

Texas Register

Volume 18, Number 54, July 16, 1993

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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 Sections - sections adopted by state agencies on an emergency basis.

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date.

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

Open Meetings - notices of open meetings.

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

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes 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 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 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
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 22, April 16, July 13, and October 12, 1993). 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
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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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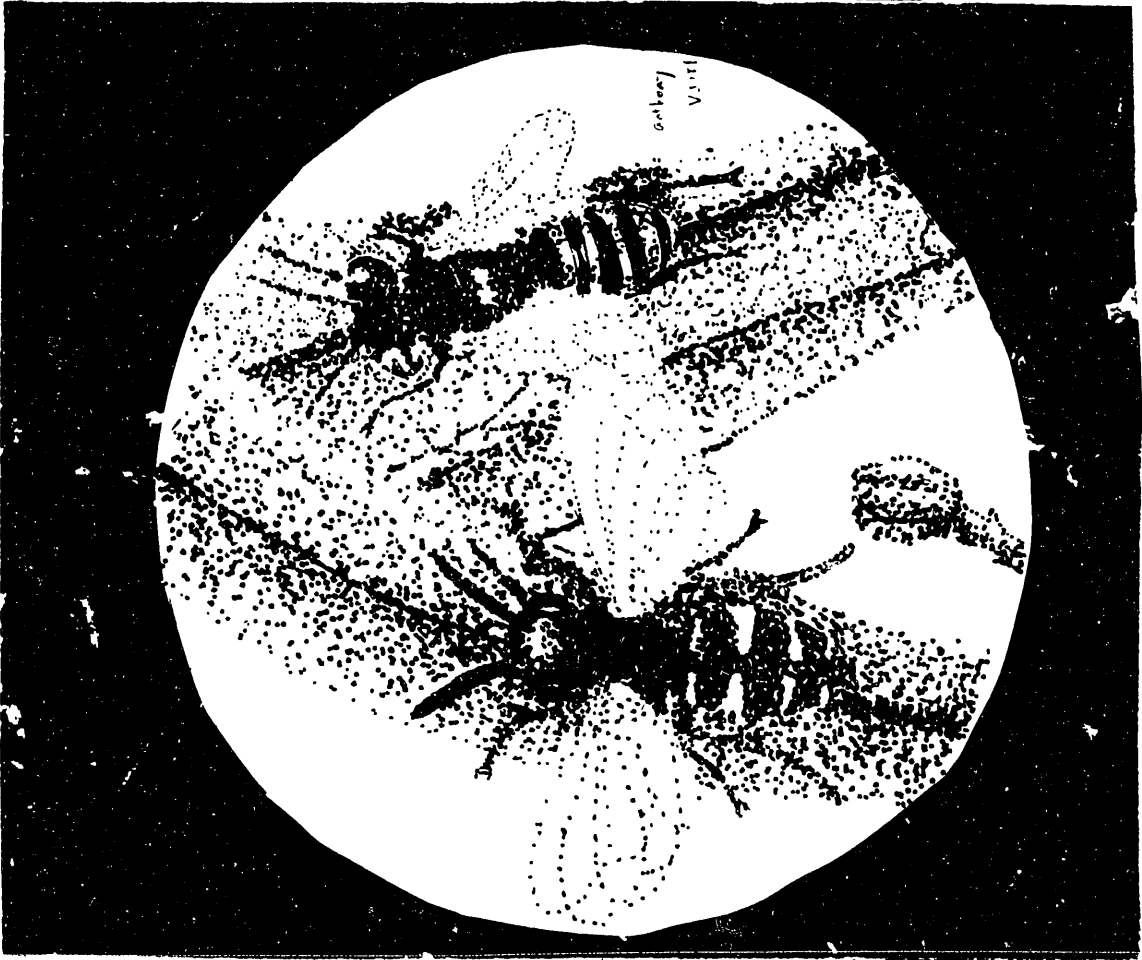
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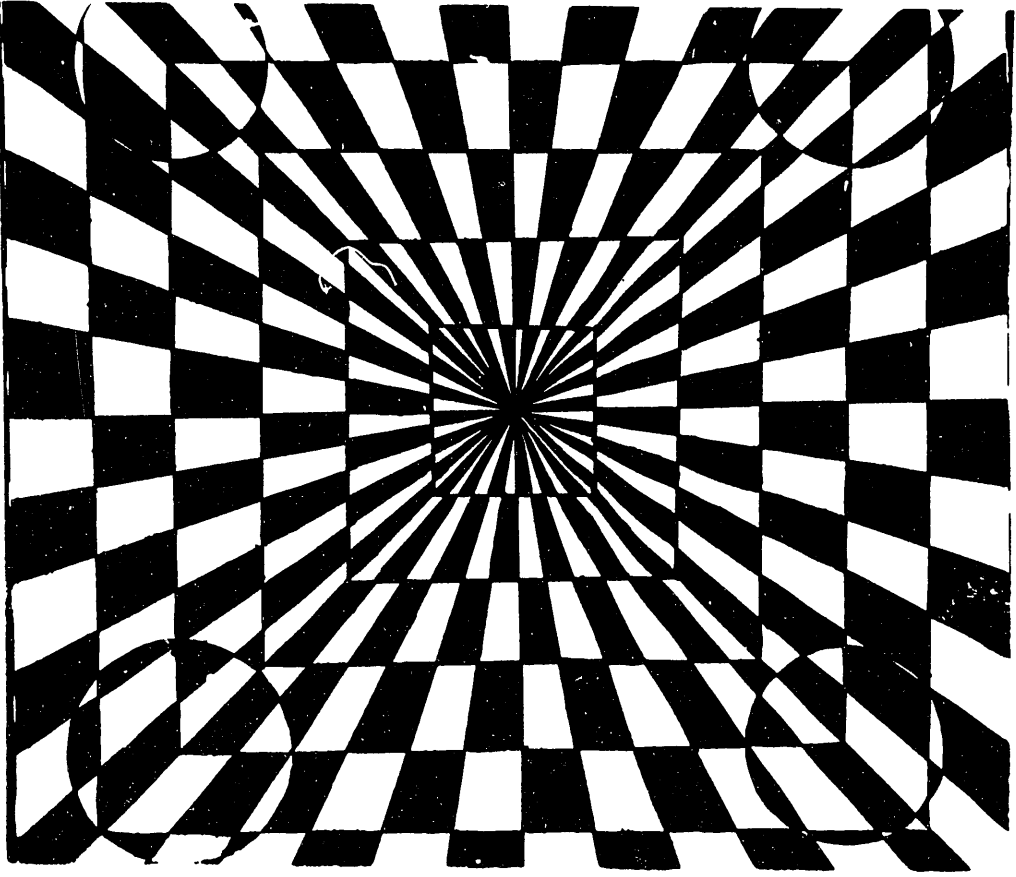
37 TAC §3.62 4637



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Grade: 7

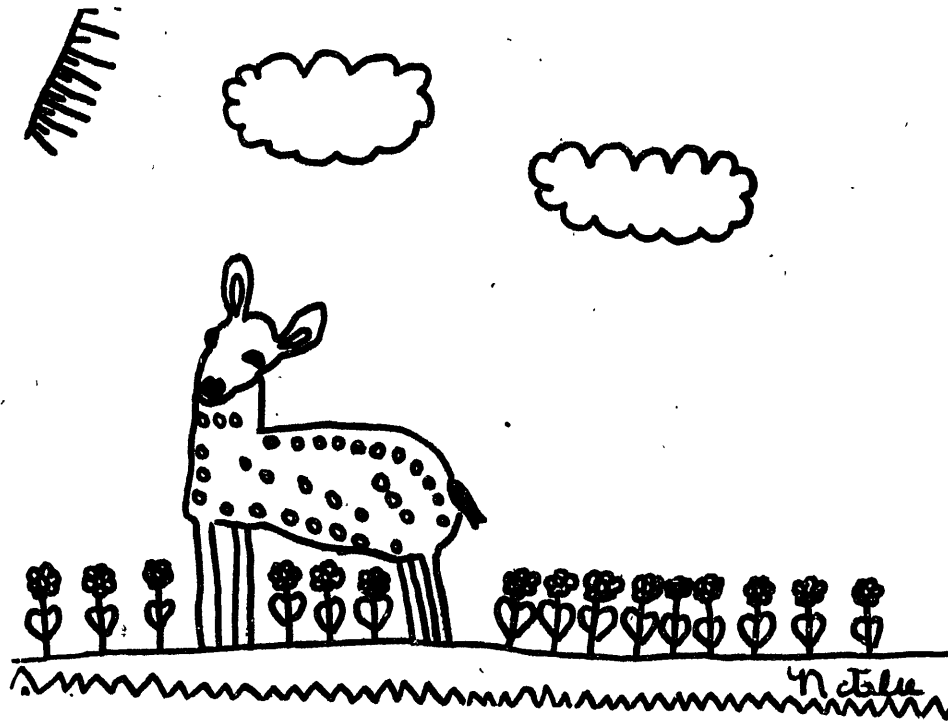
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Name: Kay Kimbrough

Grade: 7

School: Hendrick Middle School, Plano ISD

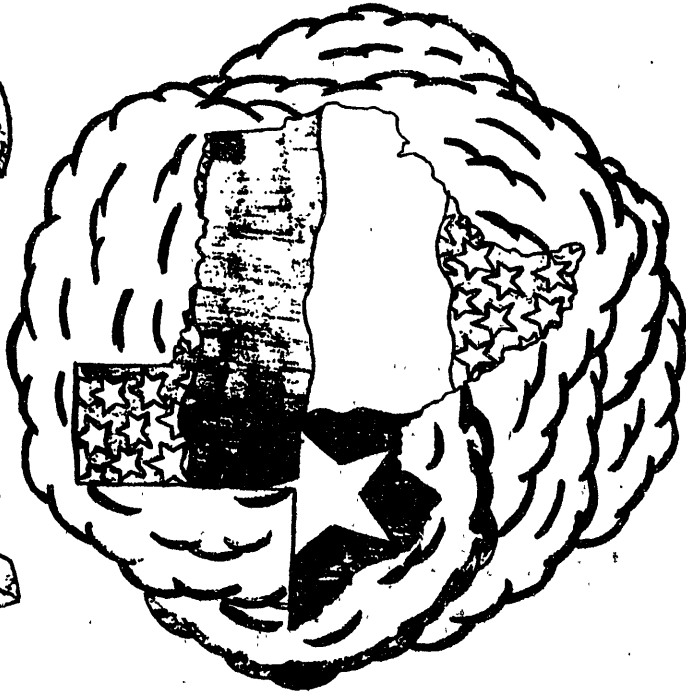


Name: Natalie Garcia
 Grade: 2
 School: Montgomery Elementary, Carrollton-Farmers Branch ISD



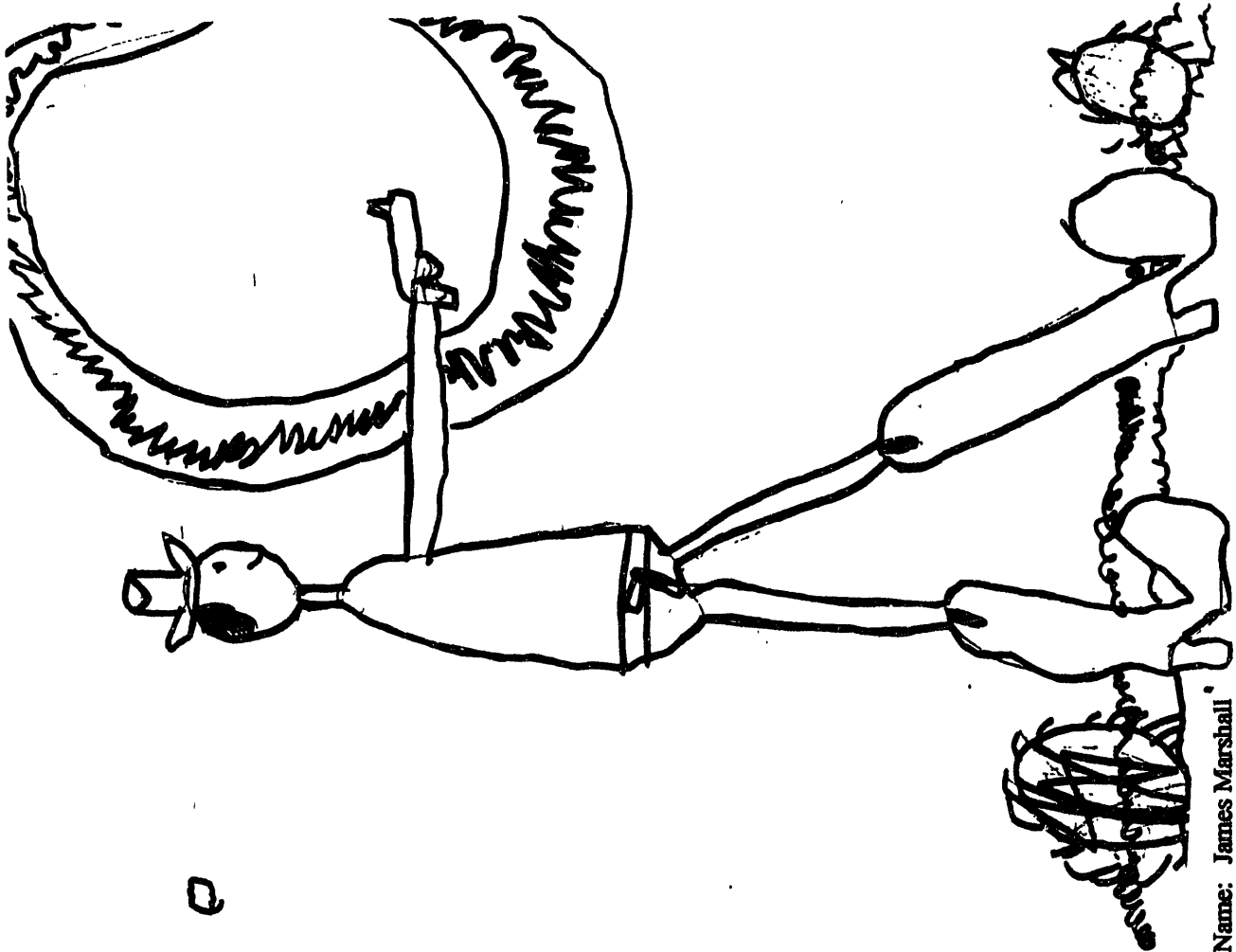
Name: Michelle Mendoza
 Grade: 2
 School: Montgomery Elementary, Carrollton-Farmers Branch ISD

TEXAS



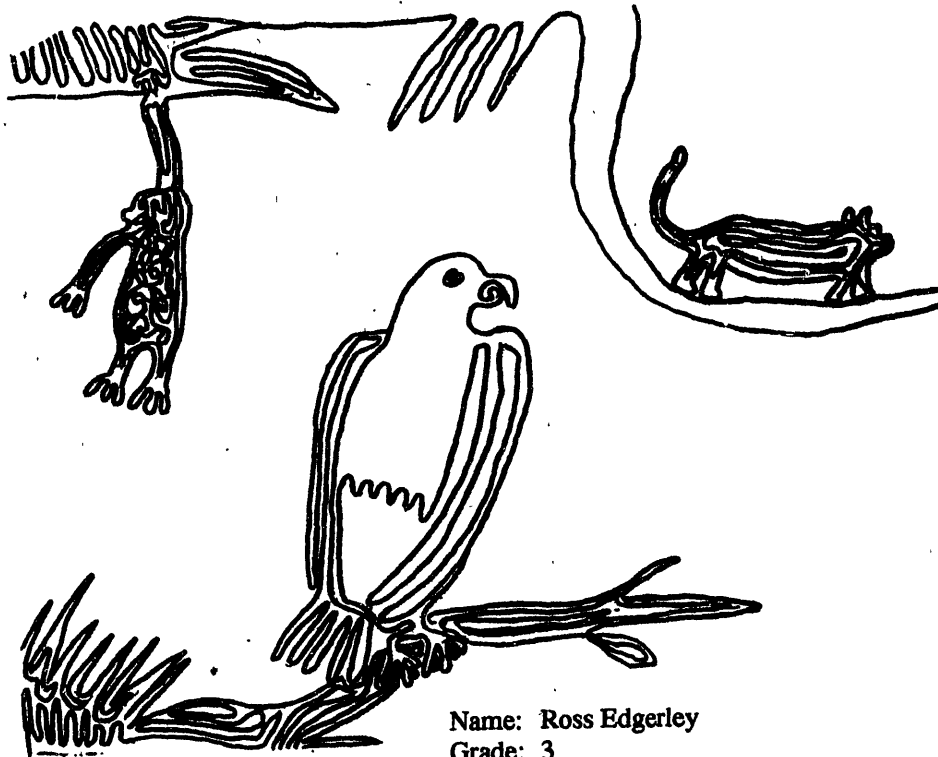
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Grade: 6

School: Montgomery Elementary, Carrollton-Farmers Branch ISD

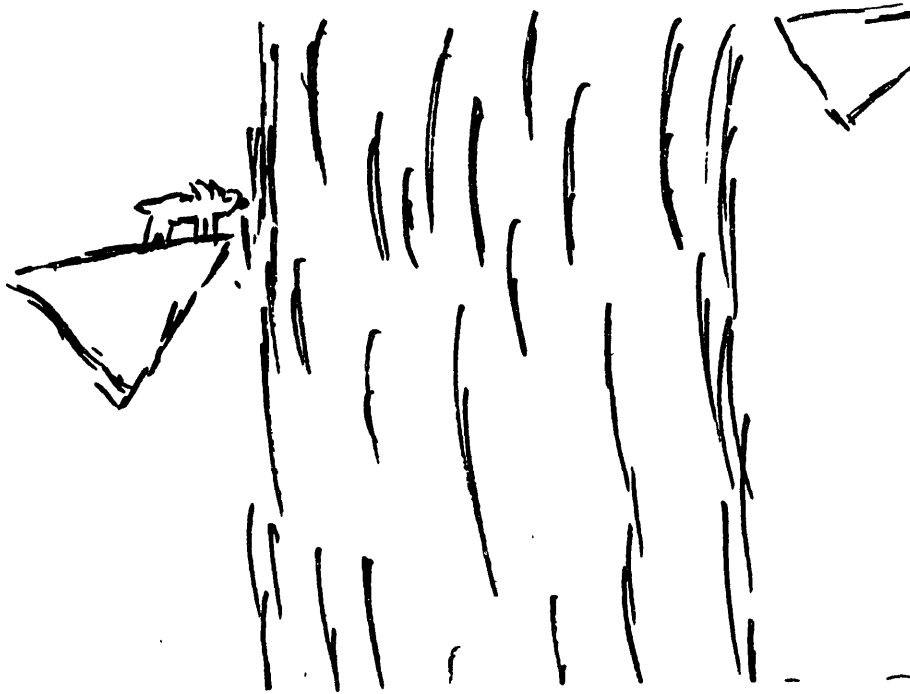


Name: James Marshall
Grade: 2

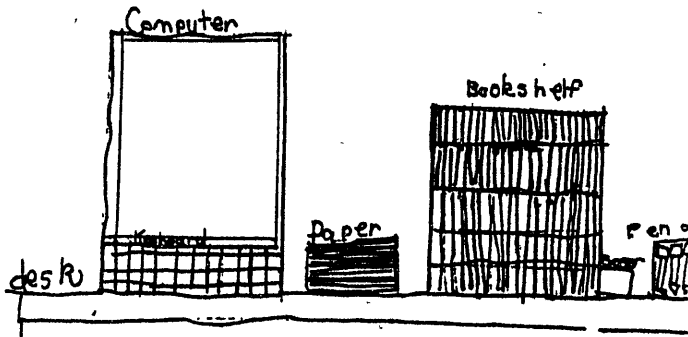
School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Name: Ross Edgerley
Grade: 3
School: Montgomery Elementary, Carrollton-Farmers Branch ISD

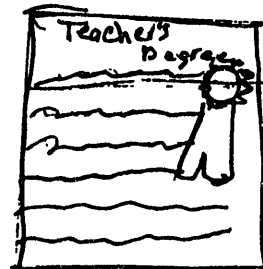
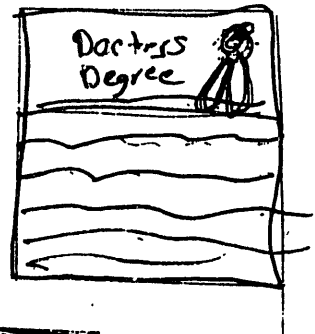
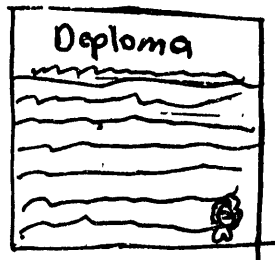


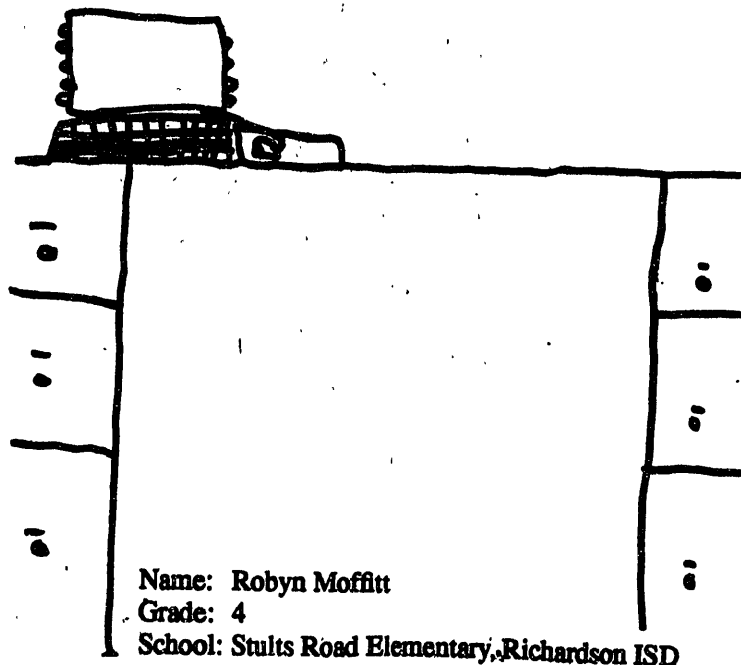
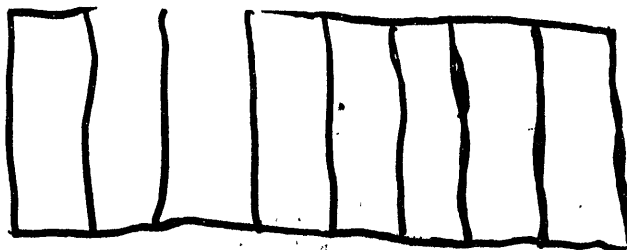
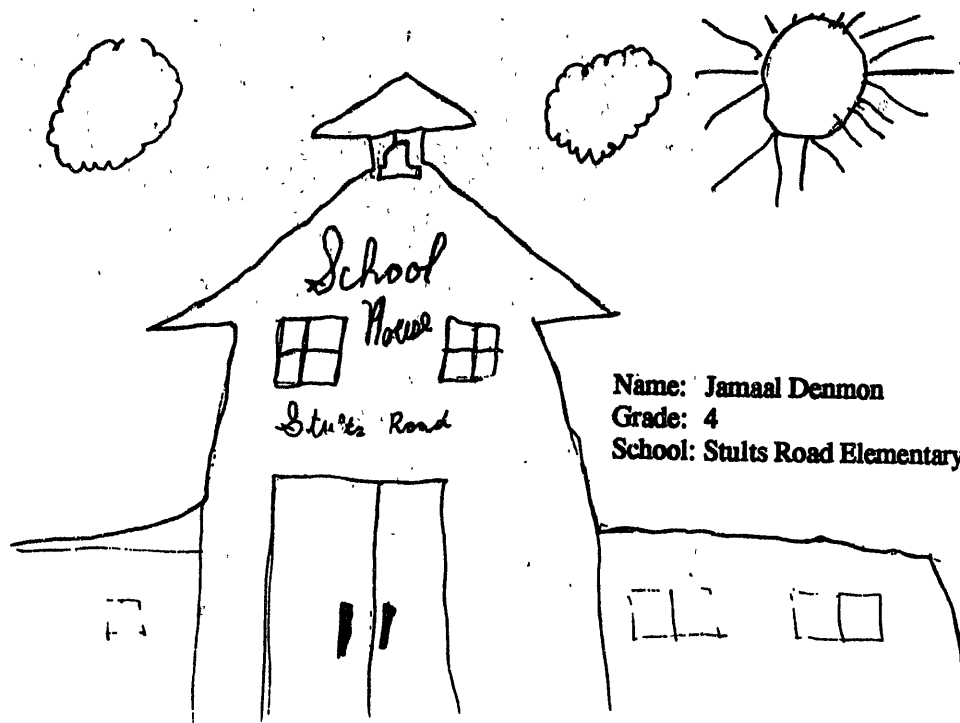
Name: Keiko Hattori
Grade: 4
School: Stults Road Elementary, Richardson ISD



Name: Brazgette Malone
Grade: 4
School: Stults Road Elementary, Richardson ISD
Mrs. Murray 4th grade class
Brazgette 10
Mrs. Daniel Art Class

Name: Shinique Brooks
Grade: 4
School: Stults Road Elementary, Richardson ISD







Name: Adriana Urbino
Grade: 6
School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Name: Blanca Zavala
Grade: 6
School: Montgomery Elementary, Carrollton-Farmers Branch ISD

The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made July 5, 1993

To be State Treasurer of Texas until the next General Election and until her successor shall be duly elected and qualified: Martha Whitehead, 1908 North Fourth Street, Longview, Texas 75601. Ms. Whitehead will be filling the unexpired term of Kay Bailey Hutchison of Dallas, who resigned to take the oath of office as United States Senator from Texas.

