(l) Copper tubing shall not be used as a substitute for a factory-assembled anodeless riser.

(m) When purging, repairing, replacing, or extending polyethylene pipe or tubing, reasonable precautions to prevent the buildup and discharge of static electricity shall be taken.

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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## Subchapter K. Division IX

### • 16 TAC §9.1255

The Railroad Commission of Texas adopts new §9.1255, relating to installation of LP-gas service station and cylinder filling underground storage containers, with changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7372). The commission adopts the new section to renumber existing safety rules to allow for future expansion and to delete references to aboveground storage containers contained in the old rule (previously §9.265, relating to installation of LP-gas service station and cylinder filling storage containers). These requirements are now addressed in new §9.184 and §9.185, relating to uniform safety requirements and LP-gas storage or installation distance requirements.

The commission received no comments on the proposed new rule. The commission makes one editorial change to remove the words "underground storage" from the text (because they are redundant) and to reformat the balance of the text as subsections instead of paragraphs of the implied subsection (a).

The new section is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

The new section implements the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

*§9.1255. Installation of LP-Gas Service Station and Cylinder Filling Underground Storage Containers.*

(a) As a means of resisting corrosion and prior to being placed underground, the container shall be given a suitable protective coating consisting of a suitable metal priming, followed by a coating of anticorrosive mastic enamel or paint.

(b) Underground containers shall be set on a firm foundation and surrounded with soft earth or sand firmly tamped in place.

(c) Container locations subject to vehicular traffic shall be buried four feet and shall be protected by a concrete slab or other adequate cover to prevent the weight of a loaded vehicle imposing concentrated direct loads on the container shell. Where ground conditions make compliance with this requirement impracticable, installation shall be made otherwise to prevent physical damage.

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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TRD-9439467

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Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

## Subchapter M. Division XI

### • 16 TAC §9.1451

The Railroad Commission of Texas adopts new §9.1451, relating to training requirements, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7373).

The commission adopts the new section (previously §9.301, relating to fuel storage containers) to renumber existing rules to allow for future expansion and to change the application of the rule from fuel storage requirements (which is now in new §9.184, relating to uniform safety requirements) to require that only personnel trained in the safe operation of dispensing equipment are authorized to dispense LP-gas from storage containers. The commission received no comments on the proposed new rule.

The new section is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

The new section implements the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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.

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 463-6949

## Subchapter N. Division XII

### • 16 TAC §§9.1551, 9.1557, 9.1565, 9.1570, 9.1571

The Railroad Commission of Texas adopts new §§9.1551, 9.1557, 9.1565, 9.1570, and 9.1571, relating to limited use only: training, written instructions and procedures required; safety requirements; containers authorized to be filled by automatic dispensers; automatic dispenser installation; and protection of dispensers, with changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7375).

The commission adopts the new sections to renumber existing rules to allow for expansion, and to implement rules for public refueling using automatic dispensers for vehicles fueled by LP-gas. New §9.1551 (previously 9.321, relating to limited use only) requires that automatic dispensers may be operated only by properly trained individuals. Written instructions and safe operating procedures must be provided to anyone trained in the use of an automatic dispenser, and licensees must maintain a list of persons trained. Step-by-step operating instructions must be provided by the manufacturer of a dispenser and be posted at or on the dispenser.

New §9.1557 (previously §9.327, relating to cylinder filling prohibited) requires that only ASME motor fuel containers, permanently secured to a vehicle and incorporating an 80% stop fill device, may be filled by an automatic dispenser. This does not prohibit the filling of fuel cells for hot air balloons approved by the Federal Aviation Administration.

New §9.1565 (previously §9.335, relating to safety requirements) requires that:

automatic dispensers must comply with new §9.156, relating to appurtenances and equipment. Existing dispensers may be modified, provided components are listed as approved by an approved laboratory;

the fueling nozzle must have an automatic vapor discharge, a 360-degree swivel inlet connection, a means to prevent LP-gas from being discharged if the nozzle is not connected to the vehicle, and a means whereby the operator must constantly manually activate the fueling nozzle to maintain fuel flow, and any automatic dispenser installation must have a pressure activated by-pass valve or similar equipment.

New §9.1570 (previously §9.340, relating to automatic dispenser installation) requires that emergency shut-down devices must be installed in a location remote from the dispensing and storage areas, and that the immedi-

ate vicinity of automatic dispensers must be well lit during all hours of operation during darkness.

New §9.1571 (previously §9.385, relating to protection of manual dispensers) includes provisions concerning protection of automatic dispensers. The section requires that an automatic dispenser must be secured on a concrete island a minimum of six inches above the normal grade and two inches above the grade of any other fuel dispensers. The automatic dispensers must also be protected from collision damage.

Texas Propane Gas Association was the only group or association to file comments on the proposed new sections.

One comment regarding the requirement in §9.1551(b) that licensees maintain a list of all entities and/or individuals trained was that the meaning of individuals should be clarified. The requirement does not distinguish between individuals not associated with an entity, and those individuals within an entity. The concern was that if "individuals" refers to employees of an entity, this regulation would place an unwarranted responsibility on the licensee. In the view of this commenter, the licensee should train key employees, who should in turn be responsible for training their individual employees. The commission agrees that clarification is needed. The intent of the new section is to require that the licensee should train key employees; however, the licensee should keep a list of every individual person trained, and then indicate whether the individual is or is not the key employee of an entity.

Another comment concerning §9.1551(b) stated that the requirement that a licensee provide any consumer operating an automatic dispenser with written instructions and safe operating procedures is not feasible, because the licensee will never see some consumers. The comment suggested that operating instructions should be posted on an automatic dispenser in the same manner as for gasoline pump. The commission agrees that the wording makes it appear that the licensee is required to provide written instructions and safe operating procedures to every consumer who operates an automatic dispenser. The commission has changed the wording in the first sentence of §9.1551(b) to clarify that the licensee is required to provide written instructions and safe operating procedures only to every consumer trained by the licensee to operate an automatic dispenser. New §9.1551(c) makes it clear that step-by-step operating instructions are to be posted on every automatic dispenser.

Three comments suggested changing the first sentence of new §9.1551(c) to read: "Step-by-step operating instructions provided by the manufacturer or licensee shall be posted at or on each dispenser, and shall be readily visible to the operator during the fueling transfer operation." The reason for the suggested change is that there are different manufacturers of dispensers and card, code, or key devices, and the licensee may need to properly sequence the operating instructions for the dispenser and with those for the card system in order to provide adequate and safe operating instructions. Another comment re-

garding §9.1551(c) suggested adding the word "appropriate" before "step-by-step" and the phrase "if available, or licensee" after "manufacturer." The commission agrees that the suggested changes clarify the intent and scope of the requirements, and has made the changes in the adopted section.

One comment pointed out that currently there are several users of propane with non-motor fuel type ASME containers permanently installed on vehicles with equipment and systems that comply with Division V rules; the new rule would preclude them from using automatic dispensers. As an example, the comment pointed out that several hot oiler customers use ASME 250 gallon stack-type tanks, as do many portable steam-cleaning units and other auxiliary engine type users. The comment recognizes that the intent was to prohibit cylinder filling and filling of containers on RVs from automatic dispensers. The comment suggested that the provision be reworded to read as follows. "Automatic dispensers shall be for dispensing LP-gas for motor/mobile fuel only. Only American Society of Mechanical Engineers (ASME) constructed type containers permanently secured to a vehicle should be filled. Additionally, only ASME constructed motor fuel type containers permanently secured to a vehicle that incorporates an 80% stop-fill device which furnishes LP-gas to the engine that propels the vehicle should be filled. However, the filling of DOT cylinders is prohibited. Also, filling of DOT cylinders and ASME containers mounted on recreational vehicles is prohibited." The comment concluded that this language would still allow for filling of fuel cells for hot-air balloons. The commission agrees that a change in wording is necessary to accommodate special users, and has revised the section accordingly, although somewhat differently from the wording offered in the comment.

Two other comments concerning §9.1557 stated that permitting fueling of only tanks equipped with 80% stop fill devices is impossible for the licensee to comply with because the licensee will not necessarily see all consumer tanks fueled by an automatic dispenser. These comments suggested that the 80% stop fill safety factor should be controlled through proper training and the use of card activated systems, so that only properly trained consumers (that is, those who should have been instructed not to over fill a tank) with an access card would be able to activate the dispenser. These comments pointed out that only after ASME mandates all motor fuel type containers be equipped with 80% stop fill devices and all existing motor fuel containers are retrofitted would this regulation be enforceable. The commission disagrees with the comment and declines to make any changes because the licensee is responsible only for the scope of the training, not any potential activity outside the scope of the training. The intent of the section, as stated previously, is that licensees will carefully document all training, and that licensees are responsible only for those individuals trained and only for activities within the scope of that training.

One comment suggested rewording §9.1565(7) to read: "Electrical components within the dispenser enclosure up to 48

inches above the base of the dispenser and below a solid vapor-tight barrier must be suitable for Class 1, Group D, Division I applications. Electrical components located above 48 inches and above a solid vapor-tight barrier must be suitable for Class 1, Group D, Division II applications." The reason for the comment is that the solid vapor barrier is necessary to isolate components located above the 48-inch level from any propane handling components. The vapor barrier is designed into the automatic dispenser in such a way that the Division II area is completely separate from the Division I area, so that this configuration will allow a key, card, or code system to be built into a propane dispenser consistent with established standards for gasoline dispensers. The commission agrees with the comment and has made the suggested change to provide needed clarity in rule.

Three comments suggested that the text in §9.1565(9) should be moved to §9.1570, relating to automatic dispenser installations, and made §9.1570(5). The commission agrees and has made the change.

Three comments suggested changing the wording of §9.1570(4) to clarify that installations do not have to be lit if they are closed. The commission agrees, the wording of the paragraph is changed to indicate that when LP-gas automatic dispenser facilities are operated during hours of darkness, the immediate vicinity of the dispensers must be well-lit.

Three comments proposed that the word "liquid" be added between the words "other" and "fuel" in the first sentence of §9.1571, so that it would read, "Each automatic dispenser shall be secured on a concrete island a minimum of six inches above the normal grade or two inches above the grade of any other liquid fuel dispensers." The changed wording would clarify the intent of the rule when, for example, one LP-gas dispenser and one CNG dispenser are to be used on the same fuel island. The commission agrees that the change would clarify that the reason for the two-inch rise is to prevent accumulation of liquid fuel under an LP-gas dispenser, and has made the change in the text of the adopted section.

The new sections are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

The new sections implement the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

*§9.1551. Limited Use Only: Training, Written Instructions and Procedures Required.*

(a) Automatic dispenser(s) may be operated only by an individual who has been properly trained.

(b) Any consumer who is trained to operate an automatic dispenser shall be provided with written instructions and safe operating procedures by the licensee. The consumer should be cautioned to study and preserve such instructions and procedures, and to educate all those with access to the automatic dispenser(s) in the proper operating procedures. Each licensee shall maintain a current list of all individual persons trained by the licensee in the operation of an automatic dispenser, along with a notation of whether the individual is or is not the key employee of an entity

(c) Appropriate step-by-step operating instructions provided by the manufacturer, if available, or by the licensee shall be posted at or on each dispenser, and shall be readily visible to the operator during transfer operations. The instructions shall describe each action necessary to operate the dispenser.

*§9.1557. Containers Authorized to be Filled by Automatic Dispensers.* Automatic dispensers shall be for dispensing LP-gas for motor/mobile fuel only. Only American Society of Mechanical Engineers (ASME) constructed motor/mobile fuel type containers that are permanently secured to a vehicle, that incorporate an 80% stop fill device, and that furnish LP-gas to the engine that propels the vehicle, and ASME constructed stack type containers permanently secured to a vehicle shall be filled. The filling of DOT cylinders is prohibited. The filling of ASME containers mounted on recreational vehicles is prohibited. This does not prohibit the filling of hot air balloon fuel cells approved by the Federal Aviation Administration. See §9.157 of this title (relating to Requirements for Construction of Containers).

*§9.1565. Safety Requirements.* Authorized automatic dispensers shall comply with the provisions of §9.156 of this title (relating to Appurtenances and Equipment). Existing dispensing devices may be modified, provided that the modifications include only those components listed as approved by an approved laboratory, and are installed in a workmanlike manner in accordance with industry standards. The authorized dispenser shall have the following features.

(1) A key, card, or code system shall be used.

(2) All valves, metering equipment, vapor eliminators, and other related equipment installed on an automatic dispenser shall meet all applicable requirements of the safety rules

(3) All dispensing equipment shall be fabricated of material suitable for LP-gas, and resistant to the action of LP-gas under service conditions. Pressure contain-

ing parts shall be of steel, ductile iron, forged steel, or brass or an equivalent material. Aluminum may be used for approved meters. All piping shall be Schedule 80, and all pipe fittings shall comply with the requirements of Subchapter I of this title.

(4) The automatic dispensing system shall incorporate a cutoff valve with an opening and closing device which ensures the valve is in a closed position when the dispenser is deactivated.

(5) A device shall be installed in the liquid and vapor piping in such a manner that displacement of the dispenser will result in the displacement of such piping on the downstream side of the device.

(6) The transfer hose downstream from the meter shall incorporate an approved pull-away device. The pull-away device shall be installed in accordance with the manufacturer's instructions.

(7) Electrical components within the dispenser enclosure up to 48 inches above the base of the dispenser and below a solid vapor-tight barrier must be suitable for Class 1, Group D, Division I applications. Electrical components located above 48 inches and above a solid vapor-tight barrier must be suitable for Class 1, Group D, Division II applications.

(8) The fueling nozzle shall have the following safety features:

(A) automatic vapor discharge;

(B) 360 degrees swivel inlet connection,

(C) a means to prevent LP-gas from being discharged, unless the nozzle is connected to the vehicle; and

(D) a means to have the operator constantly manually activate it to maintain fuel flow.

*§9.1570. Automatic Dispenser Installation.* After the installation of an automatic dispenser, an LPG Form 501 shall be submitted to the commission in accordance with the submission and fee requirements set forth in §9.20(a)(4) and (e)(3) of this title (relating to Filings Required for Stationary LP-Gas Installations). Tentative approval shall be granted if the plans indicate the installation will meet the requirements of the division. Final approval shall be issued only after a field inspection confirms that the dispenser, as installed, meets all the requirements of the safety rules. Plans shall detail the area within 150 feet of the dispenser and the fuel storage container, including the following information:



(1) Fuel storage containers shall meet all distance requirements set forth in §9.185 of this title (relating to LP-Gas Storage or Installation Distance Requirements).

(2) LP-gas fuel storage installations with automatic dispensers shall be equipped with a device(s) for emergency shut-down of the entire LP-gas installation from a location remote from the dispensing and storage areas. The device(s) shall operate to activate a valve(s) installed so as to shut off the power and gas supply to the dispenser(s). The emergency shut-down device shall be visible from the dispensing area(s). The emergency shut-down device shall be distinctly marked for easy recognition in compliance with the requirements of Table 1 of §9.183 of this title (relating to Uniform Protection Requirements).

(3) The requirements of §9.20(a) (4) and (e)(3) of this title (relating to Filings Required for Stationary LP-Gas Installations) shall not apply to existing LP-gas installations previously approved by the commission, provided that LPG Form 501 is filed and received by the commission, postmarked within ten calendar days of completion of the LP-gas dispenser installation addition.

(4) When LP-gas automatic dispenser facilities are operated during hours of darkness, the immediate vicinity of the automatic dispensers shall be well lit.

(5) Any LP-gas installation on which an automatic dispenser is installed must be equipped with a pressure activated by-pass valve or other similar means installed in accordance with the manufacturer's instructions.

**§9.1571. Protection of Dispensers.** Each automatic dispenser shall be secured on a concrete island a minimum of six inches above the normal grade and two inches above the grade of any other liquid fuel dispensers. Each automatic dispenser shall be protected against collision damage. Support columns or other means of protection installed at the approach end(s) of the concrete island shall prevent displacement of the automatic dispenser. If such protection cannot be provided, then the requirements of §9.183(a)(2) of this title (relating to Uniform Protection Standards) shall apply.

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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TRD-9439469 Mary Ross McDonald  
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For further information, please call: (512) 463-6949

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Subchapter O. Division XIII

• 16 TAC §§9.1651, 9.1653-9.1658,  
9.1660-9.1666, 9.1668-9.1695

The new sections are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

The new section implements the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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.

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TRD-9439479 Mary Ross McDonald  
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For further information, please call: (512) 463-7008

◆ ◆ ◆  
• 16 TAC §9.1659

The Railroad Commission of Texas adopts new §9.1659, relating to ventilation and labeling of compartments containing LP-gas cylinders (previously §9.408, relating to ventilation and labeling of compartments containing LP-gas containers) to renumber existing rules to allow for expansion, and to make requirements for labeling LP-gas installations in recreational vehicles consistent with new §9.771, relating to identification labels, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 *TexReg* 7387).

New §9.1659 requires that "Propane" labels on recreational vehicles must comply with §9.771. The background color for the label is changed from black to royal blue.

The commission received no comments on the new section.

The new section is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

The new section implements the Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general 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.

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TRD-9439470 Mary Ross McDonald  
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For further information, please call: (512) 463-7008

◆ ◆ ◆  
Subchapter P. Division XIV

• 16 TAC §§9.1759, 9.1762-9.1764

The Railroad Commission of Texas adopts new §§9.1759, 9.1762-9.1764, relating to use of chock blocks, protection, piping, valves, and fittings; supports-120-degree arc required; and painting, with changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 *TexReg* 7391).

The commission adopts the new sections to renumber existing rules to allow for expansion, and to add new requirements relating to LP-gas transports. New §9.1759 requires the use of chock blocks on transports. This requirement was previously in §9.64, relating to uniform safety requirements, but was moved to this rule because it applies to transports only. New §9.1762 (previously §9.510 relating to protection, piping, valves, and fittings) requires that fittings on LP-gas transports be made of malleable iron with a pressure rating of 1,500 pounds or greater.

New §9.1763 (previously §9.511, relating to supports-120 degree arc required) requires that containers be supported in compliance with Section 178.337-13 of the United States Department of Transportation Regulations, to be consistent with United States Department of Transportation (DOT) regulations. The current DOT regulations state: "A tank motor vehicle designed and constructed so that the cargo tank constitutes in whole or in part the stress member used in place of a frame must have the tank supported by external cradles. A cargo tank mounted on a frame must be supported by external cradles or longitudinal members. The cradles, where used, must subtend at least 120 degrees of the shell circumference."

New §9.1764 (previously §9.512, relating to painting) requires that paint on the undercarriage of an LP-gas transport may extend only 60 degrees on each side of the center line of the 120-degree support cradle.

The commission received no comments on the new rules. The commission made a change in new §9.1759 to substitute the word "movement" for the word "rolling," to be consistent with §9.656 of this title (relating to Use of Chock Blocks).

The new sections are adopted under Texas Natural Resources Code, §113.051, which authorizes the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

The new sections implement Texas Natural Resources Code, §113.051, which requires the commission to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

**§9.1759. Use of Chock Blocks.** Each LP-gas transport shall carry no fewer than two chock blocks designed to effectively prevent the movement of the transport. These blocks shall be used any time the transport is parked and during the transfer of fuel regardless of the level of the surrounding terrain.

**§9.1762. Protection, Piping, Valves, Fittings.**

(a) All piping, valves, relief devices, and fittings shall be securely mounted and shall be protected against damage and breakage.

(b) All piping shall be a minimum of Schedule 80. Fittings shall be malleable iron with a pressure rating of 1,500 pounds or greater.

(c) All valves on any transport shall be kept in the full closed position except during the transfer of fuel to or from the transport.

**§9.1763. Supports.** A transport container must be supported as required by Section 178.337-13 of the United States Department of Transportation Regulations.

**§9.1764. Painting.**

(a) All cargo transport containers shall be painted white or aluminum. Undercarriage painting, if of contrasting color, shall not extend above 60 degrees on either side of the center line of the bottom of the container.

(b) Insulated cargo containers equipped with either a stainless steel or aluminum outer shell or insulation cover, need not be painted.

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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## Chapter 13. Regulations for Compressed Natural Gas

### Subchapter A. Scope and Definitions

#### • 16 TAC §§13.1, 13.3, 13.4

The Railroad Commission of Texas adopts amendments to §§13.1, 13.3, and 13.4, relating to scope, definitions, and CNG forms, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7392). The amendments implement provisions of Senate Bill 576, 73rd Legislature, 1993, which clarify and expand certain sections of the Texas Natural Resources Code regarding regulation of compressed natural gas

The amendments to §13.1 clarify that regulations for CNG do not apply to the production, transportation, storage, sale or distribution of natural gas that is subject to the Gas Utility Regulatory Act, Texas Civil Statutes, Article 1446e, or the Cox Act, Texas Civil Statutes, Articles 6050-6066g, or pipelines, fixtures, equipment or facilities to the extent they are subject to the Railroad Commission safety regulations enforced under the Pipeline Safety Act, Texas Civil Statutes, Article 6053-1, or the Natural Resources Code, Chapter 117.

The amendment to §13.3 changes the definition of CNG system to include mobile fuel systems.

Amendments to §13.4 add a new form, CNG Form 1995, Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance, to implement the statutory change allowing a state agency or institution, county, municipality, school district, or other governmental subdivision to substitute self-insurance for required coverage relating to general liability, workers' compensation, and/or motor vehicle liability insurance; and change the titles of existing CNG Forms 1996A and 1996B to add the phrase "or Alternative Accident/Health Insurance" to implement the statutory change allowing accident/health insurance policies to be substituted for workers' compensation coverage.

No comments were received regarding adoption of the amendments

The amendments are adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to promul-

gate rules and standards related to the compressed natural gas industry and its operations, which will protect or tend to protect the health, safety and welfare of the general public. The amendments implement the Texas Natural Resources Code, §§116.001, 116.002, 116.031, 116.036, and 116.072, as amended by Senate Bill 576, 73rd Legislature, 1993.

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

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For further information, please call: (512) 463-6949

### Subchapter B. General Rules

#### • 16 TAC §13.32, §13.34

The Railroad Commission of Texas adopts amendments to §13.32 and §13.34, relating to hose and hose connections and vehicle fueling connection, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7393)

The amendment to §13.32 adds language clarifying that the requirements of the section do not apply to hose installed from the regulator to the mixer on a motor vehicle. Amendments to §13.34 add a new provision requiring that any vehicle refueled by an automatic dispenser must have a fueling receptacle that complies with ANSI/AGA NGV1. This is a nationally recognized requirement.

No comments were received regarding adoption of the amendments

The amendments are adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to promulgate rules and standards related to the compressed natural gas industry and its operations, which will protect or tend to protect the health, safety and welfare of the general public. The amendments implement the Texas Natural Resources Code, §116.012, which requires the commission to promulgate rules and standards related to the compressed natural gas industry and its operations, which will protect or tend to protect the health, safety and welfare of the general 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

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Proposal publication date: October 22, 1993

For further information, please call: (512)  
463-7008

◆ ◆ ◆  
• 16 TAC §13.40

The Railroad Commission of Texas adopts new §13.40, relating to manufacturer's nameplates and markings on ASME containers, with changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7393).

The commission adopts the new section to be consistent with the LP-gas safety rules, except that the nameplate is not required to be continuously welded as in LP-gas. The requirements for the nameplates and markings are consistent with national standards. The section requires that: CNG may not be introduced into an ASME container unless the container has a manufacturer's original nameplate or manufacturer's replacement nameplate permanently attached to the container. ASME containers manufactured after November 1, 1994, must have a stainless steel nameplate; nameplates have the following information stamped or etched on them.

ASME approved symbol indicating compliance with the ASME code, name and address of manufacturer, capacity of container in standard cubic feet; the wording "this container shall not contain a product having a vapor pressure in excess of ---- pounds per square inch at a temperature of 100 degrees Fahrenheit"; the thickness of the material used in the shell and heads, the overall length, outside diameter, and dish radius of the heads, the serial number of the container; and the date of manufacture; nameplates be attached to the container so they will be visible; containers manufactured prior to November 1, 1994, have the following information on the nameplate: name of container manufacturer, manufacturer's serial number; working pressure; and water capacity.

No comments were received regarding adoption of the new section

The commission has made one change to §13.40. Because the section is being adopted after the February 1, 1994, date for compliance specified in the proposed rule, the new date for compliance has been changed to November 1, 1994

The new section is adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to promulgate rules and standards related to the compressed natural gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The new section implements the Texas Natural Resources Code, §116.012, which requires the commission to promulgate rules and standards related to the compressed nat-

ural gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§13.40. *Manufacturer's Nameplates and Markings on ASME Containers.*

(a) Compressed Natural Gas (CNG) shall not be introduced into any American Society of Mechanical Engineers (ASME) container which is not equipped with a manufacturer's original nameplate or a manufacturer's replacement nameplate permanently attached to the container. No ASME container manufactured on or after November 1, 1994, shall be used in the State of Texas unless it has attached to it a stainless steel manufacturer's nameplate. The nameplate shall be attached in a manner that will minimize corrosion of the nameplate or its attachments or that will not contribute to the corrosion of the container.

(b) If the nameplate is attached directly to the container, the nameplate thickness shall be sufficient to resist distortion due to the application of markings and fusion welding

(c) Container nameplates shall be stamped or etched with the following information in legible characters:

(1) the mark or symbol approved by ASME indicating compliance with the provisions of the ASME Pressure Vessel Code,

(2) the name and address of the manufacturer,

(3) the capacity of the container in standard cubic feet;

(4) the maximum allowable working pressure of the container in pounds per square inch (psi),

(5) the wording "This container shall not contain a product having a vapor pressure in excess of ----- pounds per square inch at a temperature of 100 Fahrenheit,

(6) the thickness of the material used in both the shell and heads;

(7) the overall length of the container, the outside diameter of the container, and the dish radius of the heads;

(8) the serial number of the container, and

(9) the date of manufacture.

(d) Nameplates shall be attached to the container so as to remain visible after installation of the containers.

(e) Containers manufactured prior to November 1, 1994, which may have corroded or rusted nameplates shall have the following minimum information readable on the manufacturer's nameplate:

- (1) name of the container manufacturer;
- (2) manufacturer's serial number;
- (3) working pressure; and
- (4) water capacity.

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 11, 1994.

Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512)  
463-6949

◆ ◆ ◆  
Subchapter C. Classification,  
Registration, and Examination

• 16 TAC §13.61

The Railroad Commission of Texas adopts amendments to §13.61, relating to licensing, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7394).

The amendments implement provisions of Senate Bill 576, 73rd Legislature, 1993, which clarify and expand certain sections of the Texas Natural Resources Code regarding regulation of compressed natural gas. The amendments to §13.61 clarify that original manufacturers of new motor vehicles powered by CNG or subcontractors of those manufacturers are exempt from the CNG licensing requirements, but that they must comply in all other respects with the regulations for compressed natural gas.

The commission received no comments on the proposed amendments.

The amendments are adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to promulgate rules and standards related to the compressed natural gas industry and its operations, which will protect or tend to protect the health, safety and welfare of the general public. The amendments implement Texas Natural Resources Code, §§116.001, 116.002, 116.031, 116.036, and 116.072, as amended by Senate Bill 576, 73rd Legislature, 1993.

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 11, 1994.

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Proposal publication date: October 22, 1993

For further information, please call: (512)  
 463-6949

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**Subchapter D. CNG Compression, Storage, and Dispensing Systems**

• 16 TAC §§13.91, 13.93-13.95, 13.99-13.101, 13.104, 13.105

The Railroad Commission of Texas adopts amendments to §§13.91, 13.93-13.95, 13.99-13.101, 13.104, and 13.105, relating to applicability, general, location of installations, installation of cylinders and cylinder appurtenances, installation of piping and hoses, testing, installation of emergency shutdown equipment, operation, and fire protection, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7395).

The amendment to §13.91 clarifies that subchapter D of the regulations for compressed natural gas applies to automatic dispensing operations.

The amendments to §13.93 are made to be consistent with the LP-gas safety rules, and to add a chart relating to sign and lettering requirements. The changes include requirements that: all equipment except residential fueling facilities be protected against tampering and collision damage in accordance with the requirements of the section; guardrails be anchored a minimum of 18 inches in concrete, the top of horizontal guardrail be a minimum of 30 inches (previously 28 inches) above the ground, and secured with welding or bolts sufficient to prevent displacement of the guardrail; automatic dispensers be mounted on a concrete island no less than six inches above the normal grade and two inches above the grade of any other fuel dispensers. The automatic dispensers must be protected against collision damage; automatic dispensers comply with requirements relating to appurtenances and equipment being approved by a nationally recognized testing laboratory

Further, requirements for certain features on the automatic dispensers are specified, such as a key, card, or code system to access the automatic dispenser; a cutoff valve and pull-away device, and a pressure activated bypass valve. Finally, the amendments include a provision that the commission can require an installation to have added safeguards if it is determined that exceptional circumstances exist. If a licensee disagrees with the determination of the commission, the licensee may request a hearing.

The amendments to §13.94 include a chart relating to distance requirements and language clarifying that: compression, storage,

and dispensing equipment may not be placed directly beneath an electric transmission or distribution line, or in an area six feet to either side of the line. If that distance is not adequate to keep the broken ends of a line from contacting the CNG equipment, other protection must be provided and approved by the commission prior to installation; automatic dispensers must be installed a minimum of three feet from any other CNG or flammable fuel dispenser.

The amendments to §13.95 require that all external steel surfaces on cylinders that are subjected to direct or indirect sunlight or heat must be painted white.

The amendments to §13.99 delete the requirement relating to hose being permitted in an inlet connection to compression equipment, because the commission's jurisdiction does not extend upstream of the inlet connection to the compression equipment. Requirements are added relating to the manner in which exterior piping may be installed (e.g., 18 inches underground, 12 inches if in an area not subjected to traffic, and protected from corrosion)

The amendments to §13.100 change the current requirement that pressure relief valves must be tested every five years to a requirement that they be tested according to manufacturer's instructions

The amendments to §13.101 include wording changes to clarify the manner in which emergency shut-down equipment is to operate. A provision is added that emergency shut-down equipment must be visible from the dispensing area.

The amendments to §13.104 add provisions requiring that each CNG transport carry at least two chock blocks, and that the chock blocks must be used any time the transport is parked and during the transfer of fuel; fuel dispensers, including automatic dispensers, be operated only by properly trained individuals, a consumer who operates an automatic dispenser be provided with written instructions and safe operating procedures by the licensee. Each licensee must maintain a list of all persons or entities trained; step-by-step operating instructions be posted at each automatic dispenser; each person or entity that operates a fuel dispenser other than an automatic dispenser must also be provided with written instructions and safe operating procedures

The amendments to §13.105 include language requiring that fire extinguishers to be provided at each automatic dispensing and refueling installation in an accessible area away from the dispensing area.

No groups or associations filed comments on the proposed amendments. One comment pointed out that in the LP-gas rules, §9.185, Table 3 requires a distance of 15 feet between manual dispensers and other flammable fuel dispensers, and suggested that §13.94, Table 1 should be amended to include a similar distance requirement for CNG. The commission disagrees with this comment and declines to make the suggested change, because this would be a significant change in the CNG rules, and is beyond the scope of notice in this rulemaking.