Appointments Made July 6, 1993

To be members of the Governor's Commission for Women for terms to expire February 1, 1995. They will be replacing the current membership. The members are as follows: Nancy Pittman-Chair, 6414 Burgoyne, Houston, Texas 77057, (713) 792-2260; Linda Canales G. Escamilla-Vice Chair, 38 Trail Driver, Austin, Texas 78737, (512) 322-8819; Lila Aguirre, 2915 Green Run, San Antonio, Texas 78231, (210) 493-2847; Marva A. Bennett, 111 North Clinton Avenue, Dallas, Texas 75208, (214) 280-4596; Debra Barber Berry, 3301 Kings Row, Nacogdoches, Texas 75961, (409) 564-8356; Arlene L. Blanks, 11603 Stonebridge Drive, Houston, Texas 77064, (713) 890-1295; Ophelia S. Camina, 4521 Bordeaux Avenue, Dallas, Texas 75205, (214) 754-1910; Pauline Vee Cao, 5 Tiel Way, Houston, Texas 77019, (713) 524-5030; Martha A. Coniglio, 5811 Mesa #322, Austin, Texas 78731, (512) 476-5151; Bonnie Prosser Elder, 17219 Ea-

gle Hollow, San Antonio, Texas 78248, (210) 227-5371; Jerry Anne Jurenka, 10 Oak Forest Drive, Longview, Texas 75605, (903) 663-0025; Crystal L. Lyons, Route 3, Box 147, Waxahachie, Texas 75165, (214) 720-7200; Karen T. McLeaish, 4656 Lemonwood, Odessa, Texas 79761, (915) 550-0613; Cecilia Moreno, 405 Reynolds, Laredo, Texas 78040, (210) 723-2012; Annette C. Muniz, 1213 Orange, McAllen, Texas 78501, (210) 686-8387; Lillian Anderson Murray, 1374 Sandpiper, Corpus Christi, Texas 78412, (512) 993-7159; Norma Roby, 7578 Morrison Court, Fort Worth, Texas 76112, (214) 621-1200; Lydia G. Saenz, P.O. Box 1029, Roma, Texas 78584, (210) 849-2719; Ila M. Simon, P.O. Box 630357, Nacogdoches, Texas 75963, (409) 564-4996; Martha Tovar, 624 C. White Cliffs, El Paso, Texas 79912, (915) 532-1166; and Rosalva Villarreal, Box 2508, Zapata, Texas 78076, (512) 765-6974.

Appointments Made July 7, 1993

To be a member of the Texas Workers' Compensation Commission for a term to expire February 1, 1999: O. D. Kenemore, 109 Carnation, Lake Jackson, Texas 77566. Mr. Kenemore is being reappointed.

To be a member of the Polygraph Examiners Board for a term to expire June 18, 1999: L. E. "Jack" Driscoll, 1308 Idlewood, Sherman, Texas 75090. Sheriff Driscoll will be replacing Glenn Diviney of Hurst, whose term expired.

To be a member of the Texas Workers' Compensation Insurance Fund Board of Directors for a term to expire February 1, 1999: James P. Simpson, 2301 Oleander, Dickinson, Texas 77539. Mr. Simpson will be replacing the Stephen Van Sadler of Cleveland, who resigned.

To be a member of the Texas-Mexico Authority Advisory Board for a term to expire February 1, 1990: Carl James Kruse, 33 Meadow Lane, Brownsville, Texas 78521. Mr. Kruse is being reappointed.

To be a member of the Texas Turnpike Authority Board of Directors for a term to expire February 15, 1999: Tomas Cardenas, Jr., 717 Dulce Tierra, El Paso, Texas 79912. Mr. Cardenas will be replacing Clive Runnells of Houston, whose term expired.

To be a member of the Governing Board of the International Trade Commission for a term to expire February 1, 1999: Patricia J. Smothers, 114 Geneseo Road, San Antonio, Texas 78209. Ms. Smothers is being reappointed.

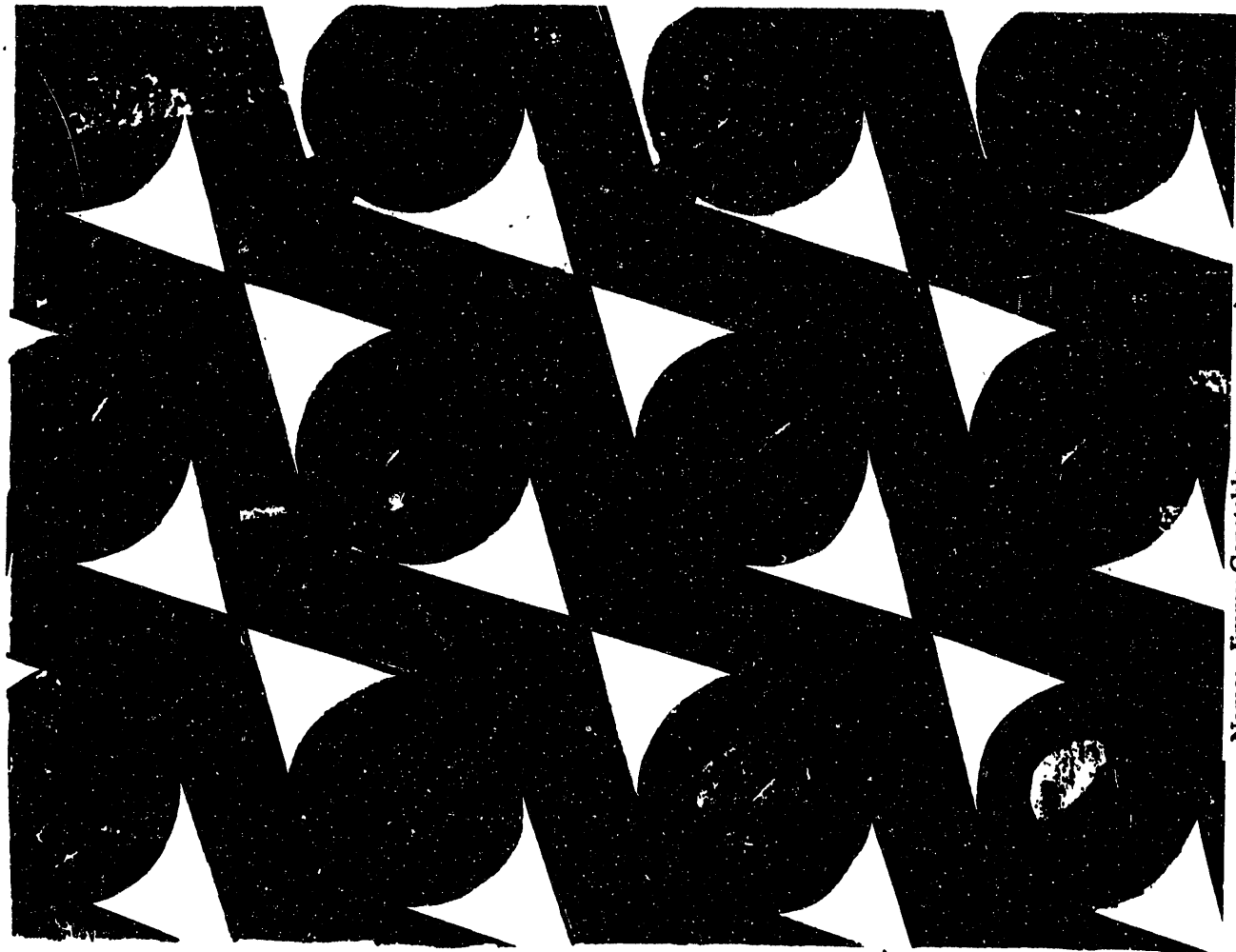
To be a member of the Governor's Advisory Committee on Immigration and Refugees for a term to expire February 1, 1995: Elena Thompson, 5602 Libyan Circle, Austin, Texas 78745. Dr. Thompson is being appointed to a new position pursuant to Vernon's Government Code, §752.021.

Issued in Austin, Texas, on July 9, 1993.

TRD-9325496

Ann W. Richards
Governor of Texas





Name: Jimmy Constable

Grade: 7

School: Hendrick Middle School, Plano ISD



1/5 "Fish Bones" Sharon Larson

Name: Sharon Larson

Grade: 8

School: Hendrick Middle School, Plano ISD

Proposed Sections

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

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

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 71. Office of the Secretary of State

Practice and Procedure

• 1 TAC §71.10

The Office of the Secretary of State proposes an amendment to §71.10, concerning the deletion of Telex service offered by the secretary of state. Because of the decreasing requests for this service, the cost of maintaining and operating this service is no longer economically practical.

Carmen I. Flores, director of the Corporations Section, Statutory Filings Division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Flores 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 that the public will not experience a significant decrease in overall service because of the widespread use of the fax transmission and filing service offered by the secretary of state. Former telex users may accomplish their objectives by use of these fax services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carmen I. Flores, Director of the Corporations Section, Statutory Filings Division, P.O. Box 13697, Austin, Texas 78711-3697.

The amendment is proposed under Texas Civil Statutes, Article 6252-13, and the Government Code, §405.031, which give the Office of the Secretary of State the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties.

§71.10. Special Services.

[(a) Upon the request of any person, notice of any action taken by the secretary of state will be given the requesting party by means of a Telex message. The fee for this service shall be \$4.00, in addition to any statutory fees required by law.

[(b) Upon the request of any person, certification of the existence of any document on file in the Office of the Secretary of State will be given the requesting party by means of a Telex message. The fee for this service shall be \$6.00, in addition to any statutory fees required by law.]

(a)[(c)] Upon the request of any person, the secretary of state will expedite the filing or reviewing of any document submitted to the Corporations Section, except for trademark documents which require a lengthy process of document review. The special handling fee for this service shall be \$10. With respect to all documents submitted for special handling, the secretary of state will notify the sender in writing or by telephone that the document was filed or by the reason why it was not filed. Such notification shall occur before the close of business on the next business day following the document's date of receipt. Unless the document sender provides a telephone number where the sender may be reached between the hours of 8:00 a.m. and 5:00 p.m., the secretary of state will not be obligated to telephone the sender regarding the disposition of the filing. Requests for expedited filing or review must be sent to: Secretary of State, Corporations Section, Special Handling, P.O. Box 13697, Austin, Texas 78711-3697.

(b)[(d)] Upon the request of any person, the secretary of state will expedite the handling of a certified record search pursuant to the Business and Commerce Code, Chapter 9 or 35, or the Property Code, Chapter 14. The fee for this service shall be \$5.00.

(c)[(e)] Upon the request of any person, the secretary of state will expedite the handling of a request for certified copies or certificates of fact. The expedited order will be processed before the close of the next business day following the date of receipt. The fee for this service shall be \$5.00 per certificate.

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

Issued in Austin, Texas, on July 6, 1993.

TRD-9325317

Audrey Selden
Assistant Secretary of
State

Office of the Secretary of
State

Earliest possible date of adoption: August 16, 1993

For further information, please call: (512) 463-5701

Chapter 79. Corporations

General Information and Correspondence

• 1 TAC §§79.13, 79.14, 79.18, 79.19

The Office of the Secretary of State proposes amendments to §§79.13, 79.14, and 79.18, and new §79.19. The amendments to §79.13 and §79.14 concern documents submitted with delayed effective dates that become effective upon the occurrence of events or facts that may occur in the future. Section 79.18 is being amended to address computer record procedures for the filing of all documents with delayed effective dates. New §79.19 sets forth computer record procedures for the statutory abandonment of documents.

House Bill 1239 added the Texas Limited Liability Company Act, Article 9.03, effective September 1, 1993, allowing limited liability companies to file documents with delayed effective dates and to abandon document filings in certain cases. Section 79.13 and §79.14 have been amended to include a reference to the Texas Limited Liability Company Act, Article 9.03. For purposes of clarification, §79.18 has been broadened to address not only computer record procedures for mergers with delayed effective dates, but also computer record procedures for all documents filed with delayed effective dates. In addition, since the new Article refers to the abandonment of document filings in certain cases, new §79.19 has been drafted to address procedures for all statutory abandonments.

Carmen I. Flores, director of the Corporations Section, Statutory Filings Division, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Flores also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will benefit from uniformity of procedures concerning delayed effective dates and statutory abandonment of

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

Comments on the proposal may be submitted to Carmen I. Flores, Director of the Corporations Section, Statutory Filings Division, P.O. Box 13697, Austin, Texas 78711-3697.

The amendments and new section are proposed under Texas Civil Statutes, Article 6252-13, which give the Office of the Secretary of State the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties. The Texas Business Corporation Act, Article 9.03, gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to administer this act efficiently and to perform its duties imposed by this Act.

§79.13. Determining the Date of the 90th Day After the Date of Filing.

(a) For purposes of filing documents which will become effective upon the occurrence of events or facts that may occur in the future, pursuant to the Texas Business Corporation Act, Article 10.03, the Texas Revised Limited Partnership Act, Article 2.12, or the Texas Limited Liability Company Act, Article 9.03, the date of the 90th day after the date of filing shall be deemed to be 90 days after the document is delivered in person or placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the Office of the Secretary of State. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the document may show by competent evidence that the actual date of posting was to the contrary.

(b) If a document submitted with a delayed effective condition pursuant to the Texas Business Corporation Act, Article 10.03, the Texas Revised Limited Partnership Act, Article 2.12, or the Texas Limited Liability Company Act, Article 9.03, does not conform to law, it will be returned to sender. When the document is corrected and resubmitted, the date of the 90th day after the date of filing may be recalculated and restated in the document to be 90 days after the document is resubmitted by delivery in person or placement in the United States Post Office or in the hands of a common or contract carrier properly addressed to the Office of the Secretary of State. The postmark or receipt mark generated in connection with the resubmission (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the document may show by competent evidence that the actual date of posting of the

resubmission was to the contrary. The secretary of state will refer to the contents of the document to determine the date of the 90th day from the date of filing or refiling.

(c) (No change.)

§79.14. Statement Regarding Delayed Effective Condition.

(a) Contents. Pursuant to the Texas Business Corporation Act, Article 10.03, [and] the Texas Revised Limited Partnership Act, Article 2.12, or the Texas Limited Liability Company Act, Article 9.03, when a condition triggering the effectiveness of a document filing has been satisfied or waived, a statement regarding the delayed effective condition must be submitted to the secretary of state. Such statement must contain the following information:

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

(6) the signatures required by the Texas Business Corporation Act, Article 10.03, [and] the Texas Revised Limited Partnership Act, Article 2.12, or the Texas Limited Liability Company Act, Article 9.03.

(b) Timeliness. Pursuant to the Texas Business Corporation Act, Article 10.03, the Texas Revised Limited Partnership Act, Article 2.12, or the Texas Limited Liability Company Act, Article 9.03, the statement regarding the delayed effective condition should be filed in the Office of the Secretary of State by the date of the 90th day from the date of filing as defined in §79.13 of this title (relating to Determining the Date of the 90th Day After the Date of Filing). Statements regarding the delayed effective condition received after the date of the 90th day from the date of filing will be filed for record, however the secretary of state will not determine substantial compliance with the provisions of the statutes referenced in this section [Texas Business Corporation Act, Article 10.03].

§79.18. Documents [Merger] with Delayed Effective Dates.

(a) Upon the filing of a document [merger] with a delayed effective date, the computer records of the secretary of state will be changed to show the filing of the document [merger], the date of the filing, the future date on which the document [merger] will be effective or a code indicating that the effectiveness is based on a future condition, and the name of the surviving entity or entities, if applicable. In addition, at the time of such filing:

(1) the status of any entity [entities] on file with the secretary of state merging out of existence, dissolving, or withdrawing will be changed from active

to inactive;

(2) the status of any entity [entities, if any.] to be created and filed with the secretary of state by the terms of a [the] plan of merger, articles of incorporation, articles of organization, a certificate of limited partnership, or a certificate authorizing a foreign entity to transact business in Texas, shall appear in the active records of the secretary of state; and

(3) any filings making amendments to articles of incorporation, articles of organization, a certificate of limited partnership, or a certificate authorizing a foreign entity to transact business in Texas, [the articles of incorporation of the surviving entity or entities, if any.] will be recorded in the records of the secretary of state.

(b) Upon filing of the document [merger]:

(1) the name [names] of any entity [entities] on file with the secretary of state which is [are] merging out of existence, dissolving, or withdrawing will not appear in the active records and will not be a bar to reservation or registration of an entity name or creation of an entity under a name which is the same as, deceptively similar to, or similar to the name of the merging, dissolving, or withdrawing entity;

(2) the name [names] of any entity [entities] to be created and filed with the secretary of state by the terms of a [the] plan of merger, articles of organization, a certificate of limited partnership, or a certificate authorizing a foreign entity to transact business in Texas will appear in the active records of the secretary of state and will be a bar to reservation or registration of any entity name or creation of an entity under a name which is the same as, deceptively similar to, or similar to the name [names] of an [the] entity [entities] to be created or authorized to transact business in Texas by one of the document filings listed in this section [plan of merger]; and

(3) if a document filing [the plan of merger] provides for a change of name of an entity previously [any of the surviving entities] on file with the secretary of state, the new name [names] of the entity [entities] will appear in the active records of the secretary of state and will be a bar to reservation or registration of any entity name or creation of an entity under a name which is the same as, deceptively similar to, or similar to any new name of the entity [entities] as provided in the document filing [by the plan of merger];

(4) if a document filing provides for an amendment to the articles of incorporation, articles of organization, a

certificate of limited partnership or a certificate authorizing a foreign entity to transact business in Texas, the secretary of state will change the computer records to reflect any amendments to information which may be obtained from the computer database. (e.g. authorized stock, registered agent/registered office, the name of a general partner.)

[(c) If a plan of merger is abandoned in accordance with a statutory provision for abandonment, the secretary of state:

[(A) will change the status of the entities filed with the secretary of state which would have merged out of existence to active on the computer records of the agency and record the filing of the abandonment. If the names of these entities are not available, the entities must file articles of amendment or take other action to change the entity name or bring the name into compliance with applicable statutory provisions as a condition to acceptance of the abandonment; and

[(B) will change the status of all entities that would have been created and filed with the secretary of state by the terms of the plan of merger to inactive on the computer records of the agency.]

§79.19. Abandonment of Document. If a document filing is abandoned in accordance with a statutory provision for abandonment, the secretary of state:

(1) will change the status of all the entities filed with the secretary of state which would have merged out of existence, dissolved or withdrawn to active on the computer records of the agency and record the filing of the abandonment. If the names of these entities are not available, the entities must file articles of amendment or take other action to change the entity name or bring the name into compliance with applicable statutory provisions as a condition to acceptance of the abandonment; and

(2) will change the status of all entities that would have been created and filed or authorized to transact business in Texas with the secretary of state by the terms of the document filing to inactive on the computer records of the agency.

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

Issued in Austin, Texas, on July 6, 1993.

TRD-9325318

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: August 16, 1993

For further information, please call: (512) 463-5701.

Entity Name Availability

• 1 TAC §79.34

The Office of the Secretary of State proposes an amendment to §79.34, concerning Words of Incorporation or Organization, adding new words of organization for limited liability companies and professional limited liability companies.

House Bill 1239 added the Texas Limited Liability Company Act, Article 9.03, effective September 1, 1993, allowing limited liability companies to file documents with delayed effective dates and to abandon document filings in certain cases. The Act, also provides for new words of organization for limited liability companies and professional limited liability companies. Section 79.34 has been amended to incorporate these new words of organization.

Carmen I. Flores, director of the Corporations Section, Statutory Filings Division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Flores 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 benefit from uniformity of procedures concerning delayed effective dates and statutory abandonment of filings. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carmen I. Flores, Director of the Corporations Section, Statutory Filings Division, P.O. Box 13697, Austin, Texas 78711-3697.

The amendment is proposed under Texas Civil Statutes, Article 6252-13, which give the Office of the Secretary of State the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties. The Texas Business Corporation Act, Article 9.03, gives the secretary of state the power and authority reasonably necessary to enable the secretary of state to administer this Act efficiently and to perform its duties imposed by this Act.

§79.34. Words of Incorporation or Organization.

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

(c) The words [word] of organization of a domestic or foreign limited liability company are [is] "Limited Liability Company"[,] or "Limited Company." The acceptable abbreviations are: "L.L.C.," "LLC" "LC," or ["Ltd." and] "L.C." In addition, the word "Limited" may be abbreviated as "Ltd." or "LTD" and the

word "Company" may be abbreviated as "Co." The words Limited or [The abbreviation "L.L.C." or the word] "Company" or other variations of the statutory terms when used alone are not acceptable.

(d) The words of organization of a domestic or foreign professional limited liability company are "Professional Limited Liability Company." The acceptable abbreviations are: "P.L.L.C." or "PLLC."

(e)[(d)] Neither the words nor the abbreviations listed in subsections (a), (b), [or] (c), or (d) of this section, or other variations of the permissible statutory terms, may be used as a sufficient basis to distinguish two otherwise deceptively similar or same names.

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

Issued in Austin, Texas, on July 6, 1993.

TRD-9325319

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: August 16, 1993

For further information, please call: (512) 463-5701

Part XIV. Texas National Research Laboratory Commission

Chapter 303. Procurement Rules

• 1 TAC §303.1

(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 National Research Laboratory or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas National Research Laboratory Commission (commission) proposes the repeal of existing §303.1 and proposes to replace it with new §§303.1-303.9, concerning procurement of mission-related supplies, materials, services, and equipment for commission use; rules to provide vendors and the public with a formalized statement of commission policies and procedures in the area of procurement; procedures for protests and dispute resolution; and ethical standards for commission personnel with respect to procurement activities.

Robert P. Carpenter, director of fiscal affairs, has determined there will be no fiscal implications for state or local government as a result of the repeal of the repeal.

Francis M. Moore, director of procurement, equal opportunity, and personnel, has deter-

mined that for each year of the first five year period the rule is in effect the public benefit will not be applicable, as the public is relatively unaffected by this particular section.

There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal.

Comments on the proposal may be submitted to Kenneth S. Welch, Associate Director for Administration; Texas National Research Laboratory Commission; 1801 North Hampton, Suite 400; DeSoto, Texas 75115; (214) 709-3800. The repeal is proposed under the Government Code, §465.082, which provides the commission with the authority to promulgate rules to carry out eligible undertakings.

§303.1. Introduction.

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 DeSoto, Texas on June 29, 1993.

TRD-9325480

Edward C. Bigler
Executive Director
Texas National Research
Laboratory

Earliest possible date of adoption: August 16, 1993

For further information, please call: (214) 709-3800

• 1 TAC §§303.1-303.9

The Texas National Research Laboratory Commission proposes new §§303.1-303.9 concerning procurement of "mission-related" supplies, materials, services, and equipment for commission use. The Texas National Research Laboratory Commission (commission) proposes these rules to provide vendors and the public with a formalized statement of commission policies and procedures in the area of procurement in order to facilitate interaction between the commission and interested parties. The rules also set forth procedures for protests and dispute resolution, as well as ethical standards for commission personnel with respect to procurement activities.

Robert P. Carpenter, director of fiscal affairs, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules.

Francis M. Moore, director of procurement, equal opportunity, and personnel, has determined that for each of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be from providing the public with a greater understanding of how the commission procures goods and services and from providing formal guidelines for public participation in the procurement process. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Kenneth S. Welch, Associate Director for Administration; Texas National Research Laboratory Commission; 1801 North Hampton, Suite 400; DeSoto, Texas 75115.

The new sections are proposed under the Government Code, §465.082, which requires the commission to adopt rules to guide its purchases of supplies, materials, services, and equipment in order to carry out eligible undertakings.

§303.1. *Introduction.* The Texas National Research Laboratory Commission ("commission") is exempt from Texas Civil Statutes, Article 601b (Article 601b), for procurements designated as "mission-related." The policies and procedures outlined herein apply to mission-related procurements.

Nonmission-related procurements made by the commission shall be conducted in accordance with the provisions of Article 601b and the applicable sections of Part V, Rules of the General Services Commission (GSC Rules).

§303.2. *Definitions.* Except as provided in this section, procurement terms used in this document shall have the same meanings as set forth in §113.2 of this title (relating to Definitions), unless the context clearly indicates otherwise.

Award—The commission makes awards by issuing a purchase order when accepting an offeror's bid, or by a bilateral contract signed by an authorized representative of both parties and delivered to the contractor.

Competitive range—The group of offerors whose proposals are determined to be acceptable, or reasonably susceptible to being made acceptable, without a major revision of the proposal.

Historically underutilized business (HUB)—Historically underutilized businesses as defined in Article 601b, §1.02, as may be amended.

Mission-related—When used with respect to supplies, materials, services and equipment is defined to include supplies, materials, services, and equipment which:

(A) are offered or made necessary by the Commission's Site Proposal, dated September 2, 1987, and as supplemented thereafter, including by the Memorandum of Understanding of 1990 between the commission and the U.S. Department of Energy (DOE) or any other agreement between the commission and DOE; or

(B) are necessary or desirable as part of an eligible undertaking as determined by resolution or rule of the commission, and

(1) are specifically requested in writing from the commission by the DOE or

the SSC laboratory through DOE for the SSC project and for which the specifications or delivery dates are substantially set by DOE or the SSC Laboratory with DOE concurrence; or

(2) are determined by the commission or the commission's executive director to affect, in whole or in part, the SSC project's schedule or budget; or

(3) are determined by the commission or the commission's executive director to be necessary to facilitate continued funding or support for the SSC project.

(C) As authorized by the Texas Constitution, Article 3, §49-g, and the Government Code, §465.021, the term "eligible undertaking" shall include any expenditure that is described in or is necessary to the fulfillment of offers made in the siting proposal described by the Government Code, §465.008(a), or is otherwise determined by the commission to have been made necessary or desirable to effect the siting, development, or operation of the SSC project.

(D) SSC project—the superconducting super collider research laboratory project of DOE under DOE Record of Decision: Superconducting Super Collider (6450-01), dated January 18, 1989 (54 Fed. Reg. 3651), as may be amended or supplemented from time to time.

(E) SSC Laboratory—the prime contractor of DOE responsible for the construction and operation of the SSC project. As of the date of adoption of these rules, the prime contractor is Universities Research Association, Inc., a nonprofit corporation.

Offeror—An individual or firm submitting a bid or proposal to the commission. This term is used interchangeably with "bidder."

Requiring office—The office in the commission with technical responsibility for the requirement being procured.

Selection authority—The individual authorized to make the final decision on which competing offeror shall be selected for award.

Solicitation—An Invitation for Bid (IFB), Request for Proposal (RFP), or Request for Qualification statements (RFQ).

Technical director—The director with technical responsibility for the requirement being procured.

§303.3. *Procurement Authority.* The commission, by policy, shall establish authorized signatories for the commission.

§303.4. Historically Underutilized Business (HUB) Program.

(a) **Certification.** The commission has formally adopted, and shall maintain, a HUB program designed to foster the participation of HUB firms in its procurement activities. As an agency of the State of Texas, the commission's HUB program will be patterned to comply, as a minimum, with the requirements contained in applicable state and federal legislation. Certification requirements shall be in accordance with the policies and procedures promulgated by the General Services Commission.

(b) **Goals for Utilization of HUB's:**

(1) The commission proposes to establish goals for awards to HUBs. The goals are stated as a percentage of total dollars awarded during each fiscal year, including prime contracts and subcontracts.

(2) The goal for "purchases" is 30%; the goal for "contracts" is 20%.

(A) The term "purchases" is defined as the procurement method used to acquire standard, noncomplex supplies and nonprofessional services, which lend themselves to selection based primarily upon the lowest bid.

(B) The term "contracts" is defined as the procurement method used to acquire more complex, high-value goods and services that do not lend themselves to selection based strictly upon the lowest bid, principally involving construction and professional-type services.

§303.5. Vendors Lists.

(a) **Vendor Database.** The commission shall maintain a vendor database of potential offerors who have requested to be considered for future procurement opportunities. Vendors shall apply for the vendor database by completing the commission's vendor database application. It is the commission's objective to achieve maximum inclusion of HUB and small businesses on its vendor database. A vendor's application may be rejected by the director of procurement if there is clearly no requirement for the vendor's supplies/services. The vendor shall be so advised.

(b) **Application Fees.** There shall be no application fee to be included in the vendor database.

(c) **Updates.** Periodically, all vendors shall be offered the opportunity to update their information in the vendor database. Vendors may be eliminated from the vendor database if correspondence to them is returned, and the vendor cannot be reached after reasonable attempts have been made to do so.

(d) **Source List.** For services or for any procurement where all eligible vendors in the vendor database are not solicited, the source list for procurements shall be established based upon relevant factors, including, but not limited to, the following considerations:

(1) number of eligible vendors in the vendor database;

(2) HUB representation;

(3) estimated dollar value of the procurement;

(4) time available to publicize and solicit;

(5) dispersing opportunities (rotation of vendors);

(6) size of the requirement and the size of the firm; and

(7) expected complexity of bids/proposals.

(e) **Additions.** In developing individual source lists, the commission shall utilize all reasonably available resources to identify potential offerors. This can include the vendor database, databases from other organizations, and recommendations by the office responsible for the procurement requirement. The commission will take affirmative steps to ensure appropriate representation of HUB firms on every source list. Any firm or individual who requests to be considered for inclusion on a particular source list shall be so considered, unless the process for the procurement is too far advanced for the requestor to be reasonably considered.

§303.6. Procurement Categories.

(a) **Applicability.** The nature of the goods or services being acquired and the business circumstances surrounding the procurement will govern which procurement method shall be utilized. The categories of procurements and the applicable procurement methods for each are set forth in §303.7(d)-(g).

(b) **Professional Services**

(1) "Professional services" shall have the meaning set forth in Texas Civil Statutes, Article 664-4, as may be amended, which includes services within the scope of the practices of accounting, optometry, medicine, land surveying, and professional engineering; or those performed by a licensed architect, optometrist, physician, surgeon, certified public accountant, land surveyor, or professional engineer in connection with his professional employment or practice.

(2) Professional services shall be procured using the two-step process described in §303.7(e). In the first step, no

pricing information shall be accepted that in any way provides a means for comparison of projected pricing for the effort being procured. Methods of proposed pricing may be addressed.

(c) **Consultant Services.**

(1) "Consultant services" shall have the meaning set forth in Texas Civil Statutes, Article 6252-11c, as may be amended, which includes services that involve studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. The term does not include a routine service that is necessary to the functioning of a state agency's programs.

(2) Consultant services shall be procured in compliance with 34 TAC §5.54, the rules published by the comptroller of public accounts (Comptroller's Rules) and the provisions of Article 6252-11c. Any of the procurement methods set forth in §303.7 may be utilized for the procurement of consulting services.

(d) **All Other Procurements.** Supplies, equipment, and services, other than professional or consulting services, may be acquired using any of the appropriate methods, or combination of methods, as is in the best interest of the commission, considering all relevant factors.

(e) **Emergency.** Emergency procurements involve requirements for goods or services that are so urgently needed that the commission would suffer serious operational or financial damage unless the goods or services are procured immediately. These requirements may be procured in the most expeditious manner deemed appropriate, including sole source. Whenever possible, informal contacts shall be made with multiple sources in order to capture some benefits of competition. Emergency procurements over \$1,000 that must utilize procedures outside of those described in §303.7 shall be approved in advance by the executive director.

§303.7 Procurement Methods.

(a) **Introduction.** Commission procurements shall be accomplished using the methods outlined below. The factors to be considered in selecting the appropriate method shall include, but not be limited to:

(1) the degree to which the requirement can be defined;

(2) need date and the procurement lead time available;

(3) estimated dollar value;

(4) staff resources; and

(5) compliance with applicable statutes.

(b) **Evaluation Panels.** When required for the evaluation of competitive bids, proposals, or qualification statements, evaluation panels shall be established in accordance with internal procedures. In general, panels shall include, but not be limited to, individuals with the requisite technical background to apply the evaluation criteria established for the selection.

(c) **Evaluation Plans.** The evaluation panel shall prepare a detailed evaluation plan prior to receipt of bids/proposals/qualification statements. These plans shall address: the evaluation criteria and their relative importance (weights), the minimum standards for each criterion, and the procedure to be used in scoring offerors' submissions.

(d) **Sole Source.** The commission may make an award without taking competitive bids or seeking proposals when:

(1) minimum needs can only be satisfied by the unique supplies or services available from only one source;

(2) there exists limited rights in data, patent rights, copyrights or secret processes, or when the control of raw materials makes the supplies or services available from only one source;

(3) only specified makes and models of technical equipment and parts will satisfy needs for additional units or replacement parts and only one source is available;

(4) an unusual or compelling urgency precludes fair and effective competition, and delay in award of the order would result in serious injury, financial or otherwise, to the commission;

(5) the use of a particular source can be clearly shown to be in the best interest of the state or the SSC project.

(e) **Competitive Bids**

(1) The Competitive Bidding method is appropriate for supplies and non-complex types of services and/or services that can be described accurately and completely. Under this procedure, selection is based upon the "lowest and best" bid.

(2) The commission shall establish guidelines regarding the minimum number of bids to be solicited, based upon dollar value, for procurements in which the lowest price is the overriding criterion.

(3) **Bid submission.**

(A) Prospective bidders may request specific bid invitations from the commission at any time prior to the bid opening. A copy of the bid invitation will be handed or mailed to the requester.

(B) A bidder may withdraw its bid by written request at any time prior to the bid opening date and hour.

(C) A bid received after the time and date established by the bid invitation is a late bid and will not be considered.

(D) Bids may be submitted by telefacsimile (fax) if authorized in the solicitation. The telephone number for fax bid submission will be identified in the solicitation; no other number may be used for bid submission. The commission's receipt of bids by fax is solely for the convenience of bidders. Bids submitted by fax need not be confirmed in writing, but must comply with all legal requirements applicable to formal bids. If all or any portion of a bid submitted by fax is received late, is illegible, or is otherwise rendered nonresponsive due to equipment failure or operator error, the bid or the applicable portion of the bid will not be considered. The commission shall not be liable for equipment failure or operator error, nor will such failure or error require other bids to be rejected or the bid invitation to be re-advertised.

(E) An unsigned bid is not valid and will be disqualified.

(F) When formal bids are required, bids may not be taken or accepted by telephone.

(G) If an error is discovered in a bid invitation, or agency requirements change prior to the opening of a bid, the commission will make an addendum correcting or changing the specifications to all bidders originally listed on the mailing list for that bid invitation. Bids will not be rejected for failure to return the addendum with the bid, if the change is noted on the bid or the bid would not be changed by the addendum.

(H) Signing a bid with a false statement shall void the bid and any resulting contract, and the bidder shall be removed from the bidders lists.

(4) **Bid opening and tabulation.**

(A) All bid openings conducted by the commission shall be open to the public.

(B) Bid opening dates may be changed and bid openings rescheduled if bidders are properly notified in advance of the new opening date.

(C) If a bid opening is canceled, all bids which are being held for opening will be returned to the bidders.

(D) All bid tabulation files are available for public inspection. Bid tabulations may be reviewed by any interested person during regular working hours at the offices of the commission. Employees of the commission shall not be required to give bid tabulation information by telephone.

(5) **Bid evaluation.**

(A) The commission may accept or reject any bid, or any part of a bid, or waive minor technicalities in a bid, if doing so would be in the commission's best interests.

(B) A bid price may not be altered or amended after bids are opened, except to correct mathematical errors in extension.

(C) No increase in price will be considered after a bid is opened. A bidder may reduce its price, provided it is the lowest and best bidder and is otherwise entitled to the award.

(D) Bid prices are considered firm for acceptance for 30 days from the bid opening date, unless otherwise specified by the invitation for bids.

(E) A bid containing a self-evident error may be withdrawn prior to an award.

(F) Bid prices which are subject to unlimited escalation will not be considered. A bidder may offer a predetermined limit of escalation in his bid and the bid will be evaluated on the basis of the full amount of the escalation.

(G) A bid containing a material failure to comply with the advertised specifications shall be rejected.

(H) All bids must be based on "F.O.B. destination" delivery terms unless otherwise specified.

(I) If requested in the invitation for bids, samples must be submitted or the bid will be rejected. The commission will require samples only when essential to the assessment of product quality during bid evaluation. Samples should be returned to a bidder whenever practicable, at the bidders' expense. Otherwise, samples will be disposed of in the same manner as surplus or

salvage property.

(J) When brand names are specified, bids on alternate brands will be considered if they otherwise meet specification requirements.

(K) Cash discounts are acceptable, but are not considered in making an award. All cash discounts offered will be taken if they are earned by the commission.

(L) No electrical item may be purchased unless the item meets applicable safety standards of the federal Occupational Safety and Health Administration (OSHA).

(6) Award. All awards shall be made to the bidder submitting the lowest and best bid conforming to the advertised specifications. In determining who is the lowest and best bidder, in addition to price, the commission may consider, but not be limited to, the evaluation factors set out in Article 601b, §3.11(e).

(f) Competitive Proposals.

(1) The Competitive Proposal method is appropriate for: requirements which cannot be completely and accurately described; requirements that can be satisfied in a number of ways, all of which could be acceptable; or requirements where oral or written communications with offerors will clearly be necessary in order to effectively assess their proposals.

(2) The Request for Proposal shall state the time and place at which the proposals will be received and opened.

(3) At a minimum, the RFP shall include:

(A) a description of the item or service desired;

(B) a statement of the criteria that will be used in evaluating proposals;

(C) a statement as to when and in what form prices are to be submitted;

(D) HUB participation goals; and

(E) all known terms and conditions anticipated to apply to the final contract.

(4) Submission of Proposals.

(A) Proposals shall be submitted at the time and place indicated in the request for proposal document. Proposals

received after the time and date established by the RFP are late and will not be considered. Deadlines shall be according to the Dallas, Texas public time system available through the commission's telephone service.

(B) Withdrawals. A proposal may be withdrawn at any time prior to award.

(C) Telefax of Proposals. Submissions may be provided by telefacsimile (fax) if authorized in the solicitation. The telephone number for fax submission will be identified in the solicitation; no other number may be used for bid submission. Submissions provided by fax need not be confirmed in writing unless required in the solicitation, but must otherwise comply with all legal requirements of the solicitation. If all or any portion of a submission provided by fax is received late, is illegible, or is otherwise rendered non-responsive due to equipment failure or operator error, the submission or the applicable portion will not be considered. The commission shall not be liable for equipment failure or operator error, nor will such failure or error require other submission to be rejected or the solicitation to be re-advertised.

(D) Addenda. If an error is discovered in a solicitation, or agency requirements change prior to the deadline, the commission shall issue an addendum correcting or changing the specifications to all offerors originally listed on the mailing list for that solicitation. Proposals will not be rejected for failure to return the addendum with the proposal, if the change is noted on the proposal or the proposal would not be changed by the addendum.

(E) Signing a submission with a false statement shall void the submission and any resulting contract, and the offeror shall be removed from all bidders lists.

(F) The cost portion of proposals may be required to be submitted separately from the technical portion in order to ensure objectivity in the evaluation technical/management factors.

(5) Proposals may be opened and evaluated as soon as they are received, even though it is before the deadline.

(6) The evaluation criteria shall be described in a plan of evaluation which identifies evaluation factors and their relative importance to the proposed work or project. The criteria shall measure how well a proposal meets desired performance requirements.

(7) Proposals shall be evaluated on the basis of stated criteria whenever possible, rather than comparing one proposal against another. In addition to the price and the evaluation criteria stated in the RFP, the commission reserves the right to consider the amount of previous work with the commission, past performance, and HUB participation.

(A) After proposals are opened, an award may be made without discussing the proposals with any of the offerors. In this context, "discussing" means clarifying, modifying, negotiating, or any of these.

(B) The commission may discuss acceptable or potentially acceptable proposals with offerors in order to evaluate an offeror's ability to meet the RFP requirements. If discussions are conducted, all offerors whose proposals are found to be in the competitive range shall be given equal opportunity to discuss their proposals with the commission and revise them accordingly. During discussion, no information from a competing proposal may be revealed to another competitor. Any type of auction practice or allowing the transfer of technical information is specifically prohibited. Internal procedures shall be established to define the process for establishing the competitive range and for authorizing the initiation of negotiations. The number of offerors included in the competitive range may be based upon the relative spread of evaluation results among the offerors, project schedule, and staff resources.

(8) Following negotiations, a time and place will be set for receipt of best and final offers from all offerors whose proposals are acceptable. No changes to proposals or prices will be allowed after best and final offers are received unless the executive director makes a written finding that resubmission would be in the public interest.

(9) Award shall be made to the offeror whose proposal is most advantageous to the commission, except that the commission may refuse all offers if none is acceptable, or if rejection of all offers is in the best interest of the commission. The contract file shall state in writing the basis on which the award is made. The contract resulting from the RFP shall reflect the advertised requirements and the proposal as submitted and, if applicable, as modified or altered during the discussion and evaluation process.

(g) Requests for Qualifications and Proposals (Two-step Method).

(1) The Two-step method shall be used for the acquisition of professional services, and may be utilized for the acqui-

sition of other services.

(2) The evaluation panel shall evaluate qualification statements on file with the commission, or those that have been submitted in response to a Request for Qualifications, in accordance with the criteria in the evaluation plan. The panel shall select a short list of firms that meet or exceed minimum requirements. The commission shall include as many firms on the short list as possible, commensurate with staff limitations and project schedule.

(3) Firms on the short list will either be interviewed or invited to submit proposals. In either case, the panel shall conduct an evaluation and ranking in accordance with the evaluation plan.

(4) In establishing short lists, the commission shall seek a mix of sizes and types of firms meeting minimum qualifications, which includes appropriate representation for small and HUB firms, thereby providing as many eligible firms as possible a fair chance to receive commission work.

(5) The evaluation panel shall present the results of its review and a selection recommendation to the selection authority. The selection authority shall establish the final ranking of firms based upon scored and unscored considerations, as outlined in the evaluation plan.

(6) The commission shall commence negotiations with the highest-ranked offeror. Should these negotiations fail, the next offeror shall be selected for negotiations. This process continues until a satisfactory agreement is established.

(h) Preferences. The commission will apply preferences on the basis set forth in §113.8 of the General Service Commission rules.

(i) Debriefing of Unsuccessful Offerors. Following award of a contract, an explanation shall be available on request to any unsuccessful proposer as to why its proposal was not accepted.

§303.8. Protests/Dispute Resolution/Hearing.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the director of procurement. Such protests must be in writing and received within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and subsection (c) of this section, and shall be resolved in accordance with the procedure set forth in subsection (d) and (e) of this section. Copies of the protest must

be mailed or delivered by the protesting party to other interested parties.

(b) In the event of a timely protest or appeal under this section, the commission shall not proceed further with the solicitation or with the award of the contract unless the executive director, after consultation with the chairman of the procurement, equal opportunity, and personnel committee, makes a written determination that award of contract without delay is necessary to protect substantial interests of the commission.

(c) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified above;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to identifiable interested parties.

(d) The director of procurement (director) shall have the authority, prior to appeal to the executive director of the commission, to settle and resolve the dispute concerning the solicitation or award of a contract. The director may solicit written responses to the protest from other interested parties.

(e) If the protest is not resolved by mutual agreement, the director will issue a written determination on the protest.

(1) If the director determines that no violation of rules or statutes has occurred, he shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination.

(2) If the director determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the director determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he shall so inform the protesting party, the using agency, and other interested parties by letter which sets forth

the reasons for the determination, which may include ordering the contract void.

(4) The director's determination on a protest may be appealed by an interested party to the executive director of the commission. An appeal of the director's determination must be in writing and must be received in the executive director's office no later than 10 working days after the date of the director's determination. The appeal shall be limited to review of the director's determination. Copies of the appeal must be mailed or delivered by the appealing party to interested parties and must contain an affidavit that such copies have been provided.

(5) The commission's general counsel shall review the protest, director's determination, and appeal, and prepare a written opinion with recommendation to the executive director. The executive director may, in his discretion, refer the matter to the commissioners for their consideration at a regularly scheduled open meeting or issue a written decision on the protest.

(6) When a protest has been appealed to the executive director under paragraph (4) of this subsection and has been referred to the commissioners by the executive director under paragraph (5) of this subsection, the following requirements shall apply.

(A) Copies of the appeal, responses of interested parties, if any, and general counsel recommendation shall be mailed to the commissioners, and copies of the general counsel's recommendation shall be mailed to the appealing party, and other interested parties.

(B) All interested parties who wish to make an oral presentation at the open meeting are requested to notify the general counsel at least 48 hours in advance of the open meeting.

(C) The commissioners may consider oral presentations and written documents presented by staff and interested parties. The chairman shall set the order and amount of time allowed for presentations.

(D) The commissioners' determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting, and shall be final.

(7) Unless good cause for delay is shown or the commission determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(8) A decision issued either by

the commissioners in open meeting, or in writing by the executive director, shall be the final administrative action of the commission.

§303.9. Ethical Standards.

(a) A breach of ethical standards under this chapter by a vendor shall bar the offending vendor from receiving a contract which may have been awarded to such vendor except for the breach. If a contract has already been awarded to the vendor found guilty of a breach of ethical standards, the commission may decide to cancel the contract, or, where applicable, remove the vendor from the commission's bidders list.

(b) An employee who breaches ethical standards under this chapter may be either reprimanded, suspended, or dismissed.

(c) The following words and terms, when used in this chapter, shall have the following meanings, except when the context clearly indicates otherwise:

(1) Confidential information—information which is available only because of one's status as a state employee.

(2) Direct or indirect participation—involvement through decision, approval, disapproval, recommendations, preparation of any contract, or of any part of a procurement process, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(3) Employee—any commissioner, officer, or employee of the commission, as well as members, officers, and employees of other state agencies acting in connection with any matters involving that agency and the commission.

(4) Financial interest—either a personal receipt, or right to receive, money or other valuable property or benefits under the actual or proposed contract; the holding of a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management; or the ownership of substantial stock, or other interest in a business. "Substantial" in this context shall not include token ownership or ownership which would not normally be able to influence the decisions of the business.

(5) Immediate family—includes spouses, parents, brothers, sisters, sons, and daughters.

(6) Person—an individual or a business entity.

(d) Conflict of interest. It shall be a breach of ethical standards for any employee to participate directly or indirectly in the procurement of any commission con-

tract when the employee knows that:

(1) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;

(2) the employee or any member of the employee's immediate family has a financial interest in a business or organization submitting a bid for that contract; or

(3) any other person with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(e) Business Relationship. It shall constitute a conflict of interest for an officer, or employee, or a person related to that officer or employee by the first degree of consanguinity or affinity to engage in any business or professional activity with the SSC Project Office of the U.S. Department of Energy, the Universities Research Association, or any of their contractors with respect to work being done on the SSC project. For the purposes of this policy, an employment relationship with a firm doing business with any of the entities listed above, or with the entities themselves, shall not constitute a conflict unless the employment relationship is a position of substantial influence within the entity. The commission shall be the sole judge as to whether such employment is in conflict with its interests. Business activities or employment that result in a conflict of interest are unacceptable. Under such circumstances, the officer or employee will be requested to alleviate the objectionable situation. Refusal to comply with the request may result in immediate dismissal for an employee, or in the case of a commission member, removal in accordance with the provisions of the Government Code, §465.0032.