The amendments are adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to promulgate rules and standards related to the compressed natural gas industry and its operations, which will protect or tend to protect the health, safety and welfare of the general public. The amendments implement the Texas Natural Resources Code, §116.012, which requires the commission to promulgate rules and standards related to the compressed natural gas industry and its operations, which will protect or tend to protect the health, safety and welfare of the general 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 April 11, 1994.

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512)  
 463-6949

◆ ◆ ◆  
**Subchapter E. Engine Fuel Systems**

• 16 TAC §13.143

The Railroad Commission of Texas adopts new §13.143, relating to venting of CNG to the atmosphere, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7402).

The new section specifies that venting of CNG must be done outdoors only and that consideration must be given to such factors as distance to buildings, terrain, wind direction and velocity, and use of a vent stack so that a flammable mixture does not reach a point of ignition. The new section also requires that cylinders must be properly grounded to eliminate any possible static electrical charges prior to and during venting.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to promulgate rules and standards related to the Compressed Natural Gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The new section implements the Texas Natural Resources Code, §116.012, which requires the commission to promulgate rules and standards related to the compressed natural gas industry and its operations, which will protect or tend to protect the health, safety and welfare of the general 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 April 11, 1994

TRD-9439440

Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

## Subchapter F. Residential Fueling Facilities

### • 16 TAC §13.184

The Railroad Commission of Texas adopts an amendment to §13.184, relating to general provisions for residential fueling facilities, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7403).

The amendment deletes language relating to venting of CNG to the atmosphere because that language is included in new §13.143, relating to venting of CNG to the atmosphere.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Natural Resources Code, §116.012, which authorizes the commission to promulgate rules and standards related to the compressed natural gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public. The amendments implement the Texas Natural Resources Code, §116.012, which requires the commission to promulgate rules and standards related to the compressed natural gas industry and its operations, which will protect or tend to protect the health, safety and welfare of the general 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 April 11, 1994

TRD-9439441

Mary Ross McDonald  
Assistant Director, Legal  
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Railroad Commission of  
Texas

Effective date: June 1, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-6949

## TITLE 22. EXAMINING BOARDS

### Part XIV. Texas Optometry Board

#### Chapter 279. Interpretations

##### • 22 TAC §279.5

The Texas Optometry Board adopts an amendment to §279.5, without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 761).

Section 279.5 is necessary to clarify what basic competence examinations must be performed by the optometrist, and those which may be performed by an assistant. The amendment removes ones basic competence examination listing which is no longer a requirement under that examination, i.e., amplitude or range of convergence.

No comments were received regarding adoption of the rule.

The amendment is adopted under the provisions of Texas Civil Statutes, Article 4552, §2.14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

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 18, 1994.

TRD-9439381

Lola Ewald  
Executive Director  
Texas Optometry Board

Effective date: May 10, 1994

Proposal publication date: February 4, 1994

For further information, please call: (512) 835-1938

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resources Conservation Commission

#### Chapter 320. Regional Assessment of Water Quality

##### Program for Water Quality Assessment by Watershed

##### • 30 TAC §320.21

The Texas Natural Resources Conservation Commission (Commission) adopts an amendment to §320.21, concerning the program for water quality assessment by watershed, with changes to the proposed text as published in the February 1, 1994, issue of the *Texas Register* (19 TexReg 706).

In December, 1992, and January, 1993, a

Clean Rivers Program Fee Task Force was convened to consider possible adjustments in the fee revenue for the Clean Rivers Program. The Fee Task Force consisted of several state legislators and representatives from various fee-payer groups. The amendments adopted here are in accordance with the guidance of the Fee Task Force.

The commission received comments regarding the proposed fee rule amendments from the City of Austin, Brazos River Authority, Fort Worth Water Department, Guadalupe Valley Electric Cooperative, Lone Star Steel, Lower Colorado River Authority, Sabine River Authority, Texas Municipal League, Texas Utilities Services, and Fred Werkenhain, for Hung's Shrimp Farm, Taiwan Shrimp Farm Village, and the Harlingen Shrimp Farm.

Two commenters stated that fees should be used only in the basin where collected. The commission believes that the intent of the legislation and the rule is to address water quality matters on a statewide basis. To allocate income and expenses strictly by basin would essentially eliminate the program in some basins while providing for comprehensive action in other basins. The procedure of directing expenditures to the basin of origin of the fees would also add considerable administrative expense to the program. Therefore, the commission did not incorporate this comment into the adopted rule.

Two commenters said that a fee increase is not appropriate in the middle of the municipal fiscal year without advance notice to allow municipal budgets the opportunity to include the additional expenses. The commission acknowledges the problem, and regrets that it was not possible to control the timing of the rulemaking process so that the municipal fiscal year could be accommodated. Commission staff will continue the transition already underway to have the fee billing cycle coincide with the state fiscal year, which is essentially the same as the typical municipal fiscal year. However, in order to cover costs of water quality assessment contracts already in place, the program requires funding this fiscal year. The 1994 Regional Water Quality Assessment is due October 1, 1994, and the Commission's summary assessment report to the Governor is due December 1, 1994. The commission did not incorporate this comment into the adopted rule.

One commenter asserted that metropolitan areas are penalized by virtue of the fact that municipal treatment facilities are subject to fees, but septic systems are not, and recommends a fee system that is equitable to all. The legislation states that costs of the program shall be recovered from permitted wastewater dischargers and users of water according to the records of the commission. There is a permit/license procedure regarding construction of septic tanks, but that program is largely handled by counties, river authorities, and other entities, with no associated TNRCC records. Therefore, the commission did not incorporate this comment into the adopted rule.

One commenter stated that municipalities should not be assessed fees for any efforts that duplicate water quality management activities described in §26.177. This commenter

suggests that a credit be given to municipalities for costs incurred in connection with §26.177 activities that are duplicated by water quality assessment activities. In association with the Clean Rivers Program, TNRC has postponed rulemaking regarding §26.177. As a result, any expense incurred by a city in regard to §26.177 is discretionary. Also, the proposed fee rules would not create a change in regard to this matter since fees are already assessed against municipalities. Therefore, the commission did not incorporate this comment into the adopted rule.

One commenter said that smaller systems are penalized via higher percentage increases than are the larger systems, and suggests that an equitable system be developed. However, costs to wastewater permit holders will depend on the permitted flow and authorized pollutant loadings of wastewater discharges so that costs to small operations will be determined on the same basis as for larger ones. In general, the percentage increase is consistent throughout the range from small to large permits; the primary exception is in regard to the larger permits where the fee is already at or near the maximum. The largest absolute increases relative to contaminated flow will be for those with flow authorizations at or near 100 MGD. For permits with authorized flow of less than 100 MGD, the percentage increase in fees for contaminated discharge is directly proportional to the flow authorization. For uncontaminated flow the charge is still proportional to the flow. For these reasons, the commission did not incorporate this comment into the adopted rule.

One commenter stated that TNRC data indicates that approximately 7.0% of the legal entities and municipalities will pay about 75% of the total amount of fees, an inequitable distribution. The comment appears to apply not to the proposed increase, but to the fees in general. Also, since fees for wastewater permits are based on authorized flow volumes and contaminant levels, those who contribute the largest amounts of wastewater and pollutants to the waters of the state will pay more than smaller dischargers, and larger water rights will pay more than smaller ones. The commission did not incorporate this comment into the adopted rule.

The same commenter said that contaminated flow should not be charged at a higher rate than uncontaminated flow since proper treatment often makes "contaminated" flow a better quality than "uncontaminated", and that it is not appropriate to further penalize a discharger by using permitted pollutant loadings as a fee factor. Commission staff believes that, in general, contaminated wastewater flow is not of better quality, and that pollutant levels are another factor that reflect the total pollution load that is placed on a stream. Therefore, the commission did not incorporate this comment into the adopted rule.

One commenter stated that approximately 30% of the money collected has been used by the commission for administration, and suggested lowering the administrative costs. Most of TNRC expenditures are for assessment activity in the Rio Grande and Coastal basins, where no river authority is available to

do the assessment. That activity by TNRC staff is the same as a river authority would do if there were one available for that area, and the activity must be financed in the same manner. The portion actually used for program administration, for salaries and other support activities has been approximately 8.0% for the first two years of the program. No change in the proposed rule is appropriate relative to this comment.

One commenter stated that the proposed fees will generate more than the \$5 million cap specified in House Bill 2620. It is not possible to precisely estimate the collection rate at this time, but TNRC staff has attempted to develop fee rates that will create sufficient income to fund needed activities while not exceeding the \$5 million limit. In addition, an effort was made in the proposed rules to allow for the possibility of an excess by providing for a rate reduction in the next billing cycle after any exceedance. Therefore, the commission did not incorporate this comment into the adopted rule.

One commenter said that the legislation specifies that users of water and wastewater permit holders will bear a portion of the costs, and that the proposal to drop irrigators is not consistent with that directive, and places additional burden on others. The Fee Task Force adopted a recommendation to exempt irrigators, and the commission accepted that recommendation. This comment was not incorporated into the adopted rule.

One commenter notes that nothing in the legislation allows TNRC to exempt any entity, and refers to an exemption for small domestic and agricultural users. This commenter also refers to entities not assessed a fee because they discharge to a publicly-owned treatment plant instead of directly to stream. Domestic and livestock water users are exempt from the need to have a permit to use water, and therefore can not be assessed a fee under this program. Also, an entity that discharges to a treatment plant would not have a wastewater permit, and thus would not be in TNRC records, and could not be assessed a fee. This comment was not incorporated into the adopted rule.

One commenter said the rules should be broadened to make it clear that any entity paying Clean Rivers Program fees can recover those costs from its customers. TNRC has authority to regulate rates for retail public utilities, and can assert the right for them to pass on the cost of the fees. However, TNRC has only limited authority to regulate wholesale water rates for municipalities or river authorities, resulting in questionable power to declare their right to pass on the expense of fees. This comment was not incorporated into the adopted rule.

One commenter suggested modified wording to clarify the basis of fees for a water right when the authorization includes impoundment and consumptive uses, such as municipal, industrial, etc., and to specify that the fee should be relative to the consumptive use, with no fee increment for the impoundment. The suggested approach has been the practice of the Commission, even though the current rules are not specific in the matter. Therefore, §320.21(e) has been changed to incorporate this comment.

Two commenters who stated that the proposed fees are not equitable said their operational costs are increased indirectly because their suppliers pass on the fees to them. One of them also said the direct fee and indirect fees cannot be passed on to their customers because of the competitive nature of their particular business. TNRC has no information regarding who passes fees on to their customers. The Commission does not believe that is pertinent to the consideration of the proposed fee change, and, except in regard to retail public utilities, has no authority related to the matter. Therefore, the commission did not incorporate these comments into the rule.

One commenter said the fee appears to be a tax. This comment appears to be in regard to the fees in general, and does not pertain to the proposed amendments. Also, the fees were adopted in accordance with legislative authority and direction, to be applied to a specific group which has activities directly related to the associated water quality assessment program. This comment was not incorporated into the rule.

One commenter stated that the Clean Rivers Program cannot be efficient without a clearly defined long-term goal, which is lacking, and that it appears that evolution of the program will require additional increases in fees. The Clean Rivers Program Long-Term Action Plan is being developed, and will be substantially complete by the end of April, 1994. Once the Long-Term Action Plan is in final form, proposals for fee policy will be developed by the Long-Term Plan Work Group, and will be submitted to the Fee Task Force for consideration. This comment was not incorporated into the rule.

One commenter said that uncontaminated flow has much less impact on the receiving stream than contaminated flow, and should be charged accordingly. This commenter stated that the proposed increase for uncontaminated flow is about 75% while the increase for contaminated flow would be about 25%. It is correct that contaminated flow has a greater impact on the receiving stream, and that the proposed percent increase for uncontaminated flow is larger than for contaminated flow. The fee proposal will help to balance the existing differential in fee assessment, while generally resulting in a relatively small absolute increase for uncontaminated flow authorizations. This comment was not incorporated into the rule.

One commenter suggested changing the definition for "Hydropower use" to insert "nonconsumptive" in the text, and changing the definition for "Non-consumptive use" to delete mention of hydroelectric power. The full purpose of such a change is not clear. It would seem to have no total impact on the classification of hydropower generation as a nonconsumptive usage. Therefore, the action does not seem appropriate, and it was not incorporated into the rule.

One commenter stated that where a hydroelectric water right does not specify an annual use amount, but instead reflects only an instantaneous flow rate, the fee should not be based on an amount derived by assuming the flow rate is used at all times throughout the

year. This commenter suggested using one-half of the actual hydro release, or no more than one-half of the highest annual flow of the stream. Any fee calculation based on actual use will create a significant administrative effort each year, which would increase TNRCC administrative costs. All other fees for this program are calculated from the authorized wastewater discharge or authorized water use, not the actual yearly amounts. It could be possible to use a flow rate based on USGS or other flow records, but that would require time for development of the procedure. Also, it would necessarily involve keeping the same flow number as the basis each year for a particular permit, and the amount would need to be extrapolated to reflect a full year's volume. A more direct approach would be for the water right holder to have the water right amended to reflect an accurate annual amount instead of a flow rate. Wastewater and water right bills are based on authorized amounts, not actual or available amounts. This comment was not incorporated into the rule.

Two commenters made statements regarding the proposed increase in hydroelectric fee rates. One statement was that the increase is too high, and one was that the hydro rate should be the same as for other nonconsumptive uses. In order to moderate the impact of the fee increase on small municipalities, and to help maintain a balance between various fee programs, adjustments were made in the fee rates for hydroelectric operations. These comments were not incorporated into the adopted rule.

One commenter stated that in cases where water is used for hydroelectric purposes only when releases are made for other purposes, fees should not be charged against both uses. This commenter also said that fees should not be levied against each permit when an entity has a series of hydro facilities on a stream. Each authorization is considered to be separate, since it would be very difficult to differentiate between the various applications and the varying amounts of water that may be applied. Also, at this time, it is not administratively feasible to bill differently for dual purpose situations as compared to hydro-only situations. This is a concept that could be considered for future change. This comment was not incorporated into the adopted rule.

One commenter noted that commercial shrimp farming (aquaculture) is a relatively new agricultural industry for which TNRCC regulatory practices are still being developed. The commenter stated that the industry currently has small profit margins, and cannot pass the expense of large fees on to its customers. TNRCC staff is currently developing rules regarding permit requirements for aquaculture operations, and recommends delaying assessment of Clean Rivers Program fees until associated agency regulatory rules are implemented under Chapter 321 of this title, Control of Certain Activities by Rule. Therefore, a definition of Aquaculture was added at §320.21(a), and §320.21(d) was changed to provide an exemption for aquaculture operations from Clean Rivers Program fees for wastewater permits during the first billing cycle after adoption of this rule. It is

anticipated that fee rules for aquaculture wastewater permits will be adopted before the subsequent billing cycle.

The amendment is adopted under the Texas Water Code, §§5.103, .105, and 5.120, which provide the Texas Natural Resources Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and all other laws of the State of Texas and to establish and approve all general policy of the commission.

#### §320.21. Water Quality Assessment Fees.

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

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

(5) Flow—The total by volume of all wastewater discharges authorized under a permit issued in accordance with the Texas Water Code, Chapter 26, expressed as an average flow per day, a maximum flow per day, an annual average or an annual maximum, exclusive of variable or occasional stormwater discharges. Generally, the flow amount used to calculate fees is the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow amount used to calculate fees is the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

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

(8) Inactive permit—A permit which authorizes a waste treatment facility, where the facility itself is not yet operational or where operation has been suspended.