(f) Employee participation in blind trusts, or retirement programs of business entities submitting bids to the commission shall not be a breach of ethical standards, provided disclosure of such participation is made to the commission, and no other conflict is shown.

(g) Failure to disclose financial interests in business entities.

(1) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee, or for any employee to solicit, demand, accept, or agree to accept from another person any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice,

investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(2) It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made to an employee by or on behalf of a contractor or subcontractor in connection with the award of a contract.

(h) Contingent fees.

(1) It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a contract from the commission upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(2) Every person, before being awarded a contract by the commission, shall represent in writing, that such person has not retained anyone in violation of paragraph (1) of this subsection. Failure to do so is a breach of ethical standards.

(i) Recruitment of employees

(1) No person shall offer an employee of the commission employment with the offeror if that employee is involved significantly in the handling of a procurement in which the offeror is interested.

(2) A former employee may not appear before the commission on behalf of any person having business before the commission, if the former employee is paid for such appearance, and the appearance involves a specific transaction the former employee was significantly involved with while an employee. Other than such a situation, there are no restrictions on former employees in making appearance before the commission.

(3) It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the State of Texas, in connection with any:

(A) judicial or other proceeding, application, request for a ruling, or other determination;

(B) contract;

(C) claim; or

(D) charge or controversy in

which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the State of Texas is a party or has a direct and substantial interest.

(j) Contemporaneous employment prohibited. It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement of contracting process to become or be, while such an employee, the employee of any person contracting with the State of Texas.

(k) Use of confidential information. It shall be a breach of ethical standards for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

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 DeSoto, Texas, on June 29, 1993.

TRD-9325481

Edward C. Bingley
Executive Director
Texas National Research
Laboratory Commission

Earliest possible date of adoption: August 16, 1993

For further information, please call: (214) 709-3800

Part XV. Health and Human Services Commission

Chapter 351. Coordinated Planning and Delivery of Health and Human Services

• 1 TAC §351.1

The Health and Human Services Commission (HHSC) proposes new §351.1 concerning the commission's review of component agency rules. The rule implements the HHSC review of its component agencies' rulemaking. The purpose of the rule is to ensure that rules promulgated by component agencies comply with the commission's coordinated strategic plan, existing statutory authority, and rules of other health and human services agencies. Additionally, the commission is to review rules for budgetary implications. The proposed rule describes the commission's procedures for review of all component agencies rules except for Medicaid rules. The State Medicaid Office, a function of HHSC, approves and issues Medicaid rules.

Tim Graves, associate commissioner for budget and support, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for

state or local government as a result of enforcing or administering the rule.

Mr. Graves 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 is a more efficient, coordinated, and cost effective service delivery system for health and human services. There will be no effect on small businesses. There is no anticipated economic cost to component agencies required to comply with the proposed rule.

Comments on the proposal may be submitted to Kathleen Hamilton, Associate Commissioner for Planning and Evaluation, Health and Human Services Commission, 4807 Spicewood Springs Road, Building 4, Austin, Texas 78759, (512) 502-3200. All written comments must be received by the commission within 30 days of publication in the *Texas Register*.

The new rule is proposed under Texas Revised Civil Statutes, Article 4413(502), §15, which provides the commission with authority to review all proposed rules of health and human services agencies for compliance with its coordinated strategic plan, existing statutory authority, rules of other health and human services agencies, and budgetary implication; and the authority to notify an agency within the designated review period for a proposed rule if the commission requires withdrawal or amendment of the proposed rule.

§351.1. Health and Human Services Commission Review of Component Agency Rules.

(a) Purpose. This rule implements the Health and Human Services Commission (HHSC) review of its component agencies' rulemaking. State law empowers HHSC to review all proposed rules of its component agencies for compliance with its coordinated strategic plan, existing statutory authority, rules of other health and human services agencies, and budgetary implications. HHSC may notify its component agencies that it requires withdrawal or amendment of their proposed rules Texas Civil Statutes, Article 4413(502), §15. This rule describes the procedures for all rules except Medicaid rules. The State Medicaid Office, a function of HHSC, approves and issues Medicaid rules.

(b) Notice by Publication. Publication of a proposed rule in the *Texas Register* is notice to the commission that a component agency proposes to adopt a rule.

(c) Notice of Emergency Rules. The power of the component agencies to enact emergency rules is not impaired by the commission's review of component agency rules.

(d) Notice of Requirement for Withdrawal or Amendment. Before a component agency adopts a rule, if the commission requires the withdrawal or amendment

of the rule, the commission will notify the component agency in writing. The commission signifies its approval of a proposed rule by not notifying the component agency in writing that the commission requires the withdrawal or amendment of the rule before the component agency adopts a rule.

(e) Procedures. HHSC will inform the component agencies from time to time of its procedures by which component agencies shall keep HHSC informed as they develop rules.

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

Issued in Austin, Texas, on July 8, 1993.

TRD-9325440

Bryan P. Sperry
Deputy Commissioner
Health and Human
Services Commission

Proposed date of adoption: September 1, 1993

For further information, please call: (512) 502-3200

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Applicability and Requirements

• 16 TAC §§9.1-9.7, 9.14-9.21, 9.23-9.25, 9.28-9.30

The Railroad Commission of Texas proposes amendments to §§9.1-9.7, 9.14-9.21, 9.23-9.25, and 9.28-9.30, concerning application of rules; definitions; categories of licenses; requirements for testing; course of instruction; examination and notification generally; examination of representative; severability; LP-gas report forms; franchise tax certification and assumed name certificate; registration of LP-gas transport; answer requirement in commission-called hearing; changes in ownership and/or form of dealership; dealership name change; application for an exception to a safety rule; insurance endorsement requirements; insurance requirements; imitation/avoidance of licensee liability; public hearing; filings required for LP-gas installations; and submission of drawings, plans, reports, and specifications.

The Commission proposes the rearrangement of numerous sections within Subchapter A, General Applicability and Requirements, in order to follow a more logical sequence and improve understanding of requirements contained in the subchapter.

The amendments to §9.1 moves the language in existing §9.14 (relating to Severabil-

ity) to §9.1, and changes the title of the section from Application of Rules to Application of Rules and Severability.

The Commission proposes an amendment to §9.2 in order to add ten new definitions of terms (aggregate water capacity, commercial installation, final approval, interim approval, mobile fuel container, motor fuel container, motor fuel system, school, special transit vehicle, tentative approval, and Railroad Commission of Texas). Existing definitions were moved from §§9.28, 9.171, 9.210, and 9.401 in order to consolidate all definitions in one section for easier reference. The definitions which were moved are auxiliary engine, mass transit vehicle, public transportation vehicle, school bus, high pressure piping, low pressure piping, camping trailer, connection, gas supply, connector, gas supply; gas appliance, motor home, recreational vehicle, travel trailer, and truck camper. Six existing definitions were revised for clarity: appliance, approved, automatic dispenser, commission, mass transit vehicle, and person.

The amendment to §9.3 replaces the language relating to categories of licensees with language from §9.15 (relating to LP-gas report forms), and renames the subsection LP-Gas Report Forms. The amendment also clarifies the names of certain report forms and lists new forms.

The amendment to §9.4 replaces existing language relating to requirements for testing with language from existing §9.3 (relating to categories of licensees), and renames the section Categories of Licenses. Amounts of original license fees and renewal fees were added for informational purposes only.

The amendment to §9.5 replaces existing language relating to course of instruction with language from existing §9.4 (relating to requirements for testing); existing §9.8 (relating to designation of operations supervisor), and §9.7 (relating to examination of representative). The amendment further explains licensing requirements and allows for the submission of new LPG Form 505, Testing Procedures Certification, by Category B and O licensees, in lieu of written testing procedures. Requirements regarding Category A licensees are amended to provide for an extension of time for submitting current ASME certificates in certain circumstances, and a new requirement is added for submission of ASME certificates of authorization for repair of ASME containers. New language is included regarding criteria for designation of a branch outlet. The title of the section is changed to Licensing Requirements.

The amendment to §9.6 combines existing language (relating to examination and notification generally) with language from existing §9.5 (relating to course of instruction), §9.6 (relating to examination and notification generally), §9.10 (relating to examination fees), and §9.11 (relating to general installers and repairman exemption). A chart has been added to reflect examination requirements, examination fees, educational requirements, and exemptions from examination requirements. The section is renamed Examination and Course of Instruction.

The amendment to §9.7 replaces existing lan-

guage (relating to examination of representative) with new language (relating to denial, suspension, or revocations of licenses or certifications). The new section specifies reasons for actions relating to licensing and provides procedures for affected parties to request hearings. The title of the section is Denial, Suspension, or Revocations of Licenses or Certifications; Hearings.

The amendment to §9.14 replaces language relating to severability, which was moved to §9.1, with language from existing §9.16 (relating to franchise taxes), and renames the section Franchise Tax Certification and Assumed Name Certificate.

The amendment to §9.15 replaces existing language (relating to LP-gas report forms) with language from existing §9.17 (relating to registration requirements for LP-gas transports), and renames the section Registration of LP-Gas Transports.

The amendment to §9.16 replaces existing language (relating to franchise tax, certification and assumed name certificate) with language from existing §9.19 (relating to changes in ownership and/or form of dealership), and renames the section Changes in Ownership and/or Form of Dealership.

The amendment to §9.17 replaces existing language (relating to registration of LP-gas transport) with language in existing §9.20 (relating to changes in dealership name), and renames the section Dealership Name Change.

The amendment to §9.18 replaces existing language (relating to answer requirement in commission-called hearing) with language in existing §9.25 (relating to limitations or avoidance of licensee liability), and renames the section Limitations/Avoidance of Liability.

The amendment to §9.19 replaces existing language (relating to changes in owner and/or form of dealership) with language in existing §9.23 (relating to insurance endorsement requirements), and §9.24 (relating to insurance requirements). A chart is added to reflect amounts of insurance required for the various categories of licenses, endorsements required to be attached to the insurance policy, and forms required to be filed. The section is renamed Insurance Requirements.

The amendment to §9.20 replaces existing language (relating to dealership name change) which was moved to §9.17, with a new section titled Filings Required for LP-Gas Stationary Installations, including portions of what was §9.28 (relating to Public Hearing), §9.29 (relating to Filings Required for LP-Gas Installations), and §9.30 (relating to Submission of Drawings, Plans, Reports, and Specifications) along with new language. The new section clarifies that an LPG Form 500 (Application for Tentative Approval) must be filed with the Commission prior to installation of any LP-gas container that would result in an aggregate water capacity of 10,000 gallons or more; that in the case of replacement of a container of the same overall length and diameter in the identical location of an existing container, an LPG Form 501 shall be filed with the Commission; that LPG Forms 500, 500A, and 501, along with plans and specifi-

cations, are not required in the case of installation of bulkheads, pull-away devices, emergency shutoff valves, or when maintenance and improvements are being made to the piping system of an existing installation over 10,000 gallons aggregate water capacity; that prior to the installation of a container resulting in an aggregate water capacity of 10,000 gallons or more in a densely populated or congested area, the Commission will determine any restrictions necessary by considering specific criteria such as density of population within 500 feet of the installation, type of operations on the premises, potential sources of ignition, as well as others, and that if the installation is not approved, the applicant may request a hearing; that certain fees shall be included with the LPG Form 500; that installations that result in an aggregate water capacity of 10,000 gallons or less require the filing of an LPG Form 501 within 10 calendar days after the completion of the installation, that certifies the installation is in compliance with the safety rules, all licenses have been obtained, and the installation has been placed in service. The current requirement to provide plans and specifications for installations under 10,000 gallons aggregate water capacity is eliminated. If any provisions relating to installations of 10,000 gallons aggregate water capacity or less are violated, the Commission may require the licensee to submit LPG Form 500 along with plans and specifications for future installations. If the licensee disagrees, he or she may request a hearing. However, the licensee will be required to submit plans and specifications until a hearing is held; that the Division will review the forms submitted and notify the applicant whether they are complete or incomplete within 21 days of receipt; and that after notification of an incomplete form, the applicant has 120 days to resubmit a corrected form, or request an extension of time or the application will expire. Also, if a tentatively approved installation is not completed within one year, the tentative approval will expire. An extension of time may be requested.

The amendment to §9.21 replaces existing language (relating to application for an exception to a safety rule (moved to §9.29)) with a new section titled Notice of Stationary LP-Gas Installations, comprising portions of what was §9.28, (Public Hearing), §9.29 (Filings Required for LP-Gas Installations), and §9.30 (Submission of Drawings, Plans, Reports, and Specifications), along with new language to clarify that notice of a proposed installation of 10,000 gallons or more aggregate water capacity must be sent to all real property owners situated within 500 feet of the proposed installation by means of a copy of the LPG Form 500, LPG Form 500A and a plat of the location. This must be done at the same time the LPG Form 500 is sent to the Commission. Notice must also be given if the size of an installation is increased more than once in a 12 month period; that notice to property owners is not required if the installation is an addition to an existing installation and does not more than double its size; and that installations at "hot-mix" plants do not require notice if certain conditions are met.

The amendment to §9.23 replaces existing language (relating to insurance endorsement

requirements (moved to §9.19)) with a new section titled Tentative Approval of Stationary LP-Gas Installations, including portions of what was §9.28 (Public Hearing), §9.29 (Filings Required for LP-Gas Installations), §9.30 (Submission of Drawings, Plans, Reports, and Specifications), along with new language to clarify that tentative approval may be granted by the Commission after procedures outlined in amended §9.20, §9.21, and new §9.22 have been followed. If the tentative approval is granted, construction may proceed at the applicant's own risk that the tentative approval may be revoked, final approval may not be granted, and the applicant may be required to remove the installation. The construction may not proceed until tentative approval in writing has been received by the applicant; that tentative approval may be revoked and all construction must cease if it is determined the construction requires notification of additional property owners, or if the completed installation varies materially from the original submission; and that the Commission must be notified of any alterations or additions during construction.

The amendment to §9.24 replace existing language (relating to insurance requirements (moved to §9.19)), with language including portions of what was §9.28 (relating to Public Hearing), §9.29 (relating to Filings Required for LP-Gas Installations), §9.30 (relating to Submission of Drawings, Plans, Reports, and Specifications), along with new language to clarify that the Commission may call a hearing if the notice requirements are not met, proper objections have been filed, or it is determined a hearing is necessary to investigate the impact of the installation; that notice shall be given to affected parties 21 days prior to the hearing; that the hearing will be conducted in accordance that the Administrative Procedure and Texas Register Act; and that tentative approval establishes a rebuttable presumption that the applicant has complied with the safety rules.

The amendment to §9.25 replaces existing (language relating to limitation/avoidance of licensee liability), which is moved to §9.18, with new language relating to interim approval of stationary LP-gas installations, and renames the section Interim Approval of Stationary LP-Gas Installations. The new language clarifies that after a public hearing, if the Railroad Commission of Texas finds that the proposed installation complies with the Safety Rules, the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, it shall grant interim approval to proceed with construction of the installation; and that grants of interim approval shall include a provision that the interim approval may be suspended or revoked if LP-gas is introduced into the container prior to inspection by the Commission, or an inspection indicates it is not installed in compliance with the plans and specifications for the installation, the Safety Rules or the statutes of the State of Texas, or an inspection indicates the installation constitutes a danger to the public health, safety, and welfare.

The amendment to §9.28 replaces language (relating to public hearing), whose provisions have been rewritten in §§9.20-9.30, and indi-

cates that the Commission may waive the requirement for final approval of an installation in case of emergency. The amendment also renames the section Emergency Use of Proposed Stationary LP-Gas Installations.

The amendment to §9.29 replaces existing language (relating to filings required for LP-gas installations) whose provisions have been rewritten in §§9.20-9.30 with language (relating to application for an exception to a safety rule) moved from §9.21, and renames the section Application for an Exception to a Safety Rule.

The amendment to §9.30 replaces existing language (relating to submission of drawings, plans, reports, and specifications) whose provisions have been rewritten in §§9.20-9.30 with language (relating to answer requirement in commission-called hearings), moved from §9.18, and renames the section Answer Requirement in Commission-Called Hearings.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state and local governments as a result of enforcing or administering the sections; however, due to the nature of the proposed changes, it is impossible to specify the amount of that impact.

Mr. Petru also has determined for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the rules will be an increase in compliance due to more clearly understandable sections, a more efficient license application process, and an increase in safety afforded to the general public due to the updated and revised safety requirements. There will be an effect on small businesses; however, due to the nature of the proposed sections, it is impossible to specify the amount of that impact. There is an anticipated economic cost to persons required to comply with the proposed sections; however, due to the nature of the proposed changes, it is impossible to specify the amount of that impact.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*. The Commission will consider all comments filed relating to the previously proposed amendments to these sections published in the January 1, 1993, issue of the *Texas Register* (18 TexReg 19).

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas 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.

§9.1. Application of Rules and Severability.

(a) The Liquefied Petroleum Gas Division (LP-Gas) safety rules are intended to apply to the design, construction, loca-

tion, and operation of liquefied petroleum gas systems, equipment, and appliances. These standards do not apply to marine terminals, natural gasoline plants, refineries, tank farms, gas manufacturing plants, plants engaged in processing liquefied petroleum gases, or to railroad loading racks used in connection with such establishments; provided that such standards shall apply to truck loading racks.

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

(13) Division XII. Division XII applies to LP-gas automatic [fuel] dispensers.

(14) -(15) (No change.)

(b) Severability. If any term, clause, or provision of these rules is for any reason declared invalid, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

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

Aggregate water capacity—The sum of all individual container capacities measured by weight or volume of water in a battery at an installation.

Appliance—Any apparatus or fixture excluding recreational vehicle gas appliances that uses or consumes LP-gas furnished or supplied by an LP-gas system to which it is connected or attached.

Approved—Authorized [for LP-gas service and/or installation] by the commission.

Automatic dispenser—An LP-gas dispenser which is operated by a member of the general public and which requires transaction authorization [A dispensing device to which access is controlled by a key, a card, or a code locking system, without which the dispenser cannot be operated].

Auxiliary engine—An engine, mounted on a vehicle, which is used for purposes other than propelling the vehicle.

Camping trailer—A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use. (Also see definition of recreational vehicle in this section).

Commercial installation—Any LP-gas installation located on premises other than a single-family dwelling used as a residence, including, but not limited to, a retail business establishment, school, bulk storage facility, convalescent home, hospital, retail LP-gas cylinder filling/ex-

change operation, service station, forklift refueling facility, or private motor/mobile fuel cylinder filling operation.

Commission—[The Railroad Commission of Texas.] An operating division of the Railroad Commission of Texas or any of the division's employees.

Connection, gas supply—The terminal end or connection to which a gas supply connector is attached on a recreational vehicle.

Connector, gas supply—Tubing or pipe connecting a recreational vehicle to a gas supply source.

Final approval—The authority issued by the Commission allowing the introduction of LP-gas into a container and system.

Gas appliance—An appliance listed for use only on a recreational vehicle with LP-gas only or with both natural gas and LP-gas (convertible from natural gas to LP-gas and vice versa).

High pressure gas piping—piping used for conveying LP-gas liquid or vapor at pressures in excess of 50 psig.

Interim approval—The authority issued by the Railroad Commission of Texas, following a public hearing, allowing construction of an LP-gas installation.

Low pressure gas piping—piping used for conveying LP-gas liquid or vapor at pressures of 50 psig or less.

Mass transit vehicle—any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

Mobile fuel container—An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply for uses other than motor fuel.

Motor fuel container—An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

Motor fuel system—An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

Motor home—A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle. (Also see the definition of recreational vehicle in this section).

Person—An individual, partnership, firm, corporation, joint ventureship, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee.

[Public building—Any building where the public conducts business on the premises, which includes all commercial in-

stallations such as, but not limited to, forklift, private motor fuel, and cylinder filling installations. A final determination as to what constitutes a public building will be made by the director.]

Public transportation vehicle—Includes, but is not limited to, taxis, buses (excluding school buses and mass transit or special transit vehicles), airport courtesy cars, and any other vehicle for hire to transport persons.

Railroad Commission of Texas—The members of the Railroad Commission of Texas.

Recreational vehicle—A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motor power or is mounted on or towed by another vehicle, including, but not limited to, a travel trailer, camping trailer, truck camper, and motor home.

School—A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

School bus—A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

Special transit vehicle—A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons. This type of vehicle is normally a smaller version of the standard designed school bus or mass transit vehicle.

Tentative approval—The authority issued by the commission without a hearing allowing construction of an LP-gas installation.

Travel trailer—A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when towed by a motorized vehicle, and of gross trailer area less than 320 square feet. (Also see the definition of recreational vehicle in this section).

Truck camper—A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck. (Also see the definition of recreational vehicle in this section).

§9.3. LP-Gas Report Forms. [Categories of Licensees.] Under the provisions of the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted by reference the following forms for use by the Liquefied Petroleum

Gas (LP-Gas) Division. These forms are available upon request directed to the LP-Gas Division in Austin.

(1) LPG Form 1. Application for License.

(2) LPG Form 1A. Branch Outlet List.

(3) LPG Form 3. Liquefied Petroleum Gas License.

(4) LPG Form 4. Liquefied Petroleum Gas Vehicle Identification.

(5) LPG Form 5. Manufacturer's Data Report.

(6) LPG Form 7. Liquefied Petroleum Gas Truck Registration.

(7) LPG Form 8. Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing.

(8) LPG Form 8A. Report of DOT Cylinder Repair.

(9) LPG Form 16. Application for Examination.

(10) LPG Form 16A. Certified Employee Transfer Certification.

(11) LPG Form 16B. Application for Examination Exemption by a Master Journeyman Plumber or a Class A or B Air Conditioning and Refrigeration Contractor.

(12) LPG Form 17. Report of Odorization of Liquefied Petroleum Gases.

(13) LPG Form 18. Statement of Lost or Destroyed License.

(14) LPG Form 18B. Statement of Lost or Destroyed LPG Form

(15) LPG Form 19. Inventory of Liquefied Petroleum Gas Bulk Storage Plants.

(16) LPG Form 20. Report of LP-Gas Incident/Accident.

(17) LPG Form 21. Notice of Intent to Appear.

(18) LPG Form 22. Report of LP-Gas Safety Rule Violation(s).

(19) LPG Form 23. Statement in Lieu of Container Testing.

(20) LPG Form 25. Application and Notice of Exception to the LP-Gas Safety Rules.

(21) LPG Form 26. Franchise Tax Certification.

(22) LPG Form 500. Application for Tentative Approval.

(23) LPG Form 500A. Notice of Proposed LP-Gas Installation.

(24) LPG Form 501. Comple-

tion Report for Commercial Installations of Less than 10,000 Gallons Aggregate Water Capacity.

(25) LPG Form 503. Application to Install an LP-Gas System on School Bus, Mass Transit, or Special Transit Vehicle(s).

(26) LPG Form 504. Notice of Subsequent Installation or Conversion.

(27) LPG Form 505. Testing Procedures Certification.

(28) LPG Form 996A. Certificate of Insurance, Workers' Compensation and Employer's Liability.

(29) LPG Form 996B. Statement in Lieu of Workers' Compensation and Employer's Liability Insurance.

(30) LPG Form 997A. Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability.

(31) LPG Form 997B. Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance.

(32) LPG Form 998A. Certificate of Insurance, General Liability.

(33) LPG Form 998B. Statement in Lieu of General Liability Insurance and/or Completed Operations and Products Liability Insurance.

(34) LPG Form 999. Notice of Insurance Cancellation.
[A prospective licensee may apply to the LP-Gas Division for a license to engage in one or more of the following categories.]

[(1) Category A—Manufacturers and/or fabricators, which covers the manufacture, fabrication, assembly, repair, installation, subframing, testing, and sale of LP-gas containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems.

[(2) Category B—Transport outfitters, which covers the subframing, testing, and sale of LP-gas transport containers, the testing of LP-gas storage containers, and the installation, testing, and sale of LP-gas motor or mobile fuel containers and systems, and the installation and repair of transport systems, and motor or mobile fuel systems.

[(3) Category C—Carriers, which covers the transportation of LP-gas by transport, including the loading and unloading of LP-gas, and the installation and repair of transport systems.

[(4) Category D—General installers and repairmen, which covers the sale, service, and installation of containers, excluding motor fuel containers, and the service, installation, and repair of piping,

certain appliances as defined by rule, and LP-gas systems, excluding motor fuel systems. The service and repair of an LP-gas appliance not required by the manufacturer to be vented to the atmosphere is exempt from Category D licensing. The installation of these unvented appliances to LP-gas systems by means of LP-gas appliance connectors is also exempt from Category D licensing.

[(5) Category E—Retail and wholesale dealers, which covers the storage, sale, transportation, and distribution of LP-gas at retail and wholesale, and all other activities included in this section, except the manufacture, fabrication, assembly, repair, subframing, and testing of LP-gas containers.

[(6) Category F—Cylinder exchangers, which covers the operation of a cylinder filling and container exchange dealership, including cylinder filling, the sale of bottled LP-gas in cylinders, and the replacement of a cylinder valve.

[(7) Category G—Service station, which covers the operation of an LP-gas service station filling ASME containers designed for motor or mobile fuel.

[(8) Category H—Cylinder dealers, which covers the transportation and sale of LP-gas in cylinders.

[(9) Category I—Service Station and cylinder exchanges, which covers any service station and cylinder activity set in Category F and Category G of this section.

[(10) Category J—Service station and cylinder dealerships, which covers the operation of a cylinder filling and container exchange dealership, including cylinder filling and the sale, transportation, installation, and connection of LP-gas in cylinders, and the replacement of cylinder valves, and the operation of an LP-gas service station as set out in Category G.

[(11) Category K—Distribution system, which covers the sale and distribution of LP-gas through mains or pipes and the installation and repair of LP-gas systems.

[(12) Category L—Carburetion, which covers the sale and installation of LP-gas motor or mobile fuel containers, and the sale and installation of LP-gas motor fuel systems.

[(13) Category M—Recreational vehicle installers and repairmen, which covers the sale, service, and installation of recreational vehicle containers, and the installation, repair, and service of recreational vehicle appliances, piping, and LP-gas systems, including recreational vehicle motor or mobile fuel systems and containers.

[(14) Category N—Manufactured

housing installers and repairmen, which covers the service and installation of containers that supply fuel to manufactured housing, and the installation, repair, and service of appliances and piping systems for manufactured housing.

[(15) Category O—Testing laboratories, which covers the testing of an LP-gas container for the purpose of determining the safety of the container for LP-gas service, including the necessary disconnection and reconnection of LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers.]

§9.4. Categories of Licenses. [Requirements for testing.] A prospective licensee may apply to the commission for a license to engage in one or more of the categories specified in paragraphs (1)-(15) of this section. The licensing fee and renewal fee is included in each category for informational purposes only.

(1) Category A—Manufacturers and/or fabricators, which covers the manufacture, fabrication, assembly, repair, installation, subframing, testing, and sale of LP-gas containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems. Original license fee is \$500; annual renewal fee is 300.

(2) Category B—Transport outfitters, which covers the subframing, testing, and sale of LP-gas transport containers, the testing of LP-gas storage containers, and the installation, testing, and sale of LP-gas motor or mobile fuel containers and systems, and the installation and repair of transport systems, and motor or mobile fuel systems. Original license fee is \$200; annual renewal fee is 100.

(3) Category C—Carriers, which covers the transportation of LP-gas by transport, including the loading and unloading of LP-gas, and the installation and repair of transport systems. Original license fee is \$500; renewal fee is \$150.

(4) Category D—General installers and repairmen, which covers the sale, service, and installation of containers, excluding motor fuel containers, and the service, installation, and repair of piping, certain appliances as defined by rule, excluding recreational vehicle appliances and LP-gas systems, and motor fuel and recreational vehicle systems. The service and repair of an LP-gas appliance not required by the manufacturer to be vented to the atmosphere is exempt from Category D licensing. The installation of these unvented appliances to LP-gas sys-

tems by means of LP-gas appliance connectors is also exempt from Category D licensing. Original license fee is \$50; annual renewal fee is \$35.

(5) Category E-Retail and wholesale dealers, which covers the storage, sale, transportation, and distribution of LP-gas at retail and wholesale, and all other activities included in this section, except the manufacture, fabrication, assembly, repair, subframing, and testing of LP-gas containers. Original license fee is \$500; annual renewal fee is \$150.

(6) Category F-Cylinder exchangers, which covers the operation of a cylinder filling and container exchange dealership, including cylinder filling, the sale of LP-gas in cylinders, and the replacement of a cylinder valve. Original license fee is \$50; annual renewal fee is \$25.

(7) Category G-Service station, which covers the operation of an LP-gas service station filling ASME containers designed for motor or mobile fuel. Original license fee is \$50; annual renewal fee is \$25.

(8) Category H-Cylinder dealers, which covers the transportation and sale of LP-gas in cylinders. Original license fee is \$500; annual renewal fee is \$150.

(9) Category I-Service Station and cylinder exchanges, which covers any service station and cylinder activity set in Category F and Category G of this section. Original license fee is \$75; annual renewal fee is \$35.

(10) Category J-Service station and cylinder dealerships, which covers the operation of a cylinder filling and container exchange dealership, including cylinder filling and the sale, transportation, installation, and connection of LP-gas in cylinders, and the replacement of cylinder valves, and the operation of an LP-gas service station as set out in Category G. Original license fee is \$500; annual renewal fee is \$150.

(11) Category K-Distribution system, which covers the sale and distribution of LP-gas through mains or pipes and the installation and repair of LP-gas systems. Original license fee is \$500; annual renewal fee is \$150.

(12) Category L-Carburetion, which covers the sale and installation of LP-gas motor or mobile fuel containers, and the sale and installation of LP-gas motor fuel systems. Original license fee is \$50; annual renewal fee is \$25.

(13) Category M-Recreational vehicle installers and repairmen, which covers the sale, service, and installation

of recreational vehicle containers, and the installation, repair, and service of recreational vehicle appliances, piping, and LP-gas systems, including recreational vehicle motor or mobile fuel systems and containers. Original license fee is \$50; annual renewal fee is \$35.

(14) Category N-Manufactured housing installers and repairmen, which covers the service and installation of containers that supply fuel to manufactured housing, and the installation, repair, and service of appliances and piping systems for manufactured housing. Original license fee is \$50; annual renewal fee is \$35.

(15) Category O-Testing laboratories, which covers the testing of an LP-gas container for the purpose of determining the safety of the container for LP-gas service, including the necessary disconnection and reconnection of LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers. Original license fee is \$100; annual renewal fee is \$50.

[(a) In addition to other licensing requirements set out in the Texas Natural Resources Code and the LP-gas Safety Rules, any Category A, B, or O licensee that proposes to determine the safety of an LP-gas container for LP-gas service in the State of Texas shall submit for division approval a written detailed test manual covering all testing activities. Also, any testing laboratory currently registered with the division or any Category A, B, or O licensee that seeks to obtain or renew an LP-gas license must submit its manual for division approval prior to the issuance or renewal of the applicable license. Procedures for hydrostatic testing must include the use of a calibrated pressure chart recorder. Any reasonable material may be required by the commission or division director in connection with division approval.

[(b) The registration for testing laboratories registered with the division on or prior to August 26, 1991, shall continue in effect until August 26, 1992, unless such registration is revoked following a formal hearing. Such registration will expire automatically on August 26, 1992, and an applicable license will be required for any continued testing activities. All testing laboratories operating under the extended registration prescribed by this section must comply with the insurance requirements pertaining to Category A licensees as set out in the Texas Natural Resources Code, §113.097 and §113.099, except that no products liability insurance is required. All certificates filed are subject to the insurance conditions of the Texas Natural Resources Code, §113.098.]

§9.5. Licensing Requirements. [Course of Instruction.]

(a) Renewals. All licenses issued under this chapter expire at midnight on the 31st day of August of each year. The commission shall not issue a license or license renewal unless the applicant's representative has met the requirements of subsection (b) of this section.

(1) The commission shall notify the licensee of the impending license expiration at least 15 days prior to the expiration date.

(2) All renewals must be submitted to the commission along with the renewal fee specified for informational purposes in §9.4 of this title (relating to Categories of Licensees) on or before the 31st day of August of each year in order for the licensee to continue LP-gas related activities.

(3) Failure to meet the August 31st deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any LP-gas related activities.

(4) If a person's license has been expired for less than 90 days, the person shall submit a late filing penalty of one-half the amount of the renewal fee. Upon receipt of the renewal fee and late filing penalty, the commission shall verify that the person's license has not been suspended, revoked, or expired for more than 2 years. After verification, if the licensee has met all other requirements for licensing, the commission shall renew the license, and the person may resume LP-gas related activities.

(5) If a person's license has been expired for more than 90 days but less than 2 years, the person shall submit a late filing penalty equal to the amount of the renewal fee in addition to the required renewal fee. Upon receipt of the renewal fee and late filing penalty, the commission shall verify that the person's license has not been suspended, revoked, or expired for more than two years. After verification, if the licensee has met all other requirements for licensing, the commission shall renew the license, and the person may resume LP-gas related activities.

(6) If a person's license has been expired for more than 2 years, that person may not renew and must comply with the requirements for issuance of a new license.

(b) Company Representative.

(1) Each applicant for a license or license renewal shall file with the

commission an LPG Form 1, designating a representative who shall be an owner or employee of the licensee and shall be directly responsible for actively supervising LP-gas operations of the licensee. A licensee may have more than one representative .

(2) An applicant for license may not engage in LP-gas activities governed by the Texas Natural Resources Code, Chapter 113, and the LP-Gas Safety Rules, until its representative has successfully completed the management examination administered by the commission or, in the case of an applicant for a Category D license, has obtained a General Installers and Repairmen Exemption by following the requirements in §9.6(b) of this title (relating to Examination for Certification and Course of Instruction).

(3) The licensee shall notify the commission in writing upon termination of its representative of record and shall at the same time designate a replacement by submitting a new LPG Form 1.

(4) The licensee must cease operations if, at the termination of its representative, there is no other qualified representative of the licensee acknowledged and recorded by the commission at its Austin office. The licensee may not resume operation until such time as it has a qualified representative, or unless it has been granted an extension of time in which to comply under the Texas Natural Resources Code, Chapter 113. See §9.6 of this title (relating to Examination for Certification and Course of Instruction).

(c) Designation of Operations Supervisor (Branch Manager).

(1) The commission shall designate whether a site is an outlet for the purpose of this chapter. Criteria used by the commission in determining the designation of an outlet includes, but is not limited to:

(A) distance from other LP-gas activities operated by the licensee;

(B) whether the operation is a duplicate of the home office operation; and

(C) whether the operation is directly supervised on a routine basis.

(2) A licensee maintaining more than one outlet shall designate a person as operations supervisor (Branch Manager) at each outlet on an LPG Form 1A and submit the form to the commission. The operations of the licensee at the

outlet may not commence or continue when the operations supervisor has not passed the management examination as administered by the commission or, in the case of a Category D licensee only, has not obtained a General Installers and Repairmen Exemption by following the procedures required in §9.6(b) of this title (relating to Examination for Certification and Course of Instruction).

(3) An operations supervisor (Branch Manager) may be a representative of the licensee, however, an individual may be designated as an operations supervisor (Branch Manager) at no more than one outlet.

(4) The operations supervisor (Branch Manager) shall be directly responsible for actively supervising LP-gas operations of the licensee at the designated outlet.

(d) In addition to complying with other licensing requirements set out in the Texas Natural Resources Code and the LP-Gas Safety Rules, an applicant for a Category B or O license or renewal shall have a properly completed LPG Form 505 on file with the commission, certifying they will follow the testing procedures indicated. The LPG Form 505 must be signed by the appropriate LP-gas company representative(s) designated on the LPG Form 1.

(e) An applicant for a Category A license or renewal shall submit a legible copy of its current American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII, Division 1 certificate of authorization and/or Department of Transportation (DOT) authorization for the manufacture of DOT cylinders for LP-gas service with the LPG Form 1 if such document is not already on file with the commission.

(1) A Category A licensee shall have a current copy of the DOT authorization referred to in this section on file with the commission at all times. A licensee may not continue to operate after the expiration date of the DOT authorization.

(2) If ASME is unable to issue the renewed certificate of authorization prior to the expiration date, the licensee may request of the commission an extension of time past the expiration date, not to exceed 60 calendar days. The licensee's request for extension shall be received by the commission prior to the expiration date of the ASME certificate of authorization referred to this section, and shall include a letter or statement from ASME that the agency is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for their purposes. A

licensee may not continue to operate after the expiration date of an ASME certificate of authorization:

(A) unless a temporary extension has been granted by the commission; or

(B) until a current ASME certificate of authorization is filed.

(f) A Category A or B licensee making repairs on ASME containers shall submit a legible copy of its current (R) certificate of authorization for the repair of ASME containers by the National Board of Boiler and Pressure Vessel Inspectors. The licensee shall have a current copy of the certificate of authorization on file with the commission at all times.

[(a) No more than one year prior to taking the LP-gas management examination, all representatives and operations supervisors for prospective Category D, E, F, G, I, J, K, and L licensees shall attend and complete an approved course of instruction.

[(b) However, any Category D, E, F, G, I, J, K, and L representative or operations supervisor who has been in a qualified status for a minimum of three years with an active licensee immediately prior to taking the management examination for the category of his qualified status shall not have to attend the course of instruction.

[(c) The Category E course of instruction shall be given in Austin at times to be determined by the division director, and shall be a minimum of 40 hours of classroom instruction.

[(d) The course of instruction for Category D, F, G, I, J, K, and L representatives or operations supervisors shall be given monthly in selected sites around the state and shall be a minimum of one hour instruction effective September 1, 1990.

[(e) No course of instruction is required for Category A, B, C, and H representatives and operations supervisors.

[(f) The director of the LP-gas division may, for good cause shown, allow an individual to become conditionally qualified as a Category D, E, F, G, I, J, K, and L representative or operations supervisor by taking the management examination if that individual attends and completes the appropriate course of instruction no more than 100 days after taking and passing the management examination. If such individual fails to complete the course of instruction within the time granted by the director, the conditional qualification shall be voided.]

§9.6. Examination and Course of Instruction. [Examination and Notification Gener-

ally.]

(a) Examination General Provisions.

(1) No person may work or be employed in any capacity which requires contact with LP-gas or LP-gas systems until that person has submitted to and successfully completed a commission examination which measures the competency of that person to perform the LP-gas related activities anticipated, and tests working knowledge of the Texas Natural Resources Code and the LP-Gas Safety Rules related to the type of LP-gas work anticipated. Table 1 of this section sets forth specific requirements for examination for each category of license. This section applies to all licensees and their employees who perform LP-gas related activities, and also applies to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as an LP-gas transport by this chapter, including any employee of such ultimate consumer if that employee drives or in any way operates such an LP-gas transport. Driving a motor vehicle powered by LP-gas or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute LP-gas related work. Only paragraph (2) of this subsection applies to an employee of a state agency or institution county, municipality school district, or other governmental subdivision.

(2) Any employee of an ultimate consumer or a state agency or institution, county municipality, school district or other governmental subdivision not required to submit to examination under this section must be properly supervised and trained in the installation, maintenance and storage of LP-gas, LP-gas systems, and vehicles fueled by LP-gas, and in the operation of equipment during the filling of and dispensing from storage containers. Such training shall also include the protection of containers and equipment against mechanical injury or tampering by unauthorized persons.

(3) Each person wishing to submit to examination by the commission shall file an LPG Form 16 with the commission prior to examination.

(4) A licensee shall notify the commission when a previously certified person is hired by immediately filing an LPG Form 16A with the commission. Notification must include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number name of previous licensee-employer, and LP-gas related work to be performed.

(5) All examinations will be administered in Austin and at other selected sites, when appropriate, unless an applicant demonstrates good cause for administering the examination elsewhere. Good cause includes, but is not limited to, severe economic hardship.

(6) Successful completion of any required examination shall be credited to and accrue to the individual.

(7) Failure of any examination shall immediately disqualify the person from performing any LP-gas related activities covered by the examination which is failed. Any person who fails an examination administered by the commission may not retake the same examination for a period of at least 24 hours.

(8) Dates and locations of examinations shall be listed in a schedule made annually by the commission. The schedule shall be prepared no later than November 15th of each year. The commission shall post the schedule in its Austin office and make a copy of it available to any person who requests it.

(b) General Installers and Repairmen Exemption.

(1) Any person who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Department of Licensing and Regulation may apply for and be granted an exemption to the Category D management examination and any service and installation employee examination excluding a carburetion examination, for those categories listed in subsection (f)(3) of this section (Table 1) of this section, and applicable seminar requirements by submitting to the commission the following information:

(A) LPG Form 16B;

(B) a \$15 original filing fee;

and

(C) any information the commission may reasonably require.

(2) This exemption does not become effective until the examination exemption card is issued by the commission.

(3) Exempted individuals as noted in paragraph (1) of this subsection cannot perform LP-gas related activities until that individual's company complies with all other applicable licensing requirements.

(4) The examination exemption accrues to the applicant and is non-transferable.

(5) Any person granted such exemption must maintain certified status at all times. Upon failure to maintain certified status, all affected LP-gas operations must cease immediately until proper status has been regained.

(6) In order to maintain certified status, each person issued an examination exemption card shall pay a \$10 fee annually to the commission on or before the 31st day of May of each year. If both of these items are not received by the deadline, that person shall cease performing all LP-gas related activities granted by this exemption and may not resume such activities until that person is in receipt of the examination exemption card. Late renewals are permitted for a period not to exceed 2 years by paying a late filing penalty plus the yearly renewal fee(s) as follows.

(A) The applicant's exemption has been expired for not longer than 92 days, the applicant's penalty fee is \$10 plus a \$10 annual fee.

(B) The applicant's exemption has been expired for greater than 92 days, but not longer than 2 years, the applicant's penalty fee is \$25 plus a \$10 annual fee. If an applicant's exemption has been expired for longer than 2 years, the applicant cannot renew the exemption and must apply for a new original exemption.

(7) Each applicant for license who plans to substitute a person as noted in subsection (b)(1) of §9.5 of this title (relating to Licensing Requirements) for its company representative may do so provided that person complies with all of the other requirements of a licensee's company representative as noted in §9.5 of this title (relating to Licensing Requirements) and subsection (f)(3) (Table 1) of this section.

(8) Each applicant for license who substitutes a person as noted in subsection (b)(1) of §9.5 of this title (relating to Licensing Requirements) may do so provided the person(s) listed on LPG Form 1A complies with all of the other requirements of a licensee's operations supervisor(s) as noted in §9.5 of this title (relating to Licensing Requirements) and subsection (f)(3) (Table 1) of this section.

(9) Any person who is issued this exemption agrees to comply with the current edition of the LP-Gas Safety Rules. In the event the exempt individual surrenders, fails to renew, or has the

license revoked either by the Texas State Board of Plumbing Examiners or Department of Licensing and Regulation, that person will immediately cease performing any LP-gas activity granted by this section. The examination exemption card must be returned immediately to the commission and all rights and privileges surrendered.

(c) Trainees.

(1) Notwithstanding the examination requirements set forth in this section, a licensee or ultimate consumer may employ an individual as a trainee for a period not to exceed 45, days without that person having successfully completed the necessary examination, subject to the following conditions:

(A) The trainee must be directly and individually supervised at all times by a person who has successfully completed the commission examination for the areas of work being performed by the trainee. Refer to Table 1 of this section for those LP-gas related activities for which a person must be certified or a trainee can perform under direct supervision.

(B) The licensee or ultimate consumer shall ensure that an LPG Form 16 is on file with the commission for each employee in training at the time that the trainee begins supervised LP-gas activities.

(C) No trainee may perform any work for which he or she is not currently certified while unsupervised, if such work involves LP-gas activities.

(2) A trainee who takes a commission examination, and who fails the examination shall cease to perform any LP-gas related activities covered by the examination failed. A trainee who has been in training for a total period of 45 days, in any combination and with any number of employers, shall cease to perform any LP-gas activities for which he or she is not currently certified.

(3) A trainee who continues to work in violation of this subsection may be held responsible for the violation. An employer who employs a person in violation of this subsection may be held responsible for the violation. Possible penalties for violation are set forth in the Texas Natural Resources Code, Chapter 113. The commission may call an administrative hearing to show cause why a license should not be subject to revocation, suspension, or probation, or any combination of these penalties.

(d) Examination fees. Each applicant shall pay to the commission the examination fee specified in subsection (f)(3) (Table 1) of this section in advance for each required examination. The fee is non-refundable and if an applicant fails an examination, they shall pay the full examination fee for each subsequent examination.

(e) Renewal of certified status.

(1) In order to maintain certified status, each person who has been qualified by examination shall pay the annual fee specified in subsection (f)(3) (Table 1) of this section to the commission on or before the 31st day of May of each year.

(2) Failure to meet the May 31st renewal deadline set forth in this section shall result in a lapse of certification. Failure to meet the August 31st of each year deadline discussed in paragraph (3) of this section shall result in the expiration of certification. If a person's certification has been expired for more than 2 years, that person must comply with the requirements of subsection (a) of this section. If a person's certification lapses or expires, that person shall immediately cease performance of any LP-gas activities that require certification. Certified status may be regained only by successfully completing the examination required for the certification, and meeting the requirements of paragraph (3) of this subsection.

(3) Any lapsed or expired renewals submitted after May 31st of each year shall include a \$10 late filing penalty in addition to the renewal fee, proof of successful completion of the examination required for the certification, and be received in the commission's Austin office no later than midnight of the 31st day of August of each year. Upon receipt of the renewal fee late filing penalty, and proof of successful completion of the examination required for the certification the commission shall verify that the person's certification has not been suspended, revoked, or expired for more than two years. After verification, the commission shall renew the certification and the person may resume LP-gas activities.

(f) Course of instruction.

(1) Dates and locations of courses of instruction and seminars shall be listed in a schedule made annually by the commission. The schedule shall be prepared no later than November 15th of each year shall be posted in the commission's Austin office, and shall be made available to any person who requests one.

(2) The one-hour course of instruction referenced in Table 1 of this section shall be held in Austin and other selected sites around the state.

(3) The Category E course of instruction referenced in Table 1 of this section shall be held in Austin or any other facility of the Railroad Commission of Texas at times to be determined by the commission, and shall be a minimum of 40 hours of classroom instruction.

LP-GAS EXAMINATION/INSTRUCTION REQUIREMENTS
CATEGORIES OF LICENSES
TABLE I.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
1. Company Representative Management Exam (\$25)	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
2. Operations Supervisor (Branch Manager) Management Exam (\$25)	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
3. Employee Level - Delivery Truck/Service & Installation (including Transport Driver, DOT Cylinder Filling, Motor Fuel Dispenser Exam (\$10) Ultimate Consumer *III)	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
4. Employee Level - Transport Driver Exam (\$10) Ultimate Consumer *III	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
5. Employee Level - Carburetion Exam (\$10)	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
6. Employee Level - DOT Cylinder Filling Exam (\$10)	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
7. Employee Level - Recreational Vehicle Technician Exam (\$10)	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
8. Employee Level - Manufactured Housing Technician Exam (\$10)	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes

CONTINUED ON NEXT PAGE

LP-GAS EXAMINATION/INSTRUCTION REQUIREMENTS

TABLE 1.