(9) Industrial use—The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial feedlot operations, commercial fish production and the development of power by means other than hydroelectric.

(10) Irrigation use—The use of water for the irrigation of crops, trees, and pastureland, including but not limited to golf courses and parks which do not receive water through a municipal distribution system.

(11) MGD—Million gallons per day

(12) Mining use—The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

(13) Municipal use—The use of treated water within or without a municipality and its environs whether supplied by a person, privately-owned utility, political subdivision, or other entity as well as the use of municipal sewage effluent for certain purposes specified as follows. It includes the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes including public and private swimming pools, the use of treated water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens. Municipal use also includes the application of municipal sewage effluent upon land sites, pursuant to a Texas Water Code, Chapter 26, permit, where:

(A) the primary purpose of the application is the treatment and/or necessary disposal of such effluent; or

(B) the application site is a park, parkway, golf course, or other landscaped area owned by the owner of the permitted sewerage system; or

(C) the effluent applied to such site is generated within an area for which the commission has adopted a no-discharge to surface water rule.

(14) Navigation use—A recognized use that is not currently included in any water rights.

(15) Non-consumptive use—the use of water for those purposes not otherwise designated as consumptive uses under this section, including hydroelectric power, navigation, non-consumptive recreation and other beneficial uses, consistent with the meaning of these uses and for which water may be appropriated under the Water Code, §§11.023-11.024.

(16) Other use—Any beneficial use not otherwise defined herein.

(17) Recreational use—The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aesthetic land enhancement of a subdivision, golf course or similar development.

(18) Recharge use—The use of surface water to either increase the amount of natural recharge to an underground aquifer or the injection of water into an aquifer.

(19) TOC—Total organic carbon.

(20) Traditional pollutants—the wastewater parameters typically found in

wastewater permits, specifically oxygen demand (BOD/COD/TOC), total suspended solids (TSS) and ammonia. For the purpose of this section, COD and TOC are converted to BOD values, and the higher value is used in fee calculations. COD and TOC are expressed in terms of BOD at the rate of three pounds of TOC equal to one pound of BOD (3:1) or eight pounds of COD equal to one pound of BOD (8:1).

(21) TSS—Total suspended solids.

(22) Wastewater permit—A permit issued by the commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26, and other statutory provisions (such as the Health and Safety Code, Chapter 361). For the purpose of this section, a permit shall include any authorization under Water Code, Chapter 26, to treat or discharge wastewater, including a registration or permit by rule.

(23) Water right—A right acquired under the laws of the state and the rules of the commission to impound, divert, or use state water.

(24) Aquaculture—The commercial propagation of aquatic species utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures

(b) For the purpose of recovery of the costs of development of regional water quality assessments and administration of the provisions of this chapter, a fee is assessed against water right holders and wastewater permit holders in each watershed of the state in proportion to their right to use water from, or to discharge wastewater into, the watershed. The fee calculation is based on the authorized limits contained in wastewater permits and water rights as of September 1 each year. All fee calculations are to be based on the parameters specified in the permit or water right without regard to the actual amount or quality of effluent discharged or the actual amount of water used. Fees do not apply to those domestic and livestock water use applications which are exempt from the need for authorization from the commission.

(c) Wastewater permit holders shall be assessed a fee based on the authority of a permittee to dispose of or discharge wastewater under a permit or other authorization issued pursuant to the Texas Water Code, Chapter 26. The fee shall be assessed on the basis of permitted flow and traditional pollutant limits and determined as the sum of factors in paragraphs (1)-(3) of this subsection. When calculating the charge based on flow, this amount shall be calculated based on the daily average flow limit in the permit. For permits that do not have a daily average flow limit, the charge shall be

based on 50% of the daily maximum flow limit.

(1) for contaminated discharges, \$375 per MGD;

(2) for uncontaminated discharges, \$1.75 per MGD;

(3) for each traditional pollutant, \$3 per pound per day.

(d) The annual fee assessed for each wastewater discharge permit shall be a minimum of \$300 and shall not exceed \$4,000. The fee for a permit which does not authorize the discharge of wastewater, including evaporation and land disposal permits, shall be \$200. The fee for an inactive permit shall be \$150. No fee will be assessed for aquaculture wastewater permits.

(e) For municipal or industrial water rights, or portions thereof, not directly associated with a facility or operation which is assessed a fee under subsection (c) or (d) of this section, and for all other types of water rights except irrigation, each water right holder shall pay a fee based on the authorization to impound, divert or use state water. The fee for each water right authorizing diversion of more than 250 acre-feet per year for consumptive use, other than for irrigation, shall be \$.22 per acre-foot up to 20,000 acre-feet, and \$.08 per acre-foot thereafter. An authorization to impound water will be assessed a fee only when there is no associated consumptive use authorized, and then the fee will be calculated at the nonconsumptive rate described below. Except for water rights for use for hydroelectric generation, the fee shall be \$.021 per acre-foot for water rights for nonconsumptive use above 2,500 acre-feet per year up to 50,000 acre-feet, and \$.0007 per acre-foot thereafter. The fee for water rights for use for hydroelectric generation shall be \$.04 per acre-foot per year up to 100,000 acre-feet and \$.004 per acre-foot thereafter.

(f) Water which is authorized in a water right for consumptive use, but which is designated by a provision in the water right as unavailable for use may be exempted from the assessment of a fee under subsection (e) of this section

(g) A retail public utility as defined by Texas Water Code, §13.002 which is subject to a water quality assessment fee under this chapter may collect from each customer a charge to recover the amount of the fee assessed. The total amount recovered by a retail public utility shall not exceed the amount assessed under this chapter plus any reasonable costs of collection. Any pass-through mechanism for the fees shall be fair and equitable for all customers and may be subject to review by the commission.

(h) The portion of a water quality assessment fee recovered from a customer

of a retail public utility may be listed on the customer's bill as a separate item and may be collected in addition to other regulatory assessments or charges for utility services.

(i) The portion of a water quality assessment fee recovered from a customer by a retail public utility is not part of the rates of that utility. This provision shall apply to a retail public utility providing water and/or wastewater service.

(j) Water quality assessment fees are due within 30 days of the billing date each year. However, for the first billing cycle after adoption of these rules, the fees are due within 60 days of the billing date. Fees shall be paid by check, either personal or certified, or by money order payable to the Texas Natural Resource Conservation Commission. A person failing to make payment of the fees imposed under this section when due shall be subject to a penalty of 5.0% of the amount due, and if the fees are not paid within 30 days after the day on which the fees are due, an additional 5.0% penalty shall be imposed. An annual interest rate of 12%, compounded monthly, shall be imposed on delinquent fees beginning 60 days from the date on which the fee is due.

(k) New wastewater permits and water rights granted after September 1 will be billed at the next regular billing date. Any change in authorization will not affect any fee already billed for the year in which the authorization change is made. Cancellation or revocation, whether by voluntary action on the part of the permittee or water right holder or as a result of proceedings initiated by the commission, will not constitute grounds for a refund of any water quality assessment fee previously paid.

(l) The commission shall monitor both the collection of fees under this section and the allocation of fee revenues under §320.22 of this title (relating to Allocation of Water Quality Assessment Fee Revenue) for the river basins of the state. The commission shall adjust the fee rates established under this section to the extent necessary to ensure the adequate support of the programs undertaken to implement this chapter and the equitable assessment of fees within each watershed and region of the state. If the fees collected for this program in any fiscal year should exceed \$5,000,000 by more than 1.0%, the commission shall make a proportional downward adjustment of the fee rates for the next fiscal year to attempt to limit the collection to \$5,000,000 per year.

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 18, 1994

TRD-9439376

May Ruth Holder  
Director, Legal Division  
Texas Natural Resources  
Conservation

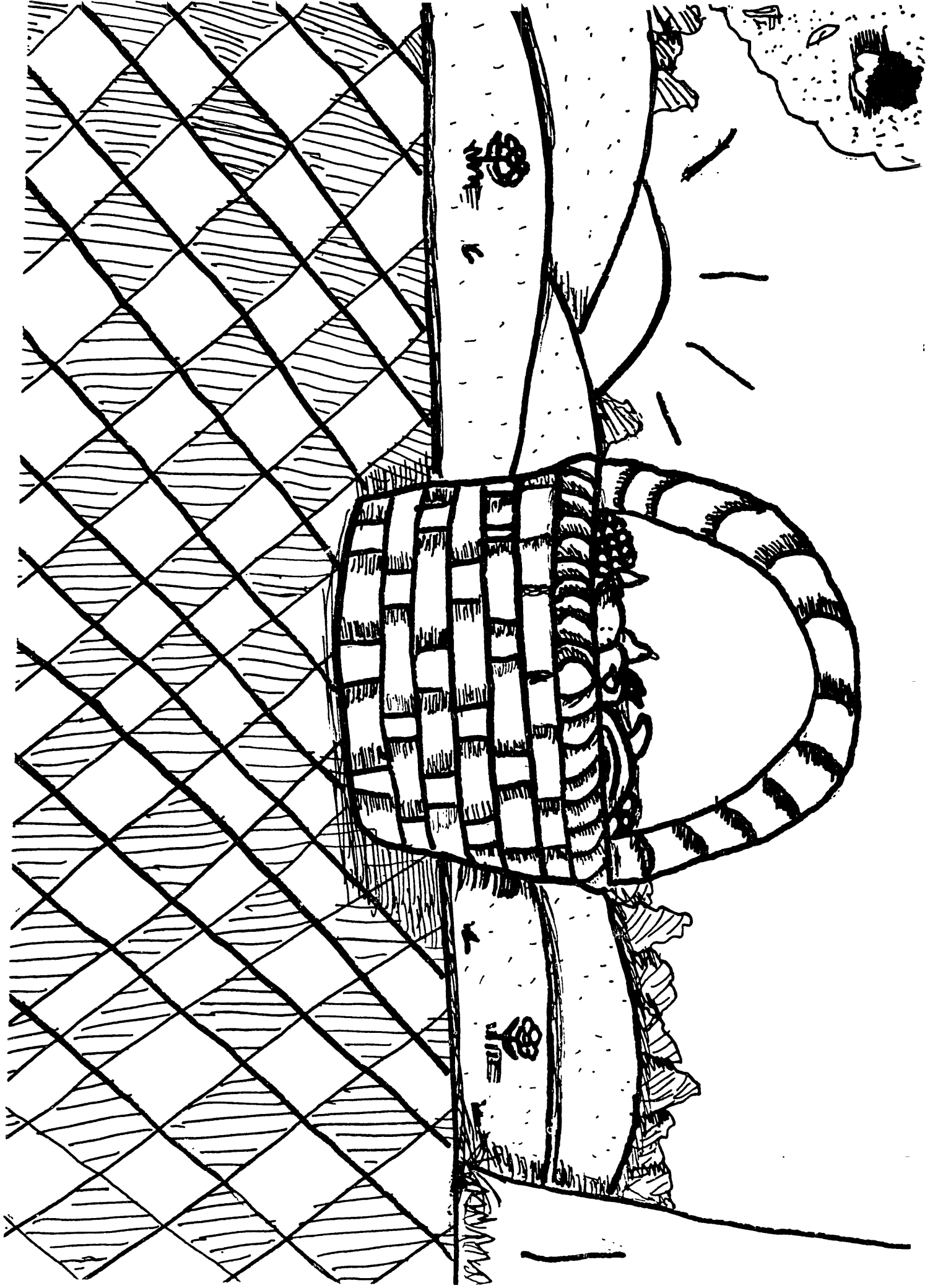
Effective date: May 10, 1994

Proposal publication date: February 1, 1994

For further information, please call: (512)  
463-8069









# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department on Aging

Friday, April 29, 1994, 9:30 a.m.

1949 South IH-35, Third Floor Large Conference Room

Austin

According to the complete agenda, the Area Agency on Aging (AAA) Operations Committee will call to order; receive public testimony on Administration on Aging notice of proposed rulemaking on the Interstate Funding Formula; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727

Filed: April 19, 1994, 4:34 p.m.

TRD-9439427

## Texas Automobile Insurance Plan Association

Thursday, April 28, 1994, 9:30 a.m.

303 West 15th Street

Austin

Revised Agenda

According to the complete agenda, the Governing Committee will discuss plan of operation update.

Contact: Marilyn Kinsey, P.O. Box 18447, Austin, Texas 78760, (512) 444-5999

Filed: April 20, 1994, 3:47 p.m.

TRD-9439535

## State Bar of Texas

Wednesday, April 27, 1994, 9:30 a.m.

The Austin Club, 110 East Ninth Street  
Austin

According to the agenda summary, the Commission for Lawyer Discipline will call to order; introductions, discuss minutes of prior meetings, review statistical reports; review commission's compliance with provisions of the State Bar Act, Texas Rules of Disciplinary Procedure and orders of the Supreme Court of Texas, review budget and operations of the office of General Counsel, discuss grievance committees, discuss special counsel program; discuss budget and operations of commission, discuss confidentiality of information at investigatory stage, staff presentations, closed executive session discuss pending litigation cases pending before evidentiary panels of grievance committees, special counsel assignments, and personnel matters, public session. take appropriate action on matters discussed in closed executive session, discuss future meetings of the commission, discuss other matters as appropriate, receive public comment, and adjourn

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, (800) 204-2222

Filed: April 19, 1994, 4:28 p.m.

TRD-9439425

## Children's Trust Fund of Texas Council

Tuesday, April 26, 1994, 10:30 a.m.

Texas Medical Association Building, 401 West 15th Street

Austin

According to the complete agenda, the Fiscal Advisory Committee will consider welcome and introductions, discussion of reauthorization of dedicated revenues; discussion of investment authority for the trust fund; discussion of appropriate size and use of the trust fund; and adjourn.

Filed: G. ...erra, 8929 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458 ...

Filed: April 19, 1994, 3:50 p.m.

TRD-9439423

Tuesday, April 26, 1994, 12:30 p.m.

Texas Medical Association Building, 401 West 15th Street

Austin

According to the complete agenda, the Budget Oversight Committee will consider review of Fiscal Advisory Committee status report/recommendations, discussion of fiscal year 1995/fiscal strategic plan; and adjourn

Contact: Gracie Guerra, 8929 Shoal Creek Boulevard #200, Austin, Texas 78757, (512) 458-1281.

Filed: April 19, 1994, 3:50 p.m.

TRD-9439424

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**Comptroller of Public Accounts/General Services Commission**

Tuesday-Wednesday, May 3-5, 1994, 10:00 a.m.

1701 North Congress Avenue  
Austin

According to the agenda summary, the Re-engineering Procurement Project Team will present preliminary findings and recommendations and solicit input from participants on how private entities should do business with the State of Texas.

Contact: Arthur F. Lorton, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-0866.

Filed: April 21, 1994, 9:46 a.m.

TRD-9439559

◆ ◆ ◆  
**Texas Commission for the Deaf and Hearing Impaired**

Saturday, April 30, 1994, 9:00 a.m.

TSD, 1102 South Congress Avenue, Building T-2

Austin

According to the complete agenda, the Board for Evaluation of Interpreters (BEI) will call to order; approval of March 5, 1994 minutes; public comments; chairperson's report; BEI report; TSID report; calendar update; criteria for evaluation, evaluation procedures, executive session; review of applicant test materials; certification, recertification, revocation; old business; and new business.

Contact: Loyce Kessler, 1414 Lamar Boulevard #310, Austin, Texas 78756, (512) 451-8494.

Filed: April 20, 1994, 11:22 a.m.

TRD-9439511

◆ ◆ ◆  
**Texas State Board of Dental Examiners**

Friday, April 29, 1994, 1:00 p.m.