CONTINUED
CATEGORIES OF LICENSES

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
9. Employee Level - Service & Installation Exam (\$10) prior to 11/15/90				yes	yes						yes		yes		
Exam (\$10) After 11/15/90				yes	yes						yes			yes	
10. Employee Level - Motor/Mobile Fuel (ASME Fuel Dispenser) Exam (\$10)					yes		yes		yes	yes	yes				
11. File LPG Form 16	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
12. File LPG Form 16B *1				yes	yes					yes	yes			yes	
13. 40 Hour Course of Instruction (Representative & Operations Supervisor only)					yes										
14. One Hour Course of Instruction (Representative & Operations Supervisor only)				yes		yes	yes		yes	yes	yes	yes			
15. Course of Instruction (Representative & Operations Supervisor only)	no	no	no					no					no	no	no
16. Seminar Every 4 years *11				yes	yes	yes	yes		yes						
17. \$10 Renewal fee on or before 5/31 Annually	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes

CONTINUED ON NEXT PAGE

LP-GAS EXAMINATION/INSTRUCTION REQUIREMENTS

TABLE 1. CONTINUED CATEGORIES OF LICENSES

A B C D E F G H I J K L M N O

18. General Installer & Repairmen Exemption *1

yes yes yes yes yes yes yes yes yes yes yes yes yes yes yes

19. Special exemption from Course of Instruction and Examination for Representative or Operations Supervisor (Branch Manager) in qualified status for minimum three years with active licensee prior to taking management exam

yes yes yes yes yes yes yes yes yes yes yes yes yes yes yes

20. Conditional qualifications for Company Representative or Operations Supervisor (Branch Manager) after passing management exam if course of instruction completed within 100 days.

yes yes yes yes yes yes yes yes yes yes yes yes yes yes yes

KEY

- *I. Applies to Company Representative, Operations Supervisor (Branch Manager), and Service & Installation Employee for Categories marked. (Applicable to Numbers 12 and 18)
- *II. Applies to Company Representative, Operations Supervisor (Branch Manager), Delivery Truck, Service Installation, DOT Cylinder Filling, and Motor/Mobile Fuel Dispenser Employees for Categories marked. (Applicable to Number 16)
- *III. Any Ultimate Consumer who has purchased, leased, or obtained other rights in any vessel defined as an LP-gas transport, including any employee of the ultimate consumer that drives or in any way operates an LP-gas transport must pass one or more employee examination. (Applicable to Numbers 3 and 4).

[(a) Each individual wishing to submit to examination by the LP-Gas Division shall file with the division, LPG Form 16 prior to the examination and within any deadlines established by the division.

[(b) The LP-Gas Division will administer all examinations in Austin and at other selected sites, when appropriate, unless an applicant demonstrates good cause for administering examination elsewhere. Good cause includes, but is not limited to, severe economic hardship.

[(c) Satisfactory completion of any required examination shall accrue to the individual.

[(d) Failure of any examination shall immediately disqualify the individual from performing any LP-gas related activities covered by the examination which is failed.

[(e) Information regarding examinations may be acquired from the Austin office of the LP-Gas Division.

[(f) Any individual who fails to pass any test administered by the LP-Gas Division may not be re-examined for a period of at least 24 hours.

[(g) A licensee shall notify the LP-Gas Division when a previously qualified person is hired, by immediately filing a Form 16-A with the division.

[(h) Any notice, application, or statement submitted to the LP-Gas Division shall have effect only on the date of receipt in the Austin office, and not on the date of mailing. In this regard, the division charges the licensee with the duty to ensure by whatever means necessary that correspondence reaches the division promptly. Notice may be received by United States mail, by telegram, or by private postal carrier at the Austin office of the division. Notice may also be delivered in person or by any other appropriate means.

[(i) Each person qualified by examination for a management level Category D, E, F, G, or I, and all employees qualified by examination for delivery truck driver, service and installation, DOT cylinder filling, and motor/mobile fuel dispensing must pass a subsequent examination or participate in a required seminar every fourth calendar year beginning with the fourth year following year of qualification. (For example: a person qualified in 1988 must attend another requalification seminar or pass a subsequent examination in 1992).

[(j) Dates and locations of examinations and seminars shall be listed in a schedule made annually by the division. This schedule will be prepared no later than November 15th of each year and shall state who is required to take examinations or

participate in seminars. The division shall post the schedule in its Austin office and shall make the same available to any individual who requests one.

[(k) In order to maintain qualified status, each person who has been qualified by examination shall pay the sum of \$10 annually to the division, on or before the 31st day of May. If this fee is not received by the deadline, that person shall cease performing all LP-Gas related activities. Upon receipt of the \$10 fee, plus a \$10 late filing penalty in the Austin office, which must be received by midnight the 31st day of August of each year, that person may resume performing LP-gas activities.

[(l) Failure to meet a deadline set forth in this section shall result in a lapse of qualification. If a person suffers a lapse in qualification, that person must immediately cease performance of any LP-Gas related activities which require qualifications. Once lapsed, qualified status can only be regained by passing an appropriate examination.]

§9.7. Denial, Suspension, or Revocations of Licenses or Certifications; Hearing. [Examination of Representative.]

(a) Denial of license or license renewal.

(1) Any applicant for license or license renewal failing to meet the requirements of §9.5 of this title (relating to Licensing Requirements), §9.6 of this title (relating to Examination for Certification and Course of Instruction), or §9.19 of this title (relating to Insurance Requirements), may be denied the license or license renewal.

(2) If the commission determines that an applicant for license or license renewal has not met the requirements of §§9.5, 9.6, or 9.19 of this title (relating to General Applicability and Requirements), the commission shall notify the applicant in writing of the reasons for denial. The notice must advise the person that the application may be resubmitted within 30 days of receipt of the denial with all cited deficiencies corrected, or, if the person disagrees with the commission's determination, that person may request a hearing on the matter within 30 days of receipt of the notice of denial.

(3) If a person resubmits the application for license or license renewal within 30 days of receipt of the denial with all deficiencies corrected, the commission shall issue the license or license renewal.

(b) Hearing regarding denial of license or license renewal.

(1) An applicant receiving a

notice of denial of a license or license renewal may request a hearing to determine whether the applicant did comply in all respects with the requirements for the category or categories of license sought. The request for hearing must be in writing, must refer to the specific requirements the applicant claims were met, and must be received in the commission's Austin office within 30 days of the applicant's receipt of the notification of denial.

(2) Upon receipt of a request complying with paragraph (1) of this subsection, the Railroad Commission of Texas shall schedule a hearing within 30 days following the receipt of the request for hearing to determine the applicant's compliance or non-compliance with the licensing requirements for the category or categories of license sought.

(3) If, after hearing, the Railroad Commission of Texas finds the applicant's claim has been supported, it shall enter an order in its records to that effect, noting the category or categories of license for which the applicant is entitled to be licensed, and the license(s) or renewal(s) shall be issued.

(4) If, after hearing, the Railroad Commission of Texas finds that the applicant is not qualified for the license or license renewal in the category or categories of license sought, it shall likewise enter an order in its records to that effect, and no license or renewal may be issued to the applicant.

(c) Suspension and revocation of licenses and certifications.

(1) If the commission finds by means including, but not limited to, inspection, review of required documents submitted, or complaint by a member of the general public or any other person, a probable or actual violation of or non-compliance with Chapter 113 of the Texas Natural Resources Code or the LP-Gas Safety Rules, it shall notify the licensee or certified person of the alleged violation or noncompliance in writing.

(2) The notice shall specify the acts, omissions, or conduct constituting the alleged violation or noncompliance and shall designate a date not less than 30 days or more than 45 days after the licensee or certified person receives the notice by which the violation or non-compliance must be corrected or discontinued. If the commission determines the violation or noncompliance may pose imminent peril to the health, safety, or welfare of the general public, the commission may notify the licensee or certified person orally with instruction to immediately cease the violation or non-compliance. When oral notice is given,

the commission shall follow it with written notification no later than five days after the oral notification.

(3) The licensee or certified person shall either report the correction or discontinuance of the violation or non-compliance within the time frame specified in the notice or request an extension of time in which to comply. The request for extension of the time to comply must be received by the commission within the same time frame specified in the notice for correction or discontinuance.

(d) Hearing regarding suspension or revocation of licenses and certifications.

(1) If a licensee or certified person disagrees with the determination of the commission under this section, that person may request a public hearing on the matter to be conducted in compliance with the Administrative Procedure and Texas Register Act, the General Rules of Practice and Procedure of the Railroad Commission of Texas, and any other applicable rules. The request must be in writing, must refer to the specific rules or statutes the licensee or certified person claims to have complied with, and must be received by the commission within 30 days of the licensee's or certified person's receipt of the notice of violation or non-compliance.

(2) If the Railroad Commission of Texas determines that the licensee or certified person may not comply within the specified time, the Railroad Commission of Texas may enter an order calling a public hearing to be conducted in compliance with the Administrative Procedure and Texas Register Act, the General Rules of Practice and Procedure of the Railroad Commission of Texas, and any other applicable rules.

[(a) [Each applicant for a license or license renewal shall file with the division LPG Form 1, designating a representative who shall be an owner or employee of the licensee and shall be directly responsible for actively supervising LP-gas operations of the licensee.

[(b) An applicant for license may not engage in LP-gas related activities governed by the Texas Natural Resources Code, Chapter 113, until its representative has passed the management examination administered by the LP-Gas Division. The division shall not issue or renew a license unless the representative has passed this examination.

[(c) The licensee shall notify the LP-Gas Division in writing upon termination of its representative of record and shall at the same time designate a replacement by submitting a new LPG Form 1.

[(d) The licensee must cease operations if, at the termination of its representative, there is no other qualified representative of the licensee acknowledged and recorded by the LP-Gas Division at its Austin office. The licensee may not resume operation until such time as it has a qualified representative, or unless it has been granted an extension of time in which to comply under the Texas Natural Resources Code, Chapter 113.

[(e) The operations supervisor shall be directly responsible for actively supervising LP-gas operations of the licensee at the designated outlet.]

§9.14. Franchise Tax Certification and Assumed Name Certificates.[Severability].

(a) Any applicant for an original or renewal license that is a corporation or limited liability company must file LPG Form 26 with the commission prior to the issuance of such license certifying that its Texas franchise taxes are current or such taxes are not applicable to the company. An applicant may file a Certificate of Account Status issued by the office of the Comptroller of Public Accounts with the commission as an alternative to filing the LPG Form 26. Making a false statement as to franchise tax status is grounds for the denial, suspension, or revocation of the license granted by the commission.

(b) Any applicant for license must list all names on LPG Form 1 under which LP-gas related activities requiring licensing are to be conducted. Any company performing LP-gas activities under an assumed name (doing business as) must file copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary or State's office with the commission. [If any term, clause or provision of these rules is for any reason declared invalid, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.]

§9.15. Registration of LP-Gas Transport.[LP-Gas Report Forms.]

(a) Each transport truck, trailer, or other motor vehicle equipped with an LP-gas cargo tank and each truck used principally for transporting LP-gas in portable containers shall be registered with the commission.

(b) A licensee who has purchased, leased or obtained other rights to use any unit described in subsection (a) of this section shall register that unit in the name or names under which the licensee conducts business before the transporta-

tion of LP-gas by means of that unit.

(c) An ultimate consumer of LP-gas who has purchased, leased, or obtained other rights to use any unit described in subsection (a) of this section shall register that unit in the person's name before transportation of LP-gas by means of that unit on public roads or highways.

(d) The registration fee for each unit is \$150 a year for any LP-gas cargo trailer or semitrailer and \$100 a year for any bobtail or cylinder delivery unit. Such fee must be paid in full before any unit may be registered or re-registered. [Under the provisions of the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted by reference the following forms for use by the Liquefied Petroleum Gas (LP-Gas) Division. These forms are available to the public upon request to the LP-Gas Division in Austin:

[(1) LPG Form 1. Application for License;

[(2) LPG Form 1A. Branch Outlet List;

[(3) LPG Form 3. Liquefied Petroleum Gas License;

[(4) LPG Form 4. Liquefied Petroleum Gas Vehicle Identification;

[(5) LPG Form 5. Manufacturer's Data Report, which shall be filed within 10 days after sale of containers by the manufacturer;

[(6) LPG Form 7. Liquefied Petroleum Gas Truck Registration;

[(7) LPG Form 8. Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing;

[(8) LPG Form 8A. Report of DOT Cylinder Repair;

[(9) LPG Form 16. Application for Examination;

[(10) LPG Form 16A. Qualified Employee Transfer Certification;

[(11) LPG Form 16B. Application for Examination Exemption by a Master or Journeyman Plumber or a Class A or B Air Conditioning and Refrigeration Contractor;

[(12) LPG Form 17. Report of Odorization of Liquefied Petroleum Gases, which shall be filed within 30 days following calendar quarters ending March 31, June 30, September 30, and December 31, by any persons, firms, or corporations who odorize liquefied petroleum gases;

[(13) LPG Form 18. Statement of Lost or Destroyed License;

[(14) LPG Form 18B. State-

ment of Lost or Destroyed LPG Form 4 Decal;

[(15) LPG Form 19. Inventory of Liquefied Petroleum Gas Bulk Storage Plants;

[(16) LPG Form 20. Report of LP-Gas Incident/Accident;

[(17) LPG Form 21. Notice of Intent to Appear (see §9.18 of this title (relating to Answer Requirement in Commission-Called Hearing));

[(18) LPG Form 22. Report of LP-Gas Safety Rule Violation(s);

[(19) LPG Form 23. Statement in Lieu of Container Testing;

[(20) LPG Form 25. Application and Notice of Exception to the LP-Gas Safety Rules;

[(21) LPG Form 26. Franchise Tax Certification;

[(22) LPG Form 500. Application for Tentative Approval;

[(23) LPG Form 500a. Notice of LP-Gas Installation;

[(24) LPG Form 501. Completion Report;

[(25) LPG Form 502. Application for Liquefied Petroleum Gas Equipment and Component Approval;

[(26) LPG Form 503. Application to Install an LP-Gas System on School Bus/Mass Transit Vehicles;

[(27) LPG Form 504. Notice of Subsequent Installation or Conversion by the Same Ultimate Consumer or Licensee;

[(28) LPG Form 996A. Certificate of Insurance, Worker's Compensation and Employer's Liability;

[(29) LPG Form 996B. Statement in Lieu of Worker's Compensation and Employer's Liability Insurance;

[(30) LPG Form 997A. Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability;

[(31) LPG Form 997B. Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance;

[(32) LPG Form 998A. Certificate of Insurance, General Liability;

[(33) LPG Form 998B. Statement in Lieu of General Liability Insurance and/or Completed Operations and Products Liability Insurance;

[(34) LPG Form 999. Notice of Insurance Cancellation.]

§9.16. Changes in Ownership and/or Form

of Dealership [Franchise Tax Certification and Assumed Name Certificate].

(a) Transfer of dealership outlet/location(s) by sale, lease, or gift.

(1) Licensing. The purchaser, lessee, or donee of any dealership outlet or location shall apply for and be issued an LP-gas license prior to engaging in any dealership operation which requires such a license.

(2) Notice. The purchaser, lessee, or donee of any dealership outlet or location or the authorized representative thereof shall notify the commission by certified mail of a completed transfer of such outlet or location prior to engaging in any operation through that outlet or location which requires an LP-gas license.

(b) Other changes in ownership.

(1) Licensing. Upon the death of a sole proprietor or partner, or the dissolution of a corporation or partnership, or any change in members of a partnership, or other change in ownership not specifically provided for elsewhere in this section, all operations of the previously existing dealership which require an LP-gas license shall cease immediately and no operation shall resume until an LP-gas license is issued to the successor(s) in interest and the notice requirement of paragraph (2) of this subsection has been satisfied.

(2) Notice. An authorized representative of the previously existing dealership or of successor(s) in interest shall notify the commission by certified mail of the death of a sole proprietor or partner, or the dissolution of a partnership or corporation, or any change in partnership members, or other change in ownership not specifically provided for elsewhere in this section.

(3) Change in partnership members. A change in members of a partnership occurs upon the death, withdrawal, expulsion, or addition of a partner.

(c) Change in dealership business form.

(1) Licensing. When a dealership converts from one business entity into a different kind of business entity the resulting dealership must apply for and be issued a license before engaging in any operation which requires an LP-gas license.

(2) Notice. A dealership's authorized representative shall notify the commission by certified mail of an accomplished change in business form before the dealership, as altered, engages in any operation requiring an LP-gas li-

cense.

[(a) Any applicant for an original or renewal license must file LPG Form 26, Franchise Tax Certification, with this office prior to the issuance of such license, certifying that its Texas franchise taxes are current or such taxes are not applicable to his company. Making a false statement as to franchise tax status is grounds for the denial, suspension, or revocation of the license granted by this division.

[(b) Any applicant for license must list all names on LPG Form 1, Application for License, under which LP-gas related activities requiring licensing are to be conducted. Any company performing LP-gas activities under an assumed name (doing business as) must file with this office copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the secretary of states office.]

§9.17. Dealership Name Change [Registration of LP-Gas Transport].

(a) Duty to report. A licensee shall file the following forms, evidencing any change in the licensee's name(s), with the commission prior to engaging, under such name(s), in operations that require an LP-gas license:

(1) an amended application for license;

(2) a copy of the licensee's Articles of Amendments reflecting the name change; and

(3) certificates of insurance or affidavits, or both, in lieu of insurance (where permitted by §9.19 of this title (relating to Insurance Requirements)).

(b) Duty to re-register. A licensee operating under a changed name(s) shall cause the re-registration of any LP-gas transport/delivery trailer or other motor vehicle or both, in the changed name(s) by filing an amended LPG Form 7 with the commission prior to the use of any such unit in the transport or delivery of LP-gas.

[(a) Each transport truck, trailer, or other motor vehicle equipped with an LP-gas cargo tank and each truck used principally for transporting LP-gas in portable containers shall be registered with the commission.

[(b) A licensee who has purchased, leased, or obtained other rights to use any unit described in subsection (a) of this section shall register that unit in the name or names under which the licensee conducts business before the transportation of LP-gas by means of that unit.

[(c) An ultimate consumer of LP-

gas who has purchased, leased, or obtained other rights to use any unit described in subsection (a) of this section shall register that unit in the person's name before transportation of LP-gas by means of that unit on public roads or highways.

[(d) The registration fee for each unit is \$150 a year for any LP-gas cargo trailer or semitrailer and \$100 a year for any bobtail or cylinder delivery unit. Such fee must be paid in full before any unit may be registered or re-registered.]

§9.18. Limitation/Avoidance of Licensee Liability [Answer Requirement in Commission-Called Hearing].

(a) An LP-gas licensee may not limit or avoid its liability or that of its insurer for damages proximately resulting from any negligent act or acts of the licensee.

(b) An attempt to limit or avoid liability before the negligent act or acts through indemnity clauses or otherwise, shall be null and void.

(c) This section does not apply to negotiations or settlements or both, made subsequent to a licensee's negligent act or acts.

(d) To the extent that any damage, occurring during or subsequent to any of the following acts, does not proximately result from any negligent act of the licensee, the licensee may limit liability based upon:

(1) unauthorized unsafe, or improper application of LP-gas or any LP-gas system or equipment by any user or other person;

(2) any use or operation of LP-gas or any LP-gas system or equipment contrary to specific representations made by any user or other person to an LP-gas licensee during or preceding installation or servicing of such LP-gas system or equipment and relied upon by such LP-gas licensee in selecting, designing, installing, or servicing such system or equipment; or

(3) any modification, change, installation, alteration tampering, or other action by any unlicensed person, to or upon any LP-gas system or equipment.

[(a) Filing of answer. The respondent/dealership in any cause of action for which notice of hearing has been served and which cites such dealership to be in violation of the LP-Gas Code or any rule or standard promulgated by the Railroad Commission of Texas pursuant to its statutory authority shall have 5 days from the date notice is received to file an answer to the charge or charges set out therein with the

LP Gas Division. Filing under this section shall be deemed accomplished when an answer is posted with the United States mail before or on due date, properly addressed and stamped with sufficient postage, or at such other time as an answer is physically delivered to the LP-Gas Division, whichever occurs first. Extension of time for filing an answer shall be considered upon motion and granted for good cause where it should appear that time for filing is insufficient. Motions for postponement of hearing date will be granted for good cause where it should appear that time for filing under these rules cannot otherwise be met or where other grounds for postponement exist.

[(b) Content of answer. The answer shall contain a written statement signed by one authorized to bind the respondent/dealership which shall admit or deny, in whole or in part, the charge or charges stated in the notice of hearing or shall state the reason or reasons why it can neither admit nor deny the charges against it and shall specifically state that part, including any allegation of fact made therein, which is denied where the charge or charges are disputed in part only. In the event that the respondent denies all or part of the charge(s) contained in the notice of hearing, the answer shall contain a concise account of the facts which the respondent contends will refute all or any part of the charge(s) against it. The respondent may additionally plead in his answer as many several matters, whether of law or fact, as he may think necessary for his defense. Further, the answer shall contain a waiver of attorney where the respondent/dealership does not choose to be represented by counsel at hearing; such waiver will not deny the respondent the right to legal representation should the respondent actually appear at hearing with or through an attorney. The answer shall also contain a statement of respondent's intent to appear at hearing or, alternatively, its decision to suffer a default judgment.

[(c) Amendments to answer. The answer may be amended at any time prior to or on the date for filing such pleading and thereafter with consent of all parties or upon finding that amendment will not operate to prejudice or unduly surprise any party to the cause of action.

[(d) Form of answer. An answer made pursuant to this section may be made on LPG Form Number 21, adopted for use by the LP-Gas Division and available to the public upon request directed to such division in Austin, Texas. Alternatively, a respondent may submit the information required by subsection (b) of this section on 8-1/2 inch by 11-inch or 8-1/2 inch by 14-inch paper, making reference to the dealership name and the docket number in the cause.]

§9.19. Insurance Requirements [Changes in Ownership and/or Form of Dealership].

(a) Pursuant to the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the minimum amounts of insurance for LP-gas licensees licensed by the State of Texas specified in subsection (g) (Table 1) of this section. A valid certificate of insurance shall be filed with the commission before it grants or renews a license.

(b) Each certificate of insurance filed with the commission must have one of the endorsements specified in subsection (g) (Table 1) of this section attached to the policy, and the endorsements may not be cancelled without cancellation of the policy to which it is attached.

(c) Each endorsement issued and attached to a certificate of insurance requires the insurance carrier, noted as company on the certificate of insurance, to give the commission 30 days written notice before the insurance cancellation. The 30-day notice commences to run from the date the notice is actually received by the commission.

(d) A licensee or applicant for a license that does not employ or contemplate employing any employee in LP-gas related activities may file LPG Form 996B in lieu of a certificate of workers' compensation, including employers liability insurance. The licensee or applicant for license must file the required insurance certificate with the commission before hiring any person as a dealership employee.

(e) A Category C, E, H, or J licensee or applicant for a license or ultimate consumer that does not operate or contemplate operating a motor vehicle equipped with an LP-gas cargo container or does not transport or contemplate transporting LP-gas by vehicle in any manner may file LPG Form 997B in lieu of a certificate of motor vehicle bodily injury and property damage insurance, if this certificate is not otherwise required. The licensee or applicant for a license must file the required insurance certificate with the commission before operating a motor vehicle equipped with an LP-gas cargo container or transporting LP-gas by vehicle in any manner.

(f) A Category A, B, C, E, or O, licensee or applicant for a license that does not engage in or contemplate engaging in any LP-gas operations that would be covered by completed operations and products liability insurance may file LPG Form 998B in lieu of a certificate of completed operations and products liability insurance. The licensee or applicant for a license must file the required insurance

certificate with the commission before engaging in any operations that require completed operations and products liability insurance.

(g) A licensee or applicant for a license that does not engage in or contemplate engaging in any operations that would be covered by general liability insurance may file LPG Form 998B in lieu of a certificate of general liability insurance. The licensee or applicant for a license must file the required insurance certificate with the commission before engaging in any operations that require general liability insurance.

**LP-GAS INSURANCE REQUIREMENTS
CONTINUED**

**STATEMENT IN LIEU
OF
REQUIRED INSURANCE
FILING**

FORM REQUIRED

ENDORSEMENT REQUIRED

TYPE OF COVERAGE

CATEGORY OF LICENSE

LPG Form 998B

LPG Form 998A

CG02 05
Texas Changes Amendments or
Cancellation Provisions or
Coverage Change Endorsement

\$300,000 per occurrence
\$300,000 aggregate

H,J

LPG Form 997B

LPG Form 997A

TE23 26A
Liquefied Petroleum Gas
Licensed Motor Vehicle
Endorsement Texas
Railroad Commission
Form Endorsement

Motor Vehicle Coverage:
Minimum \$500,000 combined
single limit for bodily injuries
to or death of all persons injured
or killed in any one accident,
and loss or damage to property
of others in any one accident
any one accident

C,E,H,J
Ultimate Consumer

TABLE 1

Refer to Section 9.4 for a description of each category.
See pages X1 - X78 for blank forms and how to complete forms.