TSBDE Offices, William P. Hobby Building, Tower Three, Suite 800, 333 Guadalupe

Austin

According to the complete agenda, the Board will call to order; roll call; discussion and action on report from the C.U.R.L. Committee; announcements; and adjournment.

Contact: C. Thomas Camp, 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: April 20, 1994, 3:47 p.m.

TRD-9439537

◆ ◆ ◆  
**Texas Education Agency**

Thursday, April 28, 1994, 10:00 a.m.

Region XX Education Service Center, Rooms B and C, 1314 Hines Avenue

San Antonio

According to the agenda summary, the State Board of Education (SBOE) Committee on the Permanent School Fund (PSF) will consider review of current portfolio status; justification of strategic asset allocation plan; impact of redistribution of funds from existing asset classes; strategy to stabilize income during affected period; revenue sources for purpose of stabilization; status of education in Texas; interfacing education with portfolio restructuring; prioritizing systemic education changes; private/public investment opportunities; conceptual summary of strategic plan; discussion and input; and adjournment. All members of the board are invited to attend.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas (512) 463-9701.

Filed: April 20, 1994, 10:16 a.m.

TRD-9439507

Friday-Saturday, April 29-30, 1994, 12:30 p.m. and 8:30 a.m. respectively

Capitol La Quinta, Lady Bird Room, 300 East 11th Street

Austin

According to the agenda summary, the Continuing Advisory Committee for Special Education will: Friday: consider good news, approval of minutes, report on conferences, and continuation of planning of goals and objectives for future meetings; Saturday: consider comprehensive system of personnel development, Leadership Council's strategic plan, nursing homes, update on Task Force on the Education of Students with Disabilities, federal funding-regulations and lapsed funds, update on State Board of Education rule revisions, CAC member task groups to develop input for CSPD, Task Force on Education of Students with Disabilities, and/or funding, draw lots, conferences, and next meeting-date for meeting and agenda.

Contact: Shirley Sanford, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9362.

Filed: April 20, 1994, 1:20 p.m.

TRD-9439519

Thursday, May 5, 1994, 9:00 a.m.

Joe C. Thompson Conference Center, Room 3.110, University of Texas at Austin Campus, 26th and Red River

Austin

According to the complete agenda, the Policy Committee on Public Education Information will consider orientation of new members; status report on the parent-family report card; new information requests related to date of birth for staff; discussion of Reports Plus, a software product for school districts to use when reviewing Public Education Information Management System (PEIMS) data; and quality assurance issues regarding date reporting problems.

Contact: Karen Comwell, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9087.

Filed: April 19, 1994, 3:14 p.m.

TRD-9439410

Thursday-Friday, May 5-6, 1994, 9:00 a.m.

William B. Travis Building, Room 1-109, 1701 North Congress Avenue

Austin

According to the complete agenda, on Thursday, the Commission on Standards for the Teaching Profession will consider opening activities: roll call, adoption of agenda, approval of minutes for March 27th meeting, and introductions; information updates: SBOE report, proposed teacher appraisal system report, ExCET, and Chapter 13; action items: Southern Methodist University and Abilene Christian University; lunch break; morning overview, transition to afternoon; discussion items: 48th Annual Conference on Teacher Education, TEA/THECB Conference on Teacher Education report, October 27-29, 1994, and EEIS prototype focus groups; summary, suggestions for follow-ups, and adjourn. On Friday, strategic planning: dissemination of EEIS prototype; summary, suggestions for follow-up (set agenda for July meeting), and adjourn.

Contact: Delia G. Quintanilla, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: April 21, 1994, 9:58 a.m.

TRD-9439561

## Division of Emergency Management

Tuesday, May 3, 1994, 2:00 p.m.

EOC Council Room, 5805 North Lamar Boulevard

Austin

According to the complete agenda, the State Emergency Management Council will consider opening remarks and agenda overview; status of state hurricane planning; and roles/responsibilities of state agencies in hurricane response and recovery.

Contact: Ed Schaefer, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 465-2434.

Filed: April 19, 1994, 1:19 p.m.

TRD-9439393

## Office of the Governor

Friday, May 13, 1994, 8:30 a.m.

Capitol Extension, Room E1.014

Austin

According to the agenda summary, the Committee on People With Disabilities will consider Program Subcommittee meeting; full committee meeting, approval of minutes, and public comment; organization reports; Program Subcommittee report, action: selection of Barbara Jordan Award winners, action: approval of design for Governor's Trophy; members' reports, issues in the deaf community, ADA implementation at SWTU; report from Texas Department of Licensing and Regulation; report from the Governor's Policy Council; reports from drafting groups, education, community services, health care, ADA, employment, action: initial adoption of draft recommendations; and adjournment.

Contact: Virginia Roberts, 201 East 14th Street, Austin, Texas 78711, (512) 463-5739.

Filed: April 20, 1994, 10:33 a.m.

TRD-9439509

## Texas Department of Health

Thursday, April 21, 1994, 3:30 p.m.

Texas Department of Health, Room M-739, 1100 West 49th Street

Austin

Revised Agenda (Rescheduled from Thursday, April 21, 1994, 10:30 a.m.)

According to the complete agenda, the committee discussed approval of the minutes from the March 25, 1994 meeting, and dis-

cussed and possibly acted on: outline for the Texas Department of Health strategic plan, 1995-1999; report on tort reform in an era of health care reform; report on homeless issues; update concerning interagency work group on health reform; and the monthly update on the department's budget.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: April 20, 1994, 5:36 p.m.

TRD-9439548

## Texas Health Benefits Purchasing Cooperative

Friday, April 29, 1994, 8:30 a.m.

Scottish Rite Hospital for Children, 2222 Welborn Street (Board Room)

Dallas

According to the complete agenda, the Texas Health Benefits Purchasing Cooperative will review and adopt minutes of previous meeting; report of executive director, report of TIPA administrator, discussion of and adoption of carrier and benefit issues, and discussion of agent issues.

Contact: Rebecca Lightsey, 1005 Congress Avenue, Suite 550, Austin, Texas 78701, (512) 472-3956.

Filed: April 20, 1994, 4:31 p.m.

TRD-9439543

## Texas High-Speed Rail Authority

Wednesday, April 27, 1994, 10:00 a.m.

Auditorium, State Capitol Extension, 1100 North Congress Avenue

Austin

According to the agenda summary, the Board of Directors will call to order; consideration of minutes from the December 17, 1993 board meeting, executive session pursuant to the provisions of Texas Government Code, §551.071, to meet with the Authority's attorney to seek or receive legal advice with respect to pending or contemplated litigation and other matters where required by the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas including matters involving a former employee and the alleged failure of the franchisee to comply with the franchise agreement and board orders; consideration, deliberation, and action on pending or contemplated litigation involving a former em-

ployee; and consideration, deliberation, and action on alleged failure of franchisee to comply with the franchise agreement and board orders.

Contact: Allan Rutter, 823 Congress Avenue #1502, Austin, Texas 78701, (512) 478-5484.

Filed: April 19, 1994, 2:51 p.m.

TRD-9439409

## Texas Incentive and Productivity Commission

Wednesday, April 27, 1994, 10:00 a.m.

Clements Building, 15th and Lavaca, Fifth Floor, Committee Room #5

Austin

Revised Agenda

According to the revised agenda summary, the Texas Incentive and Productivity Commission will add item to the agenda: consideration of 1994 agency application for Productivity Bonus Program Awards

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: April 19, 1994, 2:40 p.m.

TRD-9439396

## Department of Information Resources

Friday, April 29, 1994, 9:30 a.m.

300 West 15th Street, Fifth Floor, Committee Room #5

Austin

According to the complete agenda, the Board will call to order, roll call and witness registration; adoption of March 25, 1994 meeting minutes; recess into executive session to interview and discuss applicants for the executive director's position; reconvene in open meeting for final action on appointment of executive director; other business; public testimony; and adjournment.

Contact: John Hawkins, 300 West 15th Street, Suite 1300, Austin, Texas 78701, (512) 475-4714.

Filed: April 21, 1994, 9:58 a.m.

TRD-9439560

## Texas State Library and Archives Commission

Friday, May 6, 1994, 10:00 a.m.

1201 Brazos Street, Lorenzo del Zavala Archives and Library Building, Room 202  
Austin

According to the complete agenda, the Texas Historical Records Advisory Board will call to order; approval of minutes of meeting—February 25, 1994; review and discussion of draft of strategic planning grant proposal; report—March meeting of State Historical Records coordinators; report—Sunset hearings for State Library and Archives Commission; report—appropriation for National Historical Publications and Records Commission; report—status of board appointments; determination of site and date for next meeting; and adjournment.

Contact: Raymond Hiu, P.O. Box 12927, Austin, Texas 78711, (512) 463-5440.

Filed: April 19, 1994, 2:45 p.m.

TRD-9439406

## Local Government Investment Cooperative

Monday, April 25, 1994, 3:00 p.m.

7001 Preston Road, Suite 300

Dallas

According to the complete agenda, the Board of Directors met to adopt bylaws; elect officers; adopt seal; adopt investment policies; adopt operating policies; retain general manager, approve subcontractors; approve custodian for collateral for repurchase agreements; appoint auditor; appoint attorney and authorize attorney to post notice of meetings, approve information statement; insurance proposal for directors and officers insurance; set regular meeting dates; establish payment procedures; and establish other operating procedures.

Contact: Kathleen Ellison, 1301 McKinney #5100, Houston, Texas 77010, (713) 651-3612.

Filed: April 20, 1994, 3:52 p.m.

TRD-9439539

## Midwestern State University

Monday, April 25, 1994, 9:00 a.m.

3410 Taft Boulevard, Hardin Board Room  
Wichita Falls

According to the complete agenda, the Board of Regents met to make a recommendation concerning the refinancing of Build-

ing Revenue Bonds, Series 1983 (Clark Student Center). The sale of land off of Southwest Parkway was discussed in closed session as allowed by the Texas Open Meetings Act, §2(f).

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: April 20, 1994, 8:46 a.m.

TRD-9439474

## Board of Nurse Examiners

Tuesday-Wednesday, May 10-11, 1994, 8:00 a.m.

1812 Centre Creek Drive, Room 203

Austin

According to the agenda summary, the Board of Nurse Examiners will receive the minutes from the March meeting; February and March 1994 financial statements; consider education matters including two public hearings. San Jacinto College South, Houston, proposed ADN transition program for LVNs, May 10, 1994, 10:00 a.m.; Panola College, Carthage, proposed ADN transition program for LVNs, May 10, 1994, 10:15 a.m. The board will hold an open forum from 1:30-2:00 p.m. on Tuesday, May 10, to receive input from interested parties; receive reports from outside agency committees; receive the executive director's report; consider adoption of repeal and new rules §§217.3-217.6; consider proposed rule for fine schedules and take action on proposed board orders. On May 11, the board will receive information on ADA.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: April 20, 1994, 1:50 p.m.

TRD-9439521

## Texas Board of Pardons and Paroles

Monday-Friday, May 2-6, 1994, 9:30 a.m.

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, a panel(s) of the Board of Pardons and Paroles composed of three board members will meet to receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: April 20, 1994, 3:45 p.m.

TRD-9439529

Monday-Friday, May 2-6, 1994, 1:30 p.m.

2503 Lake Road, Suite #2

Huntsville

According to the agenda summary, a panel(s) of the Board of Pardons and Paroles composed of three board members will meet to receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: April 20, 1994, 3:45 p.m.

TRD-9439531

Monday-Wednesday, May 2-4, 1994, 1:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, a panel(s) of the Board of Pardons and Paroles composed of three board members will meet to receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: April 20, 1994, 3:45 p.m.

TRD-9439533

Thursday-Friday, May 5-6, 1994, 9:30 a.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, a panel(s) of the Board of Pardons and Paroles composed of three board members will meet to receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal

of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: April 20, 1994, 3:45 p.m.

TRD-9439532

Thursday-Friday, May 5-6, 1994, 1:00 p.m. and 9:00 a.m. respectively.

Route 5, Box 258-A

Gatesville

According to the agenda summary, a panel(s) of the Board of Pardons and Paroles composed of three board members will meet to receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: April 20, 1994, 3:45 p.m.

TRD-9439530

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**Texas State Board of Podiatry Examiners**

Saturday, April 30, 1994, 10:00 a.m.

Drury Inn North, 6511 IH-35

Austin

According to the complete agenda, the Texas State Board of Podiatry Examiners will convene in open session and then go into executive session to interview applicants for the selection of executive director position. The executive session is held in accordance with §551.074(a)(1) of the Texas Government Code. Return to open meeting session; discussion of reports on Jurisprudence exam; Nitrous Oxide Rule update; legislative changes to Podiatry Practice Act; complaint update report; and executive director's report.

Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

Filed: April 19, 1994, 2:22 p.m.

TRD-9439394

**Public Utility Commission of Texas**

Wednesday, April 27, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Public Utility Commission of Texas will hold an open meeting at which the commission will consider the following dockets: 12291, 12712, 12269, P-12476, P-12065, 12700, 11292, 12298, 12704, 12442, 12448, 11441, P-12682, P-12683, P-12289, P-12334, P-12194, P-12793, and P-11365.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 19, 1994, 2:44 p.m.

TRD-9439403

Wednesday, April 27, 1994, 9:05 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Administrative Committee will discuss: reports, discussion, and action on comments to FCC regarding Caller ID; interim legislative committees, and/or Sunset Commission; updated response to Sunset Advisory Commission staff evaluation; budget and fiscal matters; adjournment for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 19, 1994, 2:51 p.m.

TRD-9439408

Monday, May 2, 1994, 10:15 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12862-joint petition for extended area service between Southwestern Bell Telephone Company's Center Exchange and its San Augustine Exchange.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 21, 1994, 10:04 a.m.

TRD-9439570

Tuesday, May 3, 1994, 10:00 a.m. (Rescheduled from Friday, April 22, 1994, 10:00 a.m.)

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a rescheduled prehearing conference in Docket Number 12901-application of Houston Lighting and Power Company, Inc. for approval of tariff for economic improvement service-rate schedule EIS.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 19, 1994, 2:44 p.m.

TRD-9439405

Thursday, May 5, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 11336-General Counsel's inquiry into the reasonableness of the rates, terms, and conditions of Southwestern Bell Telephone Company's central office-based PBX-type services for which flexible pricing is permitted.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 19, 1994, 11:24 p.m.

TRD-9439386

Thursday, May 5, 1994, 2:00 p.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a post-hearing conference in Docket Number 7952-complaint of Metro-Link Telecommunications, Inc. against Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 21, 1994, 10:03 a.m.

TRD-9439567

Wednesday, July 13, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12900: application of Texas-New Mexico Power Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 19, 1994, 4:34 p.m.

TRD-9439428

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**Texas Real Estate Commission**

**Thursday, April 28, 1994, 10:00 a.m.**

1101 Camino La Costa, TREC Headquarters, Room 236I, Second Floor

Austin

According to the complete agenda, the Wood-Destroying Insects Subcommittee will discuss and possibly recommend action by the Texas Real Estate Inspection Committee relating to interaction with the Structural Pest Control Board.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Filed: April 21, 1994, 10:00 a.m.

TRD-9439563

**Thursday, April 28, 1994, 11:00 a.m.**

1101 Camino La Costa, TREC Headquarters, Room 236I, Second Floor

Austin

According to the complete agenda, the Inspection Standards Subcommittee will discuss and possibly recommend changes to 22 TAC §535.222.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: April 21, 1994, 10:02 a.m.

TRD-9439564

**Thursday, April 28, 1994, 1:00 p.m.**

1101 Camino La Costa, TREC Headquarters, Room 236I, Second Floor

Austin

According to the complete agenda, the Education and Examination Subcommittee will discuss and possibly recommend action on core inspection courses, requirements for course providers and examinations; possible executive session to discuss examination materials pursuant to Attorney General Opinions H-484.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: April 21, 1994, 10:03 a.m.

TRD-9439565

**Thursday, April 28, 1994, 4:00 p.m.**

1101 Camino La Costa, TREC Headquarters, Room 236I, Second Floor

Austin

According to the complete agenda, the Enforcement Subcommittee will discuss and possibly make recommendations concerning enforcement of Texas Civil Statutes, Article 6573a, §23.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: April 21, 1994, 10:03 a.m.

TRD-9439566

**Friday, April 29, 1994, 9:00 a.m.**

1101 Camino La Costa, TREC Headquarters, Room 235, Second Floor

Austin

According to the complete agenda, the Real Estate Inspector Committee will call to order; minutes of March 11-12, 1994 meeting; public comments; review and response to correspondence or questions concerning inspection standards; subcommittee reports; reports from TREC staff; discussion and possible action to recommend rules to the Texas Real Estate Commission regarding the licensing of inspectors, educational requirements, courses submitted by providers, accreditation and course requirements, experience and education required for licensing, inactive license status, sponsorship of apprentices and real estate inspectors, license renewals, continuing education, and standard inspection reports; discussion and possible action to make recommendations concerning inspection standards, 22 TAC §535.222; discussion of 22 TAC §541.1 concerning criminal offense guidelines; and scheduling of meetings.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: April 21, 1994, 9:59 a.m.

TRD-9439562

**Texas Savings and Loan Department**

**Monday, May 16, 1994, 9:00 a.m.**

300 West 15th Street, Room 502

Austin

According to the agenda summary, the Texas Savings and Loan Department will meet to accumulate a record of evidence in regard to the application of Texas Heritage Savings Association/Banc, Rowlett, Texas, to operate a branch office at 500 Harwood, Bedford, Tarrant County, Texas, from which record the commissioner will determine whether to grant to deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: April 19, 1994, 11:59 p.m.

TRD-9439390

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**Council on Sex Offender Treatment**

**Friday, April 29, 1994, 10:00 a.m.**

909 West 45th Street 240, Department of Health Building

Austin

According to the complete agenda, the Clinical Issues Committee will convene; discussion on the Third Annual Texas Conference on the Treatment and Supervision of Adult Sex Offenders; review and discussion of Standards of Practice Act; discussion of letter from the Psychology Board; review and discussion of Continuing Education criteria and applicability; other business; and adjourn.

Contact: Eliza May, P.O. Box 12546, Austin, Texas 78711, (512) 463-2323.

Filed: April 20, 1994, 9:34 a.m.

TRD-9439492

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**Stephen F. Austin State University**

**Wednesday, April 27, 1994, 9:00 a.m.**

Stephen F. Austin Campus, Austin Building, Room 307

Nacogdoches

Revised Agenda

According to the revised agenda summary, the Board of Regents will consider board meeting; executive session; approval of January 25, 1994 and March 17, 1994 minutes; election of board officers; administration;

personnel; academic and student affairs; financial affairs; buildings and grounds; and reports.

Contact: Dr. Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962, (409) 568-2201.

Filed: April 19, 1994, 4:34 p.m.

TRD-9439429

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**Texas Sustainable Energy  
Development Council**

Friday, April 29, May 6, May 13, May 20, 1994, 7:30 a.m.

100 Red River, Teacher Retirement System Cafeteria

Austin

According to the complete agenda, the Texas Sustainable Energy Development Council will call to order; discuss strategic planning; and adjourn.

Note: In addition to the April 29, 1994, meeting, the Sustainable Energy Development Council will meet the following Fridays (same time, location, and agenda): Friday, May 6, 1994; Friday, May 13, 1994; and Friday, May 20, 1994.

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745.

Filed: April 19, 1994, 2:34 p.m.

TRD-9439395

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**Texas Department of Transportation**

Thursday, April 28, 1994, 9:00 a.m.

200 East Riverside Drive, Room 101

Austin

According to the agenda summary, the Texas Transportation Commission will hold a public hearing on proposed maximum 65 mph and 55 mph speed limits; approve minutes; contract awards/rejections; partial revision of 1995 Project Development Plan allocation program amounts; routine minute orders; environmental project; IH/US/SH and FM projects; multimodal projects; rulemaking: 43 TAC Chapters 2, 11, 17, and 21; consider establishing maximum 65 mph and 55 mph prima facie speed limits; Smith County SH Loop 49 project; executive session; statewide selection of transportation enhancement projects; and open comment period.

Contact: Diane L. Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: April 20, 1994, 10:22 a.m.

TRD-9439508

Friday, May 6, 1994, 9:00 a.m.

Hilton Hotel, 5200 East University Boulevard

Odessa

According to the agenda summary, the Aviation Advisory Committee will approve minutes; approval of the Capital Improvement Program 1995-1999; reports: aviation brochure; Economic Incentive Program; Aviation Task Force; regional planning meetings; FAA Airport Improvement Program (AIP); and Texas Airport Operators Conference.

Contact: Suetta Murray, 410 East Fifth Street, Austin, Texas 78711, (512) 476-9262.

Filed: April 19, 1994, 2:46 p.m.

TRD-9439407

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**Texas Turnpike Authority**

Wednesday, April 20, 1994, 10:00 a.m.

Guest Quarters Suite Hotel, 303 West 15th Street

Austin

Emergency Revised Agenda

According to the agenda summary, the Board of Directors will consider approval of minutes of prior board and committee meetings; request from a Bridge Board for traffic study; South Texas Study report; adopt 1993 TxDOT specs; adopt Public Records Policy; consider retaining and employment of executive director; executive session; with respect to the Dallas North Tollway, award of contracts, approval of supplemental agreements to contracts, construction report, real estate purchases, and refinancing of DNT Series 1989 Bonds; with respect to Addison Toll Tunnel, consider retaining investment banking team, retaining bond counsel, General Counsel assignment, and interlocal agreement; consider legislative matters; funding and guidelines for TTA Revolving Fund; reports from committee chairpersons, and other board members.

Reason for emergency: Unforeseeable critical and potentially determinative circumstances concerning employment of executive director advice of which was received after posting of regular notice.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: April 19, 1994, 2:31 p.m.

TRD-9439392

**University of Houston System**

Wednesday, April 27, 1994, 8:00 a.m.

Flamingo Room, Conrad Hilton College Building, University of Houston, 4800 Calhoun

Houston

According to the complete agenda, the Board of Regents will meet to discuss and/or approve the following: executive session-information reports from employees.

Contact: Peggy Cervenka, 1600 Smith #3400, Houston, Texas 77002, (713) 754-7442.

Filed: April 20, 1994, 3:44 p.m.

TRD-9439528

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**Texas Workers' Compensation Insurance Fund**

Tuesday, April 26, 1994, 5:00 p.m.

Carmelos Italian Restaurant, 504 East Fifth Street

Austin

Revised Agenda

According to the revised agenda summary, the Board of Directors will take no formal action.

Contact: Beth Naylor, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3886.

Filed: April 19, 1994, 4:35 p.m.

TRD-9439430

Wednesday, April 27, 1994, 7:30 a.m.

The Four Seasons

Austin

According to the agenda summary, the Board of Directors will call to order; roll call; consideration of Board Committee structure and possible amendments to policies on governance and executive authority; and adjourn.

Contact: Beth Naylor, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3886.

Filed: April 19, 1994, 4:35 p.m.

TRD-9439434

Wednesday, April 27, 1994, 8:30 a.m.

Texas Workers' Compensation Insurance Fund, 100 Congress Avenue, Suite 600

Austin

According to the agenda summary, the Board of Directors will call to order; roll call; review and approval of the minutes of the March 30, 1994, board meeting; the

February 24, 1994, board retreat; and the March 30, 1994, board retreat; fund status report; financial report; consideration of agreement with National Council on Compensation Insurance for calculation of experience modifiers and funding of the agreement; consideration of agreement between Fund and Texas Workers' Compensation Commission (TWCC) for coordination of injury prevention services and funding of the agreement; status update on Fund/TWCC electronic data transfer; public participation; executive session; action items resulting from executive session deliberations; announcements; and adjourn.

Contact: Beth Naylor, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3886.

Filed: April 19, 1994, 4:35 p.m.

TRD-9439432

## Regional Meetings

### Meetings Filed April 19, 1994

The Coryell City Water Supply District Boards of Directors met at CCWSD Office, FM 185, Coryell, April 21, 1994, at 7:30 p.m. Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089.

The Coryell City Water Supply District (Emergency Meeting.) met at the CCWSD Office, FM 185, Coryell City, April 21, 1994, at 7:30 p.m. (Reason for emergency: Needed to go over proposals for computer monitoring.) Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089. TRD-9439389.

The Fisher County Appraisal District (Rescheduled From May 9, 1994.) Board of Directors will meet at the Fisher County Appraisal/Tax Office, Roby, May 10, 1994, at 6:00 p.m. Information may be obtained from Betty H. Mize, P.O. Box 515, Roby, Texas 79543, (915) 776-2733. TRD-9439426.

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, April 27, 1994, 9:00 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9439387.

The Parmer County Appraisal District Board of Directors will meet at 305 Third Street, Bovina, Texas 79009, May 12, 1994, at 7:00 p.m. Information may be obtained from Ronald E. Procter, Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9439422.

The Region V Education Service Center Board of Directors will meet in the ESC

Boardroom, Delaware Street, Beaumont, April 27, 1994, at 1:00 p.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703, (409) 835-5212. TRD-9439420.

The San Antonio-Bexar County Metropolitan Planning Organization Transportation Steering Committee met at the International Conference Center of the Convention Center Complex, San Antonio, April 25, 1994, at 1:30 p.m. Information may be obtained from Charlotte A. Roszell, 434 South Main, Suite #205, San Antonio, Texas 78204, (210) 227-8661. TRD-9439411.

The Tarrant Appraisal District Tarrant Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, April 27, 1994, at 2:00 p.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9439421.

The Texas Political Subdivisions (Emergency Revised Agenda.) Board of Trustees met at the Doubletree Hotel, 1590 LBJ Freeway, Dallas, April 21-22, 1994, at 6:30 p.m. and 8:00 a.m. respectively. (Reason for emergency: Oversight of agenda item: executive session discussion of servicing of contractor necessary to discuss ramifications of contract.) Information may be obtained from James R. Gresham, 14135 Midway Road, Suite 300, Dallas, Texas 75244, (214) 392-9430. TRD-9439388.

The West Central Texas Council of Governments Executive Committee will meet at 1025 EN Tenth, Abilene, April 27, 1994, at 12:45 p.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9439391.

### Meetings Filed April 20, 1994

The Big Country Quality Work Force Planning Cooperative will meet at the West Central Texas Council of Governments, 1025 East North Tenth Street, Abilene, May 10, 1994, at 10:00 a.m. Information may be obtained from Charles Dunnam, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9439504.

The Brazos Valley Quality Work Force Planning Committee will meet at 715 University Drive, College Station, April 26, 1994, at 11:30 a.m. Information may be obtained from Patty Groff, 301 Post Office Street, Bryan, Texas 77801, (409) 823-4988. TRD-9439491.

The Central Counties Center for MHMR Services Board of Trustees will meet at 304 South 22nd Street, Temple, April 28, 1994, at 7:45 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301. TRD-9439493.

The Deep East Texas Council of Governments Solid Waste Task Force will meet at the Center Country Club, Highway 96 North, Center, April 28, 1994, 10:00 a.m. Information may be obtained from Katie Bayliss, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9439499.

The Deep East Texas Council of Governments Grants Application Review Committee will meet at the Center Country Club, Highway 96 North, Center, April 28, 1994, at 11:00 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9439498.

The Education Service Center, Region 20 Board of Directors will meet at 1314 Hines Avenue, San Antonio, May 4, 1994, at 2:00 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208-1899. TRD-9439544.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis, Sherman, April 27, 1994, at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9439496.

The Grayson Appraisal District Appraisal Review Board will meet at 205 North Travis, Sherman, April 28, 1994, at 8:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9439495.

The Hays County Appraisal District Appraisal Review Board will meet at 21001 North IH-35, Kyle, April 26, 1994, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9439510.

The Leon County Central Appraisal District Board of Directors met at the corner of Highway 7 and Highway 75, Leon County Central Appraisal District Office, Gresham Building, Centerville, April 25, 1994, at 7:00 p.m. Information may be obtained from Donald G. Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9439536.

The Lower Rio Grande Valley Development Council Hidalgo County Metropolitan Planning Organization will meet at the TxDOT District Office, 600 West Expressway US 83, Pharr, April 28, 1994, at 7:00 p.m. Information may be obtained from Edward L. Molitor, 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9439546.

The Middle Rio Grande Development Council Board of Directors will meet at the Holiday Inn, Sage Room, 920 East Main, Uvalde, April 27, 1994, at 1:00 p.m. Information may be obtained from Paul Ed-



wards, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9439473.

The Middle Rio Grande Development Council Texas Review and Comment System will meet at the Holiday Inn, Sage Room, 920 East Main, Uvalde, April 27, 1994, at 4:00 p.m. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9439472.

The North Central Texas Council of Governments Executive Board will meet at 616 Six Flags Drive, Centerpoint Two, Second Floor, Arlington, April 28, 1994, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9439547.

The Texas Panhandle Mental Health Authority Board of Trustees will meet at 7201 I-40 West, Second Floor, Amarillo, April 28, 1994, at 10:00 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116-3250, (806) 353-3699. TRD-9439545.

The Trinity River Authority of Texas Board of Directors will meet at 5300 South Collins, Arlington, April 27, 1994, at 10:00

a.m. Information may be obtained from James L. Murphy, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343. TRD-9439543.

The Wood County Appraisal District Board of Directors will meet in the Conference Room, 217 North Main, Quitman, April 27, 1994, at 9:00 a.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9439534.

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**Meetings Filed April 21, 1994**

The Alamo Area Council of Governments Planning and Program Development Committee will meet at 118 Broadway, Suite 420, San Antonio, April 28, 1994, at 10:00 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78705, (512) 225-5201. TRD-9439568.

The Alamo Area Council of Governments Area Judges will meet at 118 Broadway, Suite 420, San Antonio, April 26, 1994, at 11:00 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78705, (512) 225-5201. TRD-9439569.