LP-GAS INSURANCE REQUIREMENTS

<u>CATEGORY OF LICENSE</u>	<u>TYPE OF COVERAGE</u>	<u>ENDORSEMENT REQUIRED</u>	<u>FORM REQUIRED</u>	<u>STATEMENT IN LIEU OF REQUIRED INSURANCE FILING</u>
ALL	Workers' Compensation, including Employer's Liability	WC42 L6 01, Texas Notice of Material Change	LPG Form 996A	LPG Form 996B
A,B,C,E,O	General Liability Coverage including: premises and operations in an amount not less than: \$300,000 per occurrence \$300,000 aggregate Completed operations and products liability in an amount not less than: \$300,000 aggregate	CG02 05 Texas Changes Amendment or Cancellation Provisions or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B
D,F,I,G,L,M,N,K	General Liability Coverage including: Premises and operations in an amount not less than: \$25,000 per occurrence \$50,000 aggregate	CG02 05 Texas Changes Amendments or Cancellation Provisions or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B

CONTINUED ON NEXT PAGE

[(a) Transfer of dealership outlet/location(s) by sale, lease, or gift.

[(1) Licensing. The purchaser, lessee, or donee of any dealership outlet or location shall apply for and be issued an LP-gas license prior to engaging in any dealership operation which requires such a license.

[(2) Notice. The purchaser, lessee, or donee of any dealership outlet or location or the authorized representative thereof shall notify the division by certified mail of a completed transfer of such outlet or location prior to engaging in any operation through that outlet or location which requires an LP-gas license.

[(b) Other changes in ownership.

[(1) Licensing. Upon the death of a sole proprietor or partner, or the dissolution of a corporation or partnership, or any change in members of a partnership, or other change in ownership not specifically provided for elsewhere in this section, all operations of the previously existing dealership which require an LP-gas license shall cease immediately and no operation shall resume until an LP-gas license is issued to the successor(s) in interest and the notice requirement of paragraph (2) of this subsection has been satisfied.

[(2) Notice. An authorized representative of the previously existing dealership or of successor(s) in interest shall notify the division by certified mail of the death of a sole proprietor or partner, or the dissolution of a partnership or corporation, or any change in partnership members, or other change in ownership not specifically provided for elsewhere in this section.

[(3) Change in partnership members. A change in members of a partnership occurs upon the death, withdrawal, expulsion, or addition of a partner.

[(c) Change in dealership business form.

[(1) Licensing. When a dealership converts from one business entity into a different kind of business entity, the resulting dealership must apply for and be issued a license before engaging in any operation which requires an LP-gas license.

[(2) Notice. A dealership's authorized representative shall notify the division by certified mail of an accomplished change in business form before the dealership, as altered, engages in any operation requiring an LP-gas license.]

§9.20. Filings Required for Stationary LP-Gas Installations [Dealership Name Change].

(a) Aggregate water capacity of 10,000 gallons or more.

(1) Prior to the installation of any LP-gas container which would result in an aggregate water capacity of 10,000 gallons or more, plans and specifications for the installation must be submitted to the commission with LPG Form 500. Tentative or interim approval must be obtained prior to the setting of the LP-gas container and construction of the LP-gas installation.

(2) When any LP-gas container is replaced with container(s) of the same overall length and diameter or less and installed in the identical location of the existing container(s) at LP-gas storage installations of 10,000 gallons aggregate water capacity or more, an LPG Form 501 shall be filed with the commission in accordance with this section.

(3) LPG Form 500, LPG Form 500A, and LPG Form 501, including plans and specifications, are not required to be filed prior to installation of bulkheads, pull-away devices, and emergency shutoff valves (ESV's) or when maintenance and improvements are being made to the piping system at existing LP-gas installations having an aggregate water capacity of 10,000 gallons or more which have been previously approved.

(4) Prior to the installation of any individual LP-gas container referenced in this section in a heavily populated or congested area, the commission shall determine whether the proposed installation poses a threat to the health, safety, and welfare of the general public. The commission shall determine restrictions on LP-gas container capacities in accordance with the following:

(A) density of the population within 500 feet of the LP-gas installation;

(B) nature of the land use on those pieces of property located within 500 feet of the LP-gas installation;

(C) vehicular traffic in the area;

(D) types and numbers of roadways in the area;

(E) type of operations on the premises;

(F) potential sources of ignition in the area that might be affected by an LP-gas leak;

(G) existence of dangerous or combustible materials in the area that might be affected in an emergency situation;

(H) the number of members of the general public who are concentrated in the area;

(I) any other material factor(s) related to the public health, safety, and welfare.

(i) If the commission declines to administratively approve the installation, the applicant shall be notified in writing. The applicant may modify the submission and resubmit for approval, or may request a hearing on the matter in accordance with the General Rules of Practice and Procedure of the Railroad Commission of Texas.

(ii) The proposed installation shall not be operated or used in LP-gas service until approved by the commission.

(5) Fee. A non-refundable fee of \$25 shall be submitted with each LPG Form 500. A non-refundable resubmission fee of \$15 shall be included with each incomplete or revised set of plans and specifications resubmitted.

(b) Aggregate water capacity of less than 10,000 gallons.

(1) An LPG Form 501 must be postmarked or physically delivered to the commission within 10 calendar days after completion of the installation of any LP-gas container having an aggregate water capacity under 10,000 gallons at a commercial installation. No LP-gas shall be introduced into any LP-gas container that is not installed in accordance with the statutes of the State of Texas, or with the LP-Gas Safety Rules in effect at the time of installation. The submission of the LPG Form 501 will indicate that:

(A) the installation is in total compliance with the statutes and LP-Gas Safety Rules;

(B) that any necessary LP-gas licenses have been issued; and

(C) that the installation has been placed in LP-gas service.

(2) If an LP-gas licensee violates the provisions of this subsection, the commission may require the affected LP-gas licensee to submit an LPG Form 500, and plans and specifications for future

LP-gas installations. The affected LP-gas licensee shall be notified in writing of this finding. If the LP-gas licensee disagrees with the determination of the commission, then that licensee may request a public hearing on the matter. Until a decision is issued subsequent to a hearing on the matter the LP-gas licensee shall be required to submit plans and specifications as noted above.

(3) **Fee.** A non-refundable fee of \$5.00 for each LP-gas container (including cylinders) listed on the form shall be submitted with each LPG Form 501 required to be filed by the applicable subsection(s) of this section. A non-refundable resubmission fee of \$11 shall be included for each LP-gas Form 501 resubmitted.

(c) **Notice of complete or incomplete form.** The commission will review all applications within 21 calendar days of their receipt. Written notification of whether the application is complete or incomplete shall be mailed to the applicant within the 21 calendar-day period.

(d) **Expiration of application; extension.**

(1) When an applicant is notified of an incomplete LPG Form 500, or LPG Form 500A, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, a new application must be filed should the applicant wish to reactivate commission review of the proposed installation.

(2) If the applicant requests an extension of the 120-day time period in writing, postmarked or physically delivered to the commission before the expiration date, the application may be renewed for up to 90 days as determined by the commission.

(3) If the tentatively approved installation is not completed within one year from the date tentative approval was granted the application will expire. Prior to the date of expiration, the applicant may request of the commission in writing an extension of time up to 90 days to complete the installation. If the applicant fails to request an extension of time within the time period prescribed in this subsection, the applicant will be required to submit a new application if the original installation is to be installed.

(e) **Review of drawings, plans, reports, specifications and installations for compliance.**

(1) The commission shall examine all drawings, plans, reports, and specifications required by statute or commission regulation to be submitted for

approval to determine whether the design, manufacture, construction, or use of the depicted item, system, operations, procedure, or installation complies with the LP-Gas Safety Rules. A determination will also be made whether the subject of the submission poses a threat to the health, safety, and welfare of the general public. If the commission declines administratively to approve the submission, the applicant shall be notified in writing within the required time period of the deficiencies. The applicant may modify the submission and resubmit it for approval within the required time period, or may request a hearing on the matter in accordance with the General Rules of Practice and Procedure of the Railroad Commission of Texas. The subject of the submission shall not be operated or used in LP-gas service in this state until approved by the Railroad Commission of Texas following a hearing.

(2) If an LP-gas stationary installation which is not specifically covered by the LP-Gas Safety Rules has been or is to be installed, the commission shall apply and require any reasonable sound engineering and safety provisions which may be considered necessary to ensure the LP-gas installation is safe for LP-gas service. If the affected party disagrees with the commission's determination, he or she may request a hearing. However, the installation shall not be placed into LP-gas operation until the Railroad Commission of Texas has determined the installation is safe for LP-gas service.

(3) An LPG Form 5, LPG Form 8, and any other documentation pertinent to the installation may be requested by the commission in order to further determine compliance with the safety rules.

(4) Plans and specifications required by subsection (a)(1) of this section submitted with an application for a Category F, G, or I license or for a multiple category license that includes a Category F, G, or I license will not be granted tentative approval by the commission until all other licensing requirements have been met.

[(a) **Duty to report.** A licensee shall file the following forms, evidencing any change in the licensee's name(s), with the LP-Gas Division prior to engaging, under such name(s), in operations that require an LP-gas license:

[(1) an amended application for license; and

[(2) certificates of insurance or affidavits, or both, in lieu of insurance (where permitted by §9.24 of this title (re-

lating to Insurance Requirements)).

[(b) **Duty to reregister.** A licensee operating under a changed name(s) shall cause the reregistration of any LP-gas transport/delivery trailer or motor vehicle, or both, in the changed name(s) by filing an amended LPG Form Number 7 with the division prior to the use of any such unit in the transport or delivery of LP-gas.]

§9.21. Notice of Stationary LP-Gas Installations [Application for an Exception to a Safety Rule].

(a) When notice of a proposed installation of 10,000 gallons or more aggregate water capacity is required, a person shall send a copy of an LPG Form 500, an LPG Form 500A, and a plat by certified mail, return receipt requested, to all owners of real property situated within 500 feet of the proposed container(s) location. The LPG Form 500 shall be submitted to the commission at the same time the LPG Form 500 and LPG Form 500A are mailed to the real property owners. Notice shall be considered sufficient when the applicant has provided evidence that a complete LPG Form 500, LPG Form 500A, and plat have been sent to all real property owners. Names and addresses of owners may be determined from current county tax rolls. The owners of real property situated within 500 feet of the proposed container locations must be notified if the current aggregate water capacity of the installation is increased more than once in a 12-month period.

(b) When notice is not required. Unless considered to be in the public interest by the commission, owners of real property situated within 500 feet of the proposed container location do not need to be notified of an addition to an existing LP-gas facility of 10,000 gallons aggregate water capacity or more, provided the current aggregate water capacity is not more than doubled.

(c) **Installations at "hot-mix" plants.** Applicants submitting an LPG Form 500 for installation of LP-gas containers of 10,000 gallons aggregate water capacity or more used as a fuel storage supply for asphalt heating at "hot-mix" plants or sites for asphalt paving need not file the LPG Form 500A, provided that:

(1) proof is submitted to the commission that such "hot-mix" operations will not exceed two years at the specified location; and

(2) fire marshall approval has been obtained if operations are within a city's limits or extra-territorial jurisdiction.

[(a) Filing. Any person, firm, or corporation may apply for an exception to the provisions of this chapter by filing an application for exception with the Liquefied Petroleum Gas Division.

[(b) Form. The application or pleading must be typewritten on paper not to exceed 8-1/2 inches by 11 and have an inside margin of at least one inch. Any annexed exhibits must be folded to the same size as the pleading itself. The content must be double-spaced and appear on one side of the paper only. In lieu of the typewritten application, an LPG Form 25, Application and Notice of Exception to the LP-Gas Safety Rules, may be submitted.

[(c) Content. The application shall contain the following:

[(1) a reference, by section number, to the applicable section which serves as the general rule.

[(2) a statement of the type of relief desired; i.e., the exception applied for and those details which may be helpful in comprehending the exact nature of the exception.

[(3) a concise statement of facts which support the applicant's case for the exception; e.g., the need for the exception and the reason for it, the safety aspects of the exception, and the social and/or economic impact of the exception.

[(4) a description of the acreage and/or address upon which the exception, if granted, will be located should its location be stationary. The description shall be in writing and shall include a plat drawing and shall identify the site sufficiently to permit determination of property boundaries, state the ownership of the land, and state under what legal authority the applicant, if not the owner, is permitted occupancy.

[(5) the name, business address, and telephone number of the applicant and of his authorized agent, if any.

[(6) an original signature, in ink, by the party filing the application or by his authorized representative.

[(7) a list of the names and addresses of all interested parties, as defined in subsection (d) of this section.

[(d) Notice.

[(1) The applicant shall send a copy of the application by certified mail, return receipt requested, to all affected parties on the same date on which the application is filed with or sent to the commission. The application shall include, in addition to the other requirements, a notice to the affected parties that any objection must be filed within 18 days of receipt. All return receipts shall be forwarded to the commission. All objections must be filed

with the division within 18 days of receipt of application.

[(2) In the case of an exception requested on a stationary site, affected parties to whom the applicant must give notice shall include, but not be limited to:

[(A) persons and businesses owning or occupying property adjacent to the site;

[(B) the city council, if the site is within municipal limits; and

[(C) the county commission, if the site is not within any municipal limits.

[(3) in the case of an exception requested on a nonstationary site, affected parties to whom the applicant must give notice shall include, but not be limited to:

[(A) the Texas Department of Highways and Public Transportation.

[(B) the Texas Department of Public Safety; and

[(C) all processed gas loading and unloading facilities utilized by applicant.

[(4) In the interests of justice, the director may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any party.

[(e) Division Review. The division director or his delegate shall review the application when it is complete. If the commission has received no objections from any affected parties as defined in subsection (d) of this section, the director may grant administratively the exception if it will either imperil nor tend to imperil the health, welfare, or safety of the general public. If the director declines administratively to grant the exception, the applicant shall be notified of the reasons and of any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application, or may request a hearing on the matter.

[(f) Hearings.

[(1) When held. A hearing will be held when the commission receives objections from any affected party, or when the applicant requests one following an administrative denial. To be granted a hearing the applicant must file a request for hearing within two weeks of receiving notice of the administrative denial.

[(2) Notice.

[(A) The division shall prepare a notice of hearing which shall be mailed to the applicant by certified mail, return receipt requested, not less than 10 days prior to the date of the hearing. A copy of the notice attached to the application shall be posted in a conspicuous place in the division's office in Austin, not less than 10 days prior to the date of hearing.

[(B) The division shall mail copies of the notice of hearing by certified mail to all objecting parties, return receipt requested, at such time that objecting parties should receive copies at least 10 days prior to the date of hearing.

[(3) Hearing procedure. Hearings will be held in accordance with the requirements of the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), and the General Rules of Practice and Procedure of the Railroad Commission of Texas.

[(g) Penalties. Intentional misinformation submitted by an applicant or the authorized agent of such applicant shall be punishable as set out in Texas Natural Resources Code, §91.143, and shall be grounds for dismissing the application with prejudice.

[(h) Finding requirement. After hearing, exceptions to this chapter may be granted by the commission when based on a determination that the grant of the exception will neither imperil nor tend to imperil the health, safety, or welfare of the general public.

[(i) Temporary exception. For good cause shown, the director of the LP-Gas Division may grant a temporary exception, not to exceed 30 days, to the examination requirements for representatives and operations supervisors. Good cause shall include, but not be limited to, the death of a sole proprietor or partner, or severe economic hardship. An applicant for a temporary exception must agree to comply with all applicable safety requirements and furnish the director with evidence that granting the exception will not create a safety hazard or endanger the public.

[(j) Application completion deadline. If any applicant for an exception is inactive for six months after the applicant has been notified by the division of an incomplete request, such application shall expire. The applicant may resubmit an application request.]

§9.23. Tentative Approval For Stationary LP-Gas Installations [Insurance Endorsement Requirements].

(a) Granting of tentative ap-

proval for LP-gas installations of 10,000 gallons aggregate water capacity or more. Tentative approval may be granted by the commission if it is determined that the application meets all applicable LP-Gas Safety Rules and statutes of the State of Texas, and that the installation does not appear to constitute a danger to the public health, safety, and welfare. The commission may grant tentative approval if each real property owner described in §9.21(a) of this title (relating to Notice for Stationary LP-Gas Installations) has been given notice as certified by the applicant on LPG Form 500, even though objections have been received. If tentative approval is granted, the applicant may begin construction of the proposed facility at its own risk that tentative approval may be revoked without a hearing that final approval may not be granted, and that the applicant may be required to remove the installation. The construction of the installation and the setting of the container may not proceed until the applicant has received written notification of the tentative approval.

(b) Revocation of tentative approval. If the commission determines that the installation is being or has been constructed so as to require the notification of additional real property owners situated within 500 feet of the proposed installation, or if the completed installation materially varies from the original submission, tentative approval may be revoked by the commission. If tentative approval is revoked, all construction must cease until tentative approval is again granted by the commission following a new application and re-notification of all owners of real property situated within 500 feet of the proposed installation.

(c) Alterations or additions. The commission must be notified prior to implementation of any field alterations or additions during construction (except maintenance and repairs) related to the LP-gas installation in order for the commission to determine if resubmission of plans and specifications for reconsideration is required.

[(a) Each certificate of insurance filed with the LP-Gas Division must have one of the following endorsements attached to the policy, and may not be cancelled without cancellation of the policy to which it is attached.

[(1) LPG Form 996A, Workers' Compensation, including Employer's Liability, certificate of insurance must have a "Texas Notice of Material Change Endorsement" number WC 420601 attached to the policy and any successor policies.

[(2) LPG Form 997A, Motor

Vehicle Bodily Injury and Property Damage Liability, certificate of insurance must have "Liquefied Petroleum Gas Licensee Motor Vehicle Endorsement Texas Railroad Commission Form Endorsement" number TE 2326A attached to the policy and to any successor policies.

[(3) LPG Form 998A, General Liability, certificate of insurance must have "Texas Changes Amendment or Cancellation Provisions or Coverage Change Endorsement" number CG 0205 attached to the policy and any successor policies.

[(b) Each endorsement issued and attached to a certificate of insurance noted in subsection (a) of this section requires the insurance carrier, noted as company on the certificates of insurance, to give the LP-Gas Division 30 days' written notice before the insurance cancellation. The 30 days' notice commences to run from the date the notice is actually received by the LP-Gas Division.]

§9.24. Hearings on Stationary LP-Gas Installations [Insurance Requirements].

(a) When hearing held. The commission shall call a public hearing, pursuant to the provisions of this section, if:

(1) the notice given to each real property owner situated within 500 feet of the proposed installation does not meet the requirements set forth in §9.21(a) of this title (relating to Notice of Stationary LP-Gas Installations); or

(2) proper objection to the proposed installation is filed at the commission within 18 days from the date notice was received. If notice was served by mail, three days shall be added to the time for filing an objection. A proper objection to a proposed installation shall be in writing and shall include a statement of the facts showing that the proposed installation:

(A) does not comply with the LP-Gas Safety Rules, with reference to the particular rule(s) relied upon; or

(B) does not comply with the statutes of the State of Texas, with reference to the particular provision relied upon; or

(C) constitutes a danger to the public health safety and welfare; or

(3) the commission determines that a hearing is necessary to investigate the impact of the installation.

(b) Notice of public hearing. The commission shall give conducted in ac-

cordance with the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a §13) and the General Rules of Practice and Procedure of the Railroad Commission of Texas and the LP-Gas Safety Rules. Once tentative approval has been granted by the commission, it establishes a rebuttable presumption that all applicable LP-Gas Safety Rules have been complied with by the applicant.

[(a) Pursuant to the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the following minimum amounts of insurance for LP-gas licensees licensed by the State of Texas. A valid certificate of insurance shall be filed with the LP-Gas Division before the commission grants or renews a license.

[(1) Category A-Manufacturers or fabricators.

[(A) General liability, including premises and operations coverage and products and completed operations liability coverage: \$300,000 bodily injury; \$100,000 property damage; \$300,000 aggregate; or \$300,000 combined single limits.

[(B) Workers' compensation, including employer's liability.

[(2) Category B-Transport outfitters.

[(A) General liability, including premises and operations coverage and completed operations and products liability coverage: \$300,000 bodily injury; \$100,000 property damage; \$300,000 aggregate; or \$300,000 combined single limits.

(B) Workers' compensation, including employer's liability.

[(3) Category C-Carriers.

[(A) General liability, including premises and operations coverage and products and completed operations liability coverage: \$300,000 bodily injury; \$100,000 property damage; \$300,000 aggregate; or \$300,000 combined single limits.

[(B) Motor vehicle insurance coverage of a minimum of \$500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property of others.

[(C) Workers' compensation,

including employer's liability.

[(4) Category D-General installers and repairmen.

[(A) General liability, including premises and operations coverage: \$25,000 bodily injury; \$10,000 property damage; \$25,000 aggregate; or \$25,000 combined single limits.

[(B) Workers' compensation, including employer's liability.

[(5) Category E-Retail and wholesale dealers.

[(A) General liability, including premises and operations coverage and products, and completed Railroad Commission of Texas Page 83 of 102 Liquefied Petroleum Gas Division operations liability coverage: \$300,000 bodily injury; \$100,000 property damage; \$300,000 aggregate; or \$300,000 combined single limits.

[(B) Motor vehicle insurance coverage of a minimum of \$500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property of others.

[(C) Workers' compensation, including employer's liability.

[(6) Category F-Bottle exchanges.

[(A) General liability, including premises and operations coverage: \$25,000 bodily injury; \$10,000 property damage; \$25,000 combined single limits.

[(B) Workers' compensation, including employer's liability.

[(7) Category G-Service station.

[(A) General liability, including premises and operations coverage: \$25,000 bodily injury; \$10,000 property damage; \$25,000 aggregate; or \$25,000 combined single limits.

[(B) Workers' compensation, including employer's liability.

[(8) Category H-Bottle dealers.

[(A) General liability, including premises and operations coverage: \$300,000 bodily injury; \$100,000 property damage; \$300,000 aggregate; or \$300,000 combined single limits.

[(B) Motor vehicle insurance coverage of a minimum of \$500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property of others.

[(C) Workers' compensation, including employer's liability.

[(9) Category I-Service station and bottle exchanges.

[(A) General liability, including premises and operations coverage: \$25,000 bodily injury; \$10,000 property damage; \$25,000 combined single limits.

[(B) Workers' compensation, including employer's liability.

[(10) Category J-Service station and bottle dealerships.

[(A) General liability, including premises and operations: \$300,000 bodily injury; \$100,000 property damage; \$300,000 aggregate; or \$300,000 combined single limits.

[(B) Motor vehicle insurance coverage of a minimum of \$500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property of others.

[(11) Category K-Distribution system.

[(A) General liability, including premises and operations coverage: \$50,000 bodily injury; \$25,000 property damage; \$50,000 aggregate; or \$50,000 combined single limits.

[(B) Workers' compensation, including employer's liability.

[(12) Category L-Carburetion.

[(A) General liability, including premises and operations coverage: \$25,000 bodily injury; \$10,000 property damage; \$25,000 aggregate; or \$25,000 combined single limits.

[(B) Workers' compensation, including employer's liability.

[(13) Category M-Recreational Vehicle Installers and Repairmen.

[(A) General liability, including premises and other operations cov-

erage: \$25,000 bodily injury, \$10,000 property damage; \$25,000 aggregate; or \$25,000 combined single limits.

[(B) Workers' compensation, including employer's liability.

[(14) Category N-Manufactured Housing Installers and Repairmen.

[(A) General liability, including premises and operation coverage: \$25,000 bodily injury, \$10,000 property damage; \$25,000 aggregate; or \$25,000 combined single limits.

[(B) Workers' compensation, including employer's liability.

[(15) Category O-Testing Laboratory.

[(A) General liability, including premises and operations and products liability coverage: \$300,000 bodily injury; \$100,000 property damage; \$300,000 aggregate; or \$300,000 combined single limits.

[(B) Workers' compensation, including employer's liability.

[(b) A licensee or applicant for a license that does not employ or contemplate employing any employee in LP-gas related activities may file LPG Form 996B in lieu of a certificate of workers' compensation, including employer's liability insurance. The licensee or applicant for license must file the required insurance certificate with the division before hiring any person as a dealership employee.