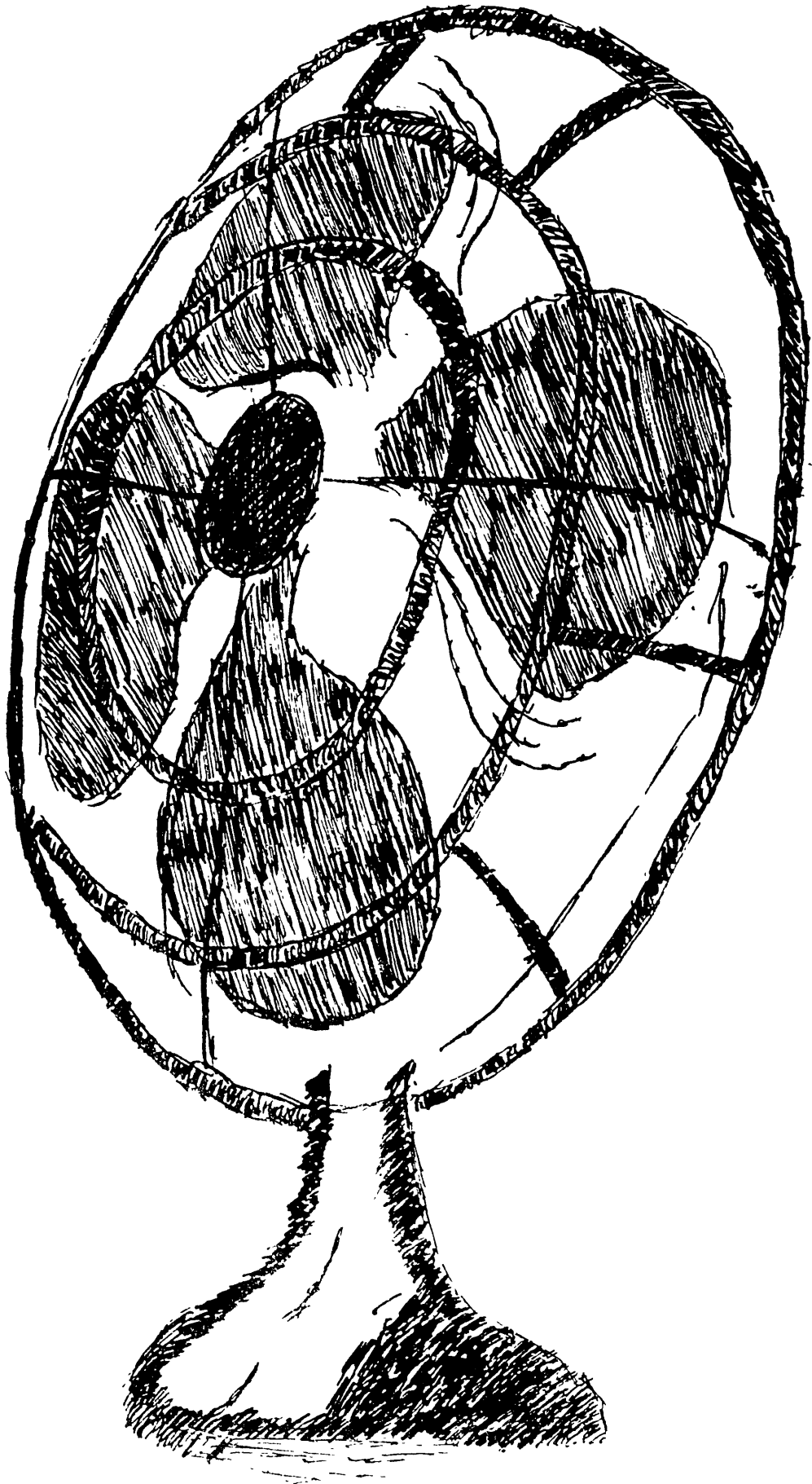
The Coastal Bend Council of Governments Membership will meet at the CBCOG Office, Conference Room, 2910 Leopard Street, Corpus Christi, April 29, 1994, at 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9439556.

The Permian Basin Regular Planning Commission Private Industry Council will meet at the UTPB-CBED, FM 1788 and 191, Midland, April 27, 1994, at 3:30 p.m. Information may be obtained from Carole Burrow, P.O. Box 60660, Midland, Texas 79711-0660, (915) 563-1061. TRD-9439554.

The Region VII Education Service Center Board of Directors will meet at the Best Western Inn of Henderson, Highway 259 South, Henderson, April 28, 1994, at Noon. Information may be obtained from Eddie J. Little, 818 East Main Street, Kilgore, Texas 75662, (903) 984-3071. TRD-9439573.

The Southwest Milam Water Supply Corporation Annual Membership and Board met at the Rockdale Center, Rockdale, April 25, 1994, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, (512) 446-2604. TRD-9439549.

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# IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1.04 and 1.05, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1.04 and 1.05, Vernon's Texas Civil Statutes).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer <sup>(1)</sup>/Agricultural/ Commercial <sup>(2)</sup> thru \$250,000</u>	<u>Commercial<sup>(2)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	04/25/94-05/01/94	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	05/01/94-05/31/94	10.00%	10.00%

<sup>(1)</sup>Credit for personal, family or household use. <sup>(2)</sup>Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439494      Al Endsley  
Commissioner  
Office of Consumer Credit Commissioner

Filed: April 20, 1994

## General Land Office Request for Proposals

Pursuant to Texas Natural Resources Code, §40.107, the Texas Land Commissioner was directed to develop, in conjunction with Texas Natural Resource Conservation Commission, and Texas Parks and Wildlife Department, an inventory of coastal natural resources. The Texas Coastal Natural Resources Inventory (NRI) Program will identify and catalog the physical locations, the seasonal variations in location, and the current condition of natural resources; provide for data collection related to coastal processes; and identify the recreational and commercial use areas that are most likely to suffer from an unauthorized discharge of oil. The NRI must be completed by September 1, 1995.

The Texas Natural Resource Inventory Program (NRI) Committee hereby requests proposals from qualified entities, including federal, state, and local government agencies, state academic institutions, non-profits, and environmental consulting businesses. Proposals shall include, but are not limited to, inventory of the following priority

areas: the Galveston Bay system and the Houston Ship Channel; the Corpus Christi Bay system; the lower Laguna Madre, Sabine Lake; and the federal and state wildlife refuge areas.

In determining which projects to fund, emphasis will be placed on projects that directly populate the following six major environmental categories and their data layers: chemical; physical; biological; commercial uses; public uses and natural resource economics; and jurisdictional boundaries and special areas. Priority will be given to proposals providing baseline sampling and analysis of current levels of constituent substances in sediment and mollusks in the priority areas. Preference will be given to those projects to be completed by June 30, 1995; compatible with the NRI geographical information system; and that can be used for potential litigation.

Up to \$3,500,000 is available to fund projects selected under this Request for Proposals. The NRI Committee may choose not to fund some of the proposals received in response to this Request for Proposals.

Request for Proposal information packages may be obtained by calling Shonte Manor at (512) 475-1575 or by writing to the address provided below. All proposals must be received by close of business at 5:00 p.m. Central Standard Time on Monday, May 16, 1994, at the following address: Oil Spill Prevention and Response Division, Attention: Natural Resources Inventory Program, Texas General Land Office, 1700 North Congress Avenue, Suite 735, Austin, Texas 78701-1495. An application is considered filed when actually received by the NRI Program Director prior to the May 16th deadline.

Following evaluation of the proposals, a complete list of successful applicants will be published in the *Texas Register*.

Questions should be addressed to the Texas General Land Office, Stephen F. Austin Building, Suite 735, Austin, Texas 78701-1495, or by telephone to (512) 463-6200 between the hours of 8:00 a.m. and 4:00 p.m. Central Standard Time. Questions may also be sent via facsimile between the hours of 8:00 a.m. and 5:00 p.m. Central Standard Time on or before May 16, 1994.

Any contract resulting from this Request for Proposal shall contain provisions prescribed by the General Land Office prohibiting discrimination in employment.

For a Copy of the Request for Proposal Package: Jose C. R. Alfonsin, Texas Coastal Natural Resources Inventory Program, Oil Spill Prevention and Response Division, Texas General Land Office, 1700 North Congress Avenue, Suite 735, Austin, Texas 78701-1495, (512) 475-1575.

Issued in Austin, Texas, on April 19, 1994.

TRD-9439383 Gary Mauro  
Commissioner  
Texas General Land Office

Filed: April 19, 1994

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**Texas Department of Health**  
**Extension of Deadline for "The**  
**Community-Oriented Primary Care**  
**Grant Application"**

The Texas Department of Health has extended the deadline to May 13 (postmarked), for "The Community-Oriented Primary Care Grant Application for Fiscal Year 1995." This amends the initial publication in the *Texas Register* on February 15, 1994. For further information contact Demetria Montgomery, M.D., Chief, Bureau of Community-Oriented Primary Care or John Dombroski, Director of Community-Oriented Primary Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7771.

Issued in Austin, Texas, on April 19, 1994.

TRD-9439385 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed April 19, 1994

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**Texas Department of Human Services**  
**Notice of Public Hearing**

*(Editor's Note: Due to an error on the part of the Texas Register, the following Notice of Public Hearing was inadvertently omitted from the April 19, 1994, issue of the Texas Register)*

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursement rates for the Primary Home Care (PHC) program. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on May 5, 1994, at 9:00 a.m. in Board Room (125E) of the John H. Winters Building (701 West 51st Street,

Austin, Texas, First Floor, East Tower). If you are unable to attend the hearing, but wish to comment on the rates, written comments will be accepted if received by 5:00 p.m. of the day of the hearing. Please address written comments to the attention of Sherri Williams. Written comments may be mailed to the address in this notice, delivered to the receptionist in the lobby of the John H. Winters Center or faxed to (512) 450-3014. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on, or after April 20, 1994, by contacting Sherri Williams, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4817.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sherri Williams (512) 450-4817 by April 27, 1994, so that appropriate arrangements can be made.

Issued in Austin, Texas, on April 11, 1994.

TRD-9439412 Nancy Murphy  
Section Manager, Policy and Document  
Support  
Texas Department of Human Services

Filed: April 11, 1994

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**Texas Department of Insurance**  
**Notice of Public Hearing**

The Commissioner of Insurance will hold a public hearing under Docket Number 2095, on May 16, 1994, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider comments on the proposed repeal of 28 TAC §§5.4601-5.4603 relating to inspections for windstorm and hail insurance and the proposed adoption of a new §5.4600 to regulate the approval and appointment of inspectors; windstorm inspection manual standards and operating procedures; windstorm inspection forms; the duties and responsibilities of the Commissioner of Insurance, the Department, and the TCPIA relating to these inspections; and complaint handling procedures.

The proposed repeal was published in the February 25, 1994 issue of the *Texas Register* (19 TexReg 1365). The proposed new section was published in the February 25, 1994, issue of the *Texas Register* (19 TexReg 1360). The hearing is held pursuant to the Insurance Code, Article 21.49, §5A which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Catastrophe Property Insurance Pool Act), including but not limited to, maximum rates, competitive rates, and policy forms. The purpose of the hearing is to afford all interested persons an opportunity to appear and testify orally or in writing either in support of or in opposition to the proposed repeals.

The statutory authority for the repeal and proposed new section is cited in the February 25, 1994, issue of the *Texas Register* (19 TexReg 1360)

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

Issued in Austin, Texas, on April 20, 1994.

TRD-9439503 D. J. Powers  
Legal Counsel to the Commissioner  
Texas Department of Insurance



The Commissioner of Insurance will hold a public hearing under Docket Number 2096, on May 25 and 26, 1994, at 9:00 a.m. on both days in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, for the purpose of soliciting comments and recommendations for how to reduce insurance losses caused by wind and hail damage to residential roofs and water and freeze damage to residential property. All interested parties, including members of the general public, are invited to attend and provide comments and recommendations.

The hearing is the first of two public forums to be held by the Department in May and June on how to reduce certain residential property insurance losses. Because the amount of losses paid by insurers is a factor in determining rates, a reduction in such losses will ultimately reduce residential property insurance rates in Texas. The second hearing will be held on June 29, 1994, and will address how to reduce residential losses from crime.

The May 25-26 agenda includes introductory remarks by the Commissioner; a staff report on loss statistics by cause of loss; and an overview of the Department's new Safety Program, including discussion of the Department's residential property insurance loss mitigation activities. The forum will then be opened for comments and recommendations from the Office of Public Insurance Counsel, consumer groups, individual consumers, and the Department's Consumer Protection staff

Consumer participants will be followed by representatives from insurance companies, academia, manufacturers, building trades organizations, government officials, agents, adjusters, and engineers who will speak first to recommendations for mitigation of wind and hail losses to residential roofs and then to recommendations for mitigation of water and freeze losses to residential property. The two-day hearing will conclude with a question/answer and summary session by the Commissioner.

This hearing is held pursuant to the Texas Insurance Code, Articles 104C, 5.25, 5.33, 5.96, and 5.98. Article 104C requires the Commissioner to provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the jurisdiction of the Commissioner. Article 5.25 (a) authorizes the Department to collect data to aid in determining methods of reducing homeowners' insurance rates. Article 5.33 authorizes the Department to compel any company to give credits for any hazards a policy holder may reduce or remove. Article 5.96 authorizes the Department to adopt uniform manual rules, rating plans, and classification plans for fire and allied lines insurance. Article 5.98 authorizes the Department to adopt rules to accomplish the purposes of the Insurance Code, Chapter 5, Subchapter C. No rules will be promulgated in this hearing, but the information obtained may be used for the promulgation of rules in the future.

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

Issued in Austin, Texas, on April 20, 1994.

TRD-9439502  
D J Powers  
Legal Counsel to the Commissioner  
Texas Department of Insurance

Filed: April 20, 1994

The Commissioner of Insurance will hold a public hearing under Docket Number 2097, on June 29, 1994, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, for the purpose of soliciting comments and recommendations for how to reduce residential property insurance losses due to crime. All interested parties, including members of the general public, are invited to attend and provide comments and recommendations.

The hearing is the second of two public forums held by the Department in May and June on how to reduce certain residential property insurance losses. Because the amount of losses paid by insurers is a factor in determining rates, a reduction in such losses will ultimately reduce residential property insurance rates in Texas. The first hearing will be held on May 25-26, 1994, and address how to reduce losses caused by wind and hail damage to residential roofs and water and freeze damage to residential property.

The June 29 agenda includes introductory remarks by the Commissioner, a staff report on loss statistics; and an overview of the Department's new Safety Program. The forum will then be opened for comments and recommendations from the Office of Public Insurance Counsel, consumer groups, individual consumers, and the Department's Consumer Protection staff.

Consumer participants will be followed by representatives from insurance companies, law enforcement, and agents and adjusters who will discuss recommendations for mitigation of residential crime losses. The hearing will conclude with a question/answer and summary session by the Commissioner.

This hearing is held pursuant to the Texas Insurance Code, Articles 104C, 5.25, 5.33, 5.33A, 5.96, and 5.98. Article 104C requires the Commissioner to provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the jurisdiction of the Commissioner. Article 5.25 (a) authorizes the Department to collect data to aid in determining methods of reducing homeowners' insurance rates. Article 5.33 authorizes the Department to compel any company to give credits for any hazards a policy holder may reduce or remove. Article 5.33A §6(e) authorizes the Department to adopt rules set specifications to protect a person's property and mandate a premium reduction therefore. Article 5.96 authorizes the Department to adopt uniform manual rules, rating plans, and classification plans for fire and allied lines insurance. Article 5.98 authorizes the Department to adopt rules to accomplish the purposes of the Insurance Code, Chapter 5, Subchapter C. No rules will be promulgated in this hearing, but the information obtained may be used for the promulgation of rules in the future.

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

Issued in Austin, Texas, on April 20, 1994

TRD-9439501  
D J Powers  
Legal Counsel to the Commissioner  
Texas Department of Insurance

Filed: April 20, 1994



## Texas State Library and Archives Commission

### Quarterly report of consultant contract reports received by the Texas State Library

By law (V.T.C.A., Government Code 2254, Subchapter B), state agencies and regional councils of governments are required to file with the Office of the Secretary of State invitations to bid and details on bidding on private consultant contracts expected to exceed \$10,000. Within 10 days of the award of the contract, the agency must file with the Secretary of State a description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, Article 6252-11c, directs the contracting agencies to file copies of all documents, films, recordings, or reports developed by the private consultants with the Texas State Library. The Library is required to compile a list of the materials received and submit the list quarterly for publication in the *Texas Register*.

Below is a list of materials received for the first quarter of 1994. These materials may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin, Texas.

Agency: Department of Health

Consultant: Best Start, Inc.

Title: WIC at the Crossroad: the Texas Marketing Study 2  
v

Agency: Education Agency

Consultant: Deloitte and Touche

Title: Texas Education Agency Financial Accountability  
System Tier I Needs Assessment Final Report

Agency: Education Agency

Consultant: Gallaudet University, Center for Assessment  
and Demographic Studies

Title: 1992-1993 Final report Texas Survey of Hearing  
Impaired Children & Youth

Issued in Austin, Texas, on April 18, 1994

TRD-9439336      Raymond Hill  
Assistant Director  
Texas State Library and Archives  
Commission

Filed April 16, 1994

## Texas Department of Mental Health and Mental Retardation

### Notice of Opportunity for Public Testimony to the Authority/Provider Task Force

The Authority/Provider Task Force, an advisory group to the Board of the Texas Department of Mental Health and Mental Retardation, will meet on Tuesday, May 10, at 3:30 p.m. in the TXMHMR Central Office Auditorium, 909 West 45th Street, Austin, to solicit public testimony concerning issues related to the role of state and local mental health and mental retardation authorities. This task force has been formed to explore the issues relating to

organizing, financing, and delivering mental health and mental retardation services and to make recommendations to the Commissioner and the Board about changes needed to ensure that TXMHMR can implement the mhmr authority role in a way which supports our vision for the future. Testimony is invited to address the following issues: definition of the functions and responsibilities of TDMHMR as a state mental health and mental retardation authority; the distinction between TDMHMR being an authority and a provider of services and how we reconcile, implement, and measure the accountability of these two functions; the delegation of this authority to the regional (or local) level; the relationship we should have with the private sector, and possible roles that the state mental health and mental retardation authority should have under various scenarios of health care reform. The Task Force will also accept written testimony in lieu of or in addition to verbal testimony. Individuals requiring an interpreter for the hearing impaired should contact Charlotte Quiter at (512) 206-4698 at least 72 hours prior to the hearing.

Issued in Austin, Texas, on April 20, 1994

TRD-9439339      Anne K. Utley  
Chair  
Texas Board of Mental Health and Mental  
Retardation

Filed April 18, 1994

## Texas Natural Resource Conservation Commission

### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AO's) pursuant to the Texas Clean Air Act, §382.096, Health and Safety Code, Chapter 382. The Act, §382.096 requires that the TNRCC may not approve these AO's unless the public has been provided an opportunity to submit written comments. §382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is May 25, 1994. §382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate or inconsistent with the requirements of the Texas Clean Air Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AO's is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-0600 and at the applicable Regional Office listed as follows. Written comments about these AO's should be sent to the Staff Attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087, and must be received by 5:00 p.m. on May 25, 1994. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-0606 or (512) 239-0626. The TNRCC Staff Attorneys are available to discuss the AO's and/or the

comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AO's should be submitted to the TNRCC in writing

(1) COMPANY Cannon Enterprises, Inc., LOCATION Houston, Harris County, TYPE OF FACILITY: demolition project, RULE VIOLATED TNRCC Rule 30 TAC §101.20, which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants (asbestos) Failure to provide written notice of intention to demolish, PENALTY: \$0.00, STAFF ATTORNEY: Peter T Gregg, (512) 239-0450, REGIONAL OFFICE 5555 West Loop, Suite 300 Bellaire, Texas 77401, (713) 666-4964

(2) COMPANY Celina Ready-Mix, Inc., LOCATION Celina, Collin County, TYPE OF FACILITY: concrete batch plant, RULE VIOLATED TNRCC Rule 30 TAC §116.115, failing to operate the water ring at the batch drop point as represented in the application for TNRCC Special Exemption X-15367, PENALTY \$500.00, STAFF ATTORNEY Janis Boyd Hudson, (512) 239-0466, REGIONAL OFFICE 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531

(3) COMPANY City of Center, LOCATION southeast section of Center on US Highway 87, Shelby County, TYPE OF FACILITY solid waste incinerator, RULE VIOLATED TNRCC Rule 30 TAC §112.11, exceeding the permitted PM-10 emission limit in solid waste Permit Number 1689-B, PENALTY \$0.00, STAFF ATTORNEY Peter T Gregg, (512) 239-0450, REGIONAL OFFICE 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, (409) 898-3838

(4) COMPANY D/F-W Ready-Mix Environmental Consultants, Inc., LOCATION Grapevine, Tarrant County, TYPE OF FACILITY portable rock crusher plant, RULE VIOLATED TNRCC Rule 30 TAC §116.110(a), unauthorized construction and operation, PENALTY \$0.00, STAFF ATTORNEY Janis Boyd Hudson, (512) 239-0466, REGIONAL OFFICE 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531

(5) COMPANY Exxon Chemical Company, LOCATION Houston, Harris County, TYPE OF FACILITY demolition project, RULE VIOLATED TNRCC Rule 30 TAC §101.20(2), 40 Code of Federal Regulation §61.145(b), failure to provide proper notification of asbestos removal from a demolition activity, 40 CFR §61.145(c)(2), failure to adequately wet all Regulated Asbestos-Containing Material (RACM) exposed during cutting or disjoining operations, 40 CFR §61.145(c)(4), failure to strip or contain the facility components covered with, coated with, or containing RACM in leak-tight wrapping after they have been removed from the facility, PENALTY \$36,500, STAFF ATTORNEY Peter T Gregg, (512) 239-0450, REGIONAL OFFICE 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964

(6) COMPANY Exxon Company, USA, LOCATION one mile north of Bridge City on FM 1442, Orange County, TYPE OF FACILITY cryogenic natural gas plant, RULE VIOLATED TNRCC Rule 30 TAC §101.20(1), failure to conduct required VOC fugitive monitoring, on 400 valves in VOC service, for the fourth quarter of 1992, TNRCC Rule 30 TAC §116.115, failing to verify catalyst performance annually by monitoring the inlet and outlet nitrogen oxide concentrations at each catalytic converter and submit these monitoring results to the TNRCC within 30 days following completion of the

tests, as required by Special Provision 3(A) of TNRCC Special Exemption Number X-15374, PENALTY: \$7,000, STAFF ATTORNEY: Walter Ehresman, (512) 239-0573, REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

(7) COMPANY Gulf Power Systems, Inc., LOCATION: Houston, Harris County, TYPE OF FACILITY: painting and sandblasting plant, RULE VIOLATED: TNRCC Rule 30 TAC §116.110(a), unauthorized construction and operation, PENALTY: \$0.00, STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450, REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

(8) COMPANY: Kuntry Kar Kare, LOCATION: San Leon, Galveston County, TYPE OF FACILITY: used motor vehicle sales lot, RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1), missing or inoperable emission control systems or devices, PENALTY: \$1,500, STAFF ATTORNEY: Randall Terrell, (512) 239-0577, REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964

(9) COMPANY: NASR Corporation, LOCATION: Houston, Harris County, TYPE OF FACILITY: demolition project, RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants (asbestos) Failure to submit the required ten day notice prior to demolition, PENALTY: \$0.00, STAFF ATTORNEY: Randall Terrell, (512) 239-0577, REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964

(10) COMPANY: Pollution Control Management Corporation, d/b/a B & B Demolition and Dismantling, LOCATION: Houston, Harris County, TYPE OF FACILITY: demolition operation, RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants (asbestos) No proper survey, and failure to remove all asbestos prior to demolition, PENALTY \$5,000, STAFF ATTORNEY Walter Ehresman, (512) 239-0573, REGIONAL OFFICE 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964

(11) COMPANY Rohm and Haas Texas, Incorporated, LOCATION Deer Park, Harris County, TYPE OF FACILITY an organic chemical manufacturing plant, RULE VIOLATED TNRCC Rule 30 TAC §101.20(1), which requires compliance with Federal New Source Performance Standards and TNRCC Rule 30 TAC §116.115, failing to conduct performance tests on flares or have approved EPA waiver by deadline, and failing to calibrate portable monitors as required, TNRCC Rule 30 TAC §115.332(4), operating four valves in the acetylene unit without the required second valve, blind flange, plug or cap, TNRCC Rule 30 TAC §115.334(1)(B), failing to monitor compressor seals, pipeline valves and pump seals as required, TNRCC Rule 30 TAC §115.335(1), failing to calibrate portable monitoring instruments in the acetylene unit as required; and TNRCC Rule 30 TAC §116.115, violating Special Provision Number 10B of TNRCC Permit Number R-8838 by not having available, for second quarter of 1991, cylinder gas audit reports for the VOC and 2 CEMs at the HT incinerator, PENALTY: \$19,650, STAFF ATTORNEY: Walter Ehresman, (512) 239-0573, REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964

(12) COMPANY: Sparhawk, Inc., LOCATION: Houston, Harris County, TYPE OF FACILITY: demolition service,

RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2), failing to comply with Federal National Emissions Standards for Hazardous Air Pollutants (asbestos) due to failure to inspect for presence of asbestos and proper notification of demolition activity, PENALTY: \$0.00, STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466, REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

(13) COMPANY: Starcrete Products, LOCATION: New Braunfels, Comal County, TYPE OF FACILITY: cement sacking plant, RULE VIOLATED: TNRCC Rule 30 TAC §116.116, failing to have baghouses on one of the cement silos and the holding hopper of the bagger as represented on their application for Exemption Number X-16202, PENALTY: \$2,500, STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466, REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232.

(14) COMPANY: Tarrant Interiors, Inc., LOCATION: Mansfield, Tarrant County, TYPE OF FACILITY: wood and plastic products manufacturing plant, RULE VIOLATED: TNRCC Rule 30 TAC §116.110, unauthorized construction and operation of a sawdust collection system and spray coating stations, PENALTY: \$0.00, STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466, REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531

(15) COMPANY: Tejas Toyota, LOCATION: Humble, Harris County, TYPE OF FACILITY: new and used motor vehicle sales lot, RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and §114.1(c)(2), missing or inoperable emission control systems or devices with which the motor vehicles were originally equipped, PENALTY: \$500, STAFF ATTORNEY: Randall Terrell, (512) 239-0577, REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964

(16) COMPANY: Tola Asphalt Pavers, Incorporated, LOCATION: Texarkana, Bowie County (at the time of these violations), TYPE OF FACILITY: hot-mix asphalt plant, screening plant, three rock crushers, RULE VIOLATED: TNRCC Rule 30 TAC §116.115, failing to have operable water sprays installed at all material transfer points, inlet and exit of all crushers and shaker screens as required under Special Provision Number 2 of TNRCC Permit Number R-4434, violated Special Provision Number 6 of TNRCC Permit Number R-5924 by having excessive dust emissions from the pugmill hopper and the baghouse stack, violated Special Provision Number 1 of TNRCC Permit R-4434 by failing to provide a method to determine the amount of material crushed, in both tons/hour and tons/year increments, violated Special Provision Number 7 of TNRCC Permit Number R-4434 by failing to maintain and operate a full-time watering truck on-site for watering of road surfaces, violated Special Provision Numbers 15 and 19 of TNRCC Permit Numbers R-4434 and R-5924 respectively by failing to provide documentation within 60 days of the start of operations—demonstrating compliance with all provisions of these two permits, violated Special Provision Numbers 16 and 28 of TNRCC Permit Numbers R-4434 and R-5924 respectively by failing to meet certain recordkeeping requirements; violated Special Provision Number 10 of TNRCC Permit Number R-5924 by failing to control dust emissions from on-site roads; and violated Special Provision Number 30 of TNRCC Permit Number R-5924 by failing to keep a copy of the permit at the plant site, PENALTY: \$10,500, STAFF ATTORNEY: Walter Ehresman, (512) 239-0573, REGIONAL OFFICE:

1304 South Vine Avenue, Tyler, Texas 75701, (903) 595-2639.

(17) COMPANY: Trinity Medical Center, LOCATION: Carrollton, Dallas County, TYPE OF FACILITY: private hospital, RULE VIOLATED: TNRCC Rule 30 TAC §111.123(1)(D), failing to comply with limits of incinerator operating hours; TNRCC Rule 30 TAC §116.115, failing to comply with the no visible emission requirement of Standard Exemption Number 90, PENALTY: \$2,400, STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450, REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Arlington, Texas 76116, (817) 732-5531.

(18) COMPANY: West Briar Interests Partnership, LOCATION: Houston, Harris County, TYPE OF FACILITY: demolition project, RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants (asbestos) Failure to submit the required ten day notice prior to demolition, PENALTY: \$0.00, STAFF ATTORNEY: Randall Terrell, (512) 239-0577, REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Issued in Austin, Texas, on April 19, 1994.

TRD-9439477 Mary Ruth Holder  
Director, Legal Services Division  
Texas Natural Resource Conservation  
Commission

Filed April 20, 1994

## Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017 (Vernon's 1992), Texas Government Code, Subchapter B, Chapter 2001 (Vernon's 1993); 30 Texas Administrative Code §103.11(4), and 40 Code of Federal Regulations (CFR) §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony concerning revisions to Chapter 101 and the SIP.

The TNRCC proposes the repeal of §101.28, concerning Asbestos Notification Fees. The TNRCC collects fees from owner/operators for asbestos demolition/renovation work done under the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation (40 CFR Part 61, Subpart M). The Texas Department of Health plans to assume all NESHAP Subpart M responsibilities that relate to asbestos demolition/renovation effective September 1, 1994, and will adopt a fee rule of its own to fund the continuing asbestos program. Since the TNRCC will no longer have responsibility for asbestos demolition/renovation oversight after that date, §101.28 is proposed for repeal, to be effective August 31, 1994.

A public hearing on the proposal will be held May 18, 1994, at 10:00 a.m. in Room 201S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TNRCC staff member will discuss the proposal 30 minutes prior to the hearing and will be available to answer questions informally.



Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin through May 27, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on May 27, 1994, will be considered by the Commission prior to any final action on the proposal. Copies of the revision are available at the central office of the TNRCC located at 12118 North I-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. Please mail written comments to the Regulation Development Section, Air Quality Planning, P.O. Box 13087, Austin, Texas 78711-3087. For further information, contact Al Langley at (512) 239-1549.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible issued in Austin, Texas, on March 25, 1994.

TRD-9439476      Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: April 20, 1994

◆      ◆      ◆  
**Public Utility Commission of Texas**  
**Notices of Intent to File Pursuant to**  
**Public Utility Commission Substantive**  
**Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific contract for GTECH Corporation

**Tariff Title and Number.** Application of GTE Southwest Incorporated for Approval of a Customer-Specific Contract for GTECH Corporation Pursuant to Public Utility Commission Substantive Rule 23.27 Tariff Control Number 12927.

**The Application.** GTE Southwest Incorporated is requesting approval of a customer-specific contract to provide customized services to GTECH Corporation which will utilize these services to provide the Texas Lottery. The geographic service market for these customized services comprises GTE's entire certificated service area in Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on April 18, 1994

TRD-9439418      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 19, 1994

◆      ◆      ◆  
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule

23.27 for approval of a customer-specific contract for Billing and Collection Services with Ameritel Communications, Inc.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for Approval of a Customer-Specific Contract for Billing and Collections Services with Ameritel Communications, Inc. pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 12929.

**The Application.** Southwestern Bell Telephone Company is requesting approval of a customer-specific contract for billing and collections services with Ameritel Communications, Inc. The geographic service market for this specific service is anywhere within the state of Texas where Ameritel Communications, Inc. provides services to Southwestern Bell Telephone Company end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on April 18, 1994

TRD-9439419      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 19, 1994

◆      ◆      ◆  
**Notice of Intent to File Pursuant to**  
**Public Utility Commission Substantive**  
**Rule 23.28**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.28 for approval of promotional rates for Business Line 800 service.

**Tariff Title and Number.** Application of GTE Southwest Incorporated for Approval of Promotional Rates for Business Line 800 Service Pursuant to Public Utility Commission Substantive Rule 23.28 Tariff Control Number 12932

**The Application.** GTE Southwest Incorporated is requesting approval of promotional rates for its Business Line 800 service. The geographic service market for this specific service is anywhere within the state of Texas where GTE Southwest Incorporated provides Business Line 800 service.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on April 18, 1994.

TRD-9439417      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 19, 1994