[(c) A Category C, E, H, or J licensee or applicant for a license that does not operate or contemplate operating a motor vehicle equipped with an LP-gas cargo container or does not transport or contemplate transporting LP-gas by vehicle in any manner may file LPG Form 997B in lieu of a certificate of motor vehicle bodily injury and property damage insurance, if this certificate is otherwise required. The licensee or applicant for a license must file the required insurance certificate with the division before operating a motor vehicle equipped with an LP-gas cargo container or transporting LP-gas by vehicle in any manner.

[(d) A Category A, B, C, E, or O licensee or applicant for a license that does not engage in or contemplate engaging in any LP-gas operations that would be covered by completed operations and products liability insurance may file LPG Form 998B in lieu of a certificate of completed operations and products liability insurance. The licensee or applicant for a license must file

the required insurance certificate with the division before engaging in any operations that require completed operations and products liability insurance.

[(e) A licensee or applicant for a license that does not engage in or contemplate engaging in any operations that would be covered by general liability insurance may file LPG Form 998B in lieu of a certificate of general liability insurance. The licensee or applicant for a license must file the required insurance certificate with the division before engaging in any operations that require general liability insurance.]

§9.25. Interim Approval of Stationary LP-Gas Installations [Limitation/Avoidance of Licensee Liability]. If the Railroad Commission of Texas finds, after a public hearing, that the proposed installation complies with the LP-Gas Safety Rules and the statutes of the State of Texas, and does not constitute a danger to the public health, safety, and welfare, it shall grant interim approval. The construction of the installation and the setting of the container may not proceed until the applicant has received written notification of the interim approval. Any grant of interim approval shall include a provision that such approval may be suspended or revoked if:

(1) the commission does not conduct a physical inspection of the installation prior to the introduction of LP-gas; or

(2) a physical inspection of the installation indicates that it is not installed in compliance with the plans and specifications for the installation, the LP-Gas Safety Rules or the statutes of the State of Texas; or

(3) the installation constitutes a danger to the public health, safety, and welfare.

[(a) An LP-gas licensee may not limit or avoid its liability or that of its insurer for damages proximately resulting from any negligent act or acts of the licensee.

[(b) An attempt to limit or avoid liability before the negligent act or acts, through indemnity clauses or otherwise, shall be null and void.

[(c) This section does not apply to negotiations or settlements, or both, made subsequent to a licensee's negligent act or acts.

[(d) To the extent that any damage, occurring during or subsequent to any of the following acts, does not proximately result from any negligent act of the licensee, the licensee may limit liability based upon:

(1) unauthorized, unsafe, or im-

proper application of LP-gas or any LP-gas system or equipment by any user or other person;

[(2) any use or operation of LP-gas or any LP-gas system or equipment contrary to specific representations made by any user or other person to an LP-gas licensee during or preceding installation or servicing of such LP-gas system or equipment and relied upon by such LP-gas licensee in selecting, designing, installing, or servicing such system or equipment; or

[(3) any modification, change, installation, alteration, tampering, or other action by any unlicensed person, to or upon any LP-gas system or equipment.]

§9.28. Emergency Use of Proposed Stationary LP-Gas Installations [Public Hearing]. When there is an immediate need for LP-gas supply under emergency circumstances, the commission may waive the requirement for final approval for a limited time period in order to meet the emergency need. LP-gas may not be introduced into the container and it may not be placed into LP-gas service until permission to do so has been received.

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

[(1) Tentative approval—The authority issued by the commission allowing construction of an LP-gas installation.

[(2) Final approval—The authority issued by the commission allowing the introduction of LP-gas into a container and system.

[(b) Notice of the proposed installation. Any application for approval of LP-gas installation (LPG Form 500) which is received at the Austin office of the LP-Gas Division on or after January 1, 1988, which pertains to a new stationary LP-gas installation of 10,000 gallons or more aggregate capacity, or an addition to an existing facility whose aggregate capacity will be 10,000 gallons or more when complete, shall ensure that a notice of the proposed installation, (LPG Form 500a) is sent to all owners of real property situated within 500 feet of the proposed tank location. Sufficient notice shall be deemed given when the applicant has provided evidence that LPG Form 500a has been sent to all such property owners whose names and addresses may be determined upon diligent investigation of readily available sources of information. If such owners are not determinable as set out in this subsection, the applicant may send an LPG Form 500a to all persons shown as owners on the current county tax rolls. Exception: Applicants submitting an LPG Form 500, Application for Tentative Ap-

proval of LP-gas Installation, for installation of LP-gas containers of 10,000 water gallon capacity or greater used as a fuel storage supply for asphalt heating at "hot-mix plants or sites for asphalt paving, need not file the LPG Form 500a, Notice of Installation, provided proof is submitted to the division that such "hot-mix" operations will not exceed one year at the specified location, and that fire marshal approval has been obtained if operations are within a city's limits or the extra-territorial jurisdiction of a city.

[(c) Tentative approval considered. Each real property owner receiving notice shall have 18 days from the date of mailing of the notice to submit an objection in writing to the division. An objection is not deemed filed until it is actually received at the Austin office of the LP-Gas Division. The director of the division may grant tentative approval if each real property owner in this subsection has been given notice as certified by the applicant on LPG Form 500, even though objections have been received. Tentative approval may be granted by the director of the LP-Gas Division if he determines that the application meets all applicable rules of the LP-Gas Division, all applicable statutes of the State of Texas, and that the construction of the installation does not constitute a danger to the public health, safety, and welfare. If tentative approval, as defined herein, is granted, the applicant may begin construction of the proposed facility at its own risk that final approval may not be granted.

[(d) When hearing held. The director of the division shall call a public hearing, pursuant to the provisions of this section, if any of the following exist:

[(1) sufficient notice is not deemed given to each real property owner in subsection (c) of this section;

[(2) proper objection to the proposed installation is received by the division in a timely manner. A proper objection to a proposed installation shall include a statement in support of the matters alleged, and is one which alleges either:

[(A) noncompliance with the LP-Gas Division safety rules, with reference to the particular rule(s) relied upon;

[(B) noncompliance with the statutes of the State of Texas, with reference to the particular provision relied upon;

[(C) facts which indicate that the proposed installation constitutes a danger to the public health, safety, and welfare;

[(3) the commission or the division director determines that a hearing is necessary to investigate the impact of the

installation.

(e) Notice of public hearing. The division shall ensure that notice of the public hearing is given at least 10 days prior to the date of the hearing to the applicant and to all real property owners who have filed proper objections.

(f) Procedure at hearing. The public hearing will be conducted in accordance with the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a, §14) and the General Rules of Practice and Procedure of the Railroad Commission of Texas and the LP-Gas Division Safety Rules. Once tentative approval has been granted by the division, it establishes a rebuttable presumption that all applicable LP-gas safety rules have been complied with by the applicant.

(g) Commission orders. Following a public hearing, if the commission finds that the proposed installation is in accordance with the LP-gas safety rules, the statutes of the State of Texas, and that the installation does not constitute a danger to the public health, safety, and welfare, an order shall be issued granting interim approval. Any grant of interim approval will include a provision that such approval may be suspended or revoked if a physical inspection of the installation is not conducted by the division prior to the introduction of LP-gas or if a physical inspection of the installation indicates that it is not installed in accordance with the LP-gas safety rules, or the statutes of the State of Texas, or that the installation constitutes a danger to the public health, safety, and welfare. Following the physical inspection of the installation by the division, if the installation is found to be in accordance with the plans and specifications approved by interim order, and is in compliance with the LP-gas safety rules, the statutes of the State of Texas, and the installation does not constitute a danger to the public health, safety, and welfare, then the commission shall issue an order granting final approval. If no objection is filed to the proposed installation, final approval may be granted by the division director upon a similar finding and with a similar provision.]

§9.29. Application for an Exception to a Safety Rule [Filings Required for LP-Gas Installations].

(a) Filing. Any person, firm, or corporation may apply for an exception to the provisions of this chapter by filing an application for exception with the commission.

(b) Form. The application or pleading must be typewritten on paper not to exceed 8-1/2 by 11 inches and have an inside margin of at least one inch. Any annexed exhibits must be folded to the

same size as the pleading itself. The content must be double-spaced and appear on one side of the paper only. In lieu of the typewritten application an LPG Form 25 may be submitted.

(c) Content. The application shall contain the following;

(1) a reference, by section number, to the applicable section which serves as the general rule;

(2) a statement of the type of relief desired; i.e. the exception applied for and those details which may be helpful in comprehending the exact nature of the exception;

(3) a concise statement of facts which support the applicant's case for the exception; e.g., the need for the exception and the reason for it, the safety aspects of the exception, and the social and/or economic impact of the exception;

(4) a description of the acreage and/or address upon which the exception, if granted, will be located should its location be stationary. The description shall be in writing and shall include a plat drawing and shall identify the site sufficiently to permit determination of property boundaries, state the ownership of the land, and state under what legal authority the applicant if not the owner, is permitted occupancy;

(5) the, name business address, and telephone number of the applicant and of the authorized agent, if any;

(6) an original signature, in ink, by the party filing the application or by the authorized representative;

(7) a list of the names and addresses of all interested parties, as defined in subsection (d) of this section.

(d) Notice.

(1) The applicant shall send a copy of the application by certified mail, return receipt requested, to all affected parties on the same date on which the application is filed with or sent to the commission. The application shall include, in addition to the other requirements, a notice to the affected parties that any objection must be filed within 18 days of receipt. All return receipts shall be forwarded to the commission. All objections must be filed with the commission within 18 days of receipt of the application.

(2) In the case of an exception requested on a stationary site affected parties to whom the applicant must give notice shall include but not be limited to:

(A) persons and businesses owning or occupying property adjacent

to the site;

(B) the city council if the site is within municipal limits; and

(C) the county commission, if the site is not within any municipal limits.

(3) in the case of an exception requested on a nonstationary site affected parties to whom the applicant must give notice shall include, but not be limited to:

(A) the Texas Department of Public Safety; and

(B) all processed gasloading and unloading facilities utilized by the applicant.

(4) In the interests of justice, the commission may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any party.

(e) Review. The commission shall review the application within 21 calendar days of receipt of the application. If the commission has received no objections from any affected parties as defined in subsection (d) of this section, the commission may grant administratively the exception if it will neither imperil nor tend to imperil the health welfare, or safety of the general public. If the commission declines administratively to grant the exception, the applicant shall be notified of the reasons and of any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application, or may request a hearing on the matter.

(f) Hearings.

(1) When held. A hearing will be held when the commission receives objections from any affected party, or when the applicant requests one following an administrative denial. To be granted a hearing the applicant must file a request for hearing within two weeks of receiving notice of the administrative denial.

(2) Notice.

(A) The commission shall prepare a notice of hearing which shall be mailed to the applicant by certified mail, return receipt requested not less than 21 days prior to the date of the hearing. A copy of the notice attached to the application shall be posted in a conspicuous place in the commission's office in Austin, not less than 10 days prior to

the date of hearing.

(B) The commission shall mail copies of the notice of hearing by certified mail to all objecting parties, return receipt requested, at such time that objecting parties should receive copies at least 21 days prior to the date of hearing.

(3) Hearing procedure. Hearings will be held in accordance with the requirements of the Administrative Procedure and Texas Register Act, and the General Rules of Practice and Procedure of the Railroad Commission of Texas.

(g) Penalties. Intentional misinformation submitted by an applicant or the authorized agent of such applicant shall be punishable as set out in Texas Natural Resources Code, §91.143, and shall be grounds for dismissing the application with prejudice.

(h) Finding requirement. After hearing, exceptions to this chapter may be granted by the Railroad Commission of Texas when based on a determination that the grant of the exception will neither imperil nor tend to imperil the health, safety, or welfare of the general public.

(i) Temporary exception. For good cause shown the commission may grant a temporary exception, not to exceed 30 days, to the examination requirements for representatives and operations supervisors. Good cause shall include, but not be limited to, the death of a sole proprietor or partner, or severe economic hardship. An applicant for a temporary exception must agree to comply with all applicable safety requirements and furnish the commission with evidence that granting the exception will not create a safety hazard or endanger the public.

(j) Application completion deadline. If any application for an exception is inactive for six months after the applicant has been notified by the commission of an incomplete request, such application shall expire. The applicant may re-submit an application request.

§9.30. Answer Requirement in Commission-Called Hearing [Submission of Drawings, Plans, Reports and Specifications].

(a) Filing of Answer. The respondent/dealership in any cause of action for which notice of hearing has been served and which cites such dealership to be in violation of the LP-Gas Code or any rule or standard promulgated by the Railroad Commission of Texas pursuant to its statutory authority shall have 5 days from the date notice is received to file an answer to the charge or charges

set out therein with the commission. Filing under this section shall be deemed accomplished when an answer is posted with the United States mail before or on due date, properly addressed and stamped with sufficient postage, or at such other time as an answer is physically delivered to the commission, whichever occurs first. Extension of time for filing an answer shall be considered upon motion and granted for good cause where it should appear that time for filing is insufficient. Motions for postponement of hearing date will be granted for good cause where it should appear that time for filing under these rules cannot otherwise be met or where other grounds for postponement exist.

(b) Content of answer. The answer shall contain a written statement by one authorized to bind the respondent/dealership which shall admit or deny, in whole or in part, the charge or charges stated in the notice of hearing or shall state the reason or reasons why it can neither admit nor deny the charges against it and shall specifically state that part, including any allegation of fact made therein, which is denied where the charge or charges are disputed in part only. In the event that the respondent denies all or part of the charge(s) contained in the notice of hearing, the answer shall contain a concise account of the facts which the respondent contends will refute all or any part of the charge(s) against it. The respondent may additionally plead in the answer as many several matters, whether of law or fact, as the respondent may think necessary for a defense. Further, the answer shall contain a waiver of attorney where the respondent/dealership does not choose to be represented by counsel at hearing; such waiver will not deny the respondent the right to legal representation should the respondent actually appear at hearing with or through an attorney. The answer shall also contain a statement of respondent's intent to appear at hearing or, alternatively, its decision to suffer a default judgment.

(c) Amendments to answer. The answer may be amended at any time prior to or on the date for filing such pleading and thereafter with consent of all parties or upon finding that amendment will not operate to prejudice or unduly surprise any party to the cause of action.

(d) Form of answer. An answer made pursuant to this section may be made on LPG Form 21, adopted for use by the Railroad Commission of Texas and available to the Public upon request directed to the commission in Austin, Texas. Alternatively, a respondent may

submit the information required by subsection (b) of this section on 8-1/2 by 11-inch or 8-1/2 by 14-inch paper making reference to the dealership name and the docket number in the cause. [The division director or his delegate shall examine all drawings, plans, reports, and specifications required by statute or commission regulation to be submitted for approval. The director shall determine whether the design, manufacture, construction, or use of the depicted item, system, operation, procedure, laboratory, or installation complies with division rules. The director shall also determine whether the subject of the submission poses a threat to the health, welfare, and safety of the general public. If the director declines administratively to approve the submission, he shall notify the applicant in writing of the deficiencies. The applicant may modify the submission and resubmit it for approval, or may request a hearing on the matter in accordance with the general rules of practice and procedure of the commission. The subject of the submission shall not be operated or used in LP-gas service in this state until approved by the director or by the commission following a hearing.]

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

Issued in Austin, Texas, on July 8, 1993.

TRD-9325449 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption: August 16, 1993

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

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* 16 TAC §§9.8-9.13

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §§9.8-9.13, concerning designation of operation supervisor, examination for certification, examination fees, general installers and repairman exemption, qualifications of inspectors, and containers for hot air balloons.

The Commission proposes the repeal of §9.8, as the language in this section has been included in a proposed amendment to §9.5 (concerning licensing requirements).

The repeal of §9.9 is proposed as the language in this section has been included in a proposed amendment to §9.6 (concerning examination and course of instruction).

The Commission proposes the repeal of §9.10, as the language in this section has been included in a proposed amendment to §9.6 (concerning examination and course of instruction).

The repeal of §9.11 is proposed as the language in this section has been included in a proposed amendment to §9.6 (concerning examination and course of instruction).

The Commission proposes the repeal of §9.12 as the requirements of this section are no longer necessary.

The repeal of §9.13 is proposed as the language in this section has been included in an amendment to §9.37 (concerning requirements for construction of containers).

Thomas D. Petru, director, Liquefied Petroleum Gas 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. Petru 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 an increase in compliance due to more clearly understandable 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeals are proposed under the Texas Natural Resources Code, §113.051 (Vernon Supplement 1992), which authorizes the Railroad Commission of Texas 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.

§9.8. Designation of Operations Supervisors.

§9.9. Examination for Certification.

§9.10. Examination Fees.

§9.11. General Installers and Repairmen Exemption.

§9.12. Qualification of Inspectors.

§9.13. Containers for Hot Air Balloons.

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

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Assistant Director, Legal
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• 16 TAC §§9.22, 9.26, 9.27.

The Railroad Commission of Texas proposes new §§9.22, 9.26, and 9.27, concerning objections to proposed stationary LP-gas installations, physical inspection of stationary LP-gas installations, and final approval of stationary LP-gas installations.

The Commission proposes new §9.22 to clarify that owners of real property situated within 500 feet of a proposed installation who have been notified must file an objection with the commission within 18 days of receiving notice.

New §9.26 is proposed to consolidate portions of existing rules §9.28 (concerning public hearing), §9.29 (concerning filings required for LP-gas installations), and §9.30 (concerning submission of drawings, plans, reports, and specifications), along with new language to clarify that if the LP-Gas Division does not inspect a completed installation of 10,000 gallons aggregate water capacity or more within 30 days of receipt of written notification that it is ready for inspection, the installation may operate conditionally. If, upon inspection, a safety rule violation is detected, the installation must cease operation until the violation is corrected. The new language also clarifies that an inspection of a completed installation of 10,000 gallons aggregate water capacity or less will be conducted as soon as possible after receipt of an LPG Form 501. If, upon inspection, a safety rule violation is detected, the installation may be removed from service until the violation is corrected.

The Commission proposes new §9.27 to clarify that final approval of an installation may be granted following a physical inspection, if the installation complies with the plans and specifications granted tentative or interim approval, the safety rules, and if it does not constitute a danger to the health, safety, and welfare of the general public.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the rules are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the rules; however, due to the nature of the proposed changes, it is impossible to specify the amount of that impact.

Mr. Petru also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be an increase in compliance due to clearly understandable rules and an increase in safety afforded to the general public due to the updated and revised safety requirements. There will be an effect on small businesses; however, it is impossi-

ble to specify the amount of that impact. There is an anticipated economic cost to persons required to comply with the proposed sections; however, due to the nature of the proposed changes it is impossible to specify the amount of that impact.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new sections are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas 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.

§9.22. Objections to Proposed Stationary LP-Gas Installations. Each owner of real property situated within 500 feet of the proposed location of an LP-gas container(s) of 10,000 gallon aggregate water capacity or more receiving notice shall have 18 days from the date the notice was received to file an objection, in writing, as described in §9.24(a)(2) of this title (relating to Hearings on Stationary LP-Gas Installations) with the commission. If notice is served by mail, three days shall be added to the time for filing an objection. An objection is not considered filed until it is actually received at the Austin office of the commission.

§9.26. Physical Inspection of Stationary Installations.

(a) Aggregate water capacity of 10,000 gallons or more. The applicant shall notify the commission when the installation is ready for inspection. If the commission does not physically inspect the facility within 30 calendar days of receipt of written notice that the facility is ready for inspection, the facility may operate conditionally until the initial inspection is made. If any safety rule violation(s) exists at the time of the initial inspection, the installation shall cease operation until the violation(s) are corrected.

(b) Aggregate water capacity of less than 10,000 gallons. After receipt of an LPG Form 501, an inspection will be conducted as soon as possible to verify the installation described is in compliance with the LP-Gas Safety Rules. If any LP-gas statute or safety rule violation exists at the time of the first inspection at a commercial installation, the subject container, including any piping, appliances, appurtenances or equipment connected to it may be immediately removed from LP-gas service until the violation(s) are corrected.

(c) Material variances. If the com-

mission determines the completed installation varies materially from the application originally accepted as in compliance, correction of the variance and notification to the commission or resubmission of the application is required. The review of such resubmitted application will follow the procedure(s) described in §9.20 of this title (relating to Filings Required for Stationary LP-Gas Installations).

§9.27. Final Approval of Stationary LP-Gas Installations. Except as provided in §9.28 of this title (relating to Emergency Use), no LP-gas container may be placed into LP-gas service until after final approval has been granted. Final approval will follow a physical inspection of the completed installation. If, following the physical inspection of the installation by the commission, the commission finds that the installation:

(1) complies with:

(A) the plans and specifications given tentative approval by the commission, or interim approval by order of the Railroad Commission of Texas;

(B) the LP-Gas Safety Rules; and

(C) the statutes of the State of Texas; and

(2) does not constitute a danger to the public health, safety, and welfare, then the commission shall issue an order granting final approval.

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

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



Subchapter B. Basic Rules

• 16 TAC §9.33, §9.38

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §9.33 concerning authorized

containers, and §9.38 concerning inspection of containers.

The Commission proposes the repeal of §9.33 as the routine submission of manufacturer's data reports to the LP-Gas Division will no longer be required. Other provisions of the section relating to ASME containers have been moved to §9.37 (concerning requirements for construction of containers).

The repeal of §9.38 is proposed as the requirements of this section are no longer applicable.

Thomas D. Petru, director, Liquefied Petroleum Gas 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. Petru 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 an increase in compliance due to more clearly understandable 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeals are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas 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.

§9.33. Authorized Containers.

§9.38. Inspection of Containers.

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

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Assistant Director, Legal
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• 16 TAC §§9.34, 9.36, 9.37, 9.69

The Railroad Commission of Texas proposes amendments to §§9.34, 9.36, 9.37, and 9.69, concerning examination of containers; approval of valves, fittings, and equipment; requirements for construction of containers; and

grounding and electrical fields.

The amendment to §9.34 allows the Commission to request a manufacturer's data report if necessary to determine the safety of a container. The amendment also clarifies the type of testing that may be conducted on a container.

The amendment to §9.36 deletes language that is no longer applicable. New language clarifies that all appurtenances and equipment used in LP-gas service must be listed by a nationally recognized testing laboratory, unless its use is specifically prohibited or there is not a testing specification or procedure developed. Appurtenances and equipment that cannot be tested must be able to operate at the full range of pressures and temperatures to which they will be subjected. The Commission may request documentation to substantiate claims of safety. A statement is added that compliance with this section does not ensure conformity with other laws and regulations, such as those of the Texas Air Control Board.

The amendment to §9.37 incorporates language in existing §9.33 (relating to authorized containers), indicating requirements for ASME and DOT containers, and also incorporates language from existing §9.13 (relating to containers for hot air balloons).

The amendment to §9.69 eliminates unnecessary and overly restrictive requirements.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Petru also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be an increase in compliance due to more clearly understandable rules and an increase in safety afforded to the general public due to the updated and revised safety requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas 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.

§9.34. Examination of Containers.

(a) In order to determine the safety of a container, the commission may request the manufacturer's data report on that container. At the request of

the commission [division director, when in his opinion such action is necessary], containers and assemblies shall be examined by a recognized testing laboratory equipped for and experienced in the testing of LP-gas [liquefied petroleum gas] containers and equipment and a comprehensive report on the findings of the [such] testing laboratory shall be submitted to the commission [Railroad Commission] for its consideration. This subsection can be applied even though an acceptable LPG Form 23 [(Statement in Lieu of Container Testing)] has been received.

(b) Any stationary American Society of Mechanical Engineers (ASME) LP-gas container previously in LP-gas service which has not been subject to continuous LP-gas vapor pressure must be retested by at least two of the following nondestructive test methods recognized by ASME to determine if the container or assembly is safe for LP-gas use in the State of Texas: [The test results must be submitted on an LPG Form 8 (Manufacturer's Report of Pressure Vessel Repair, Modification or Testing):]

(1) (No change.)

(2) ultrasonic thickness test; [or]

(3) wet [particle] fluorescent magnetic particle test [or magnaflux.]; or

(4) magnaflux test. The test results must be submitted to the commission on an LPG Form 8.

(c) Any stationary ASME LP-gas container which has been subject to continuous LP-gas vapor pressure need not be tested prior to installation, provided an acceptable LPG Form 23 [(Statement in Lieu of Container Testing)] is filed with the commission [division] at the time an LPG Form 500[. Application for Tentative Approval of LP-Gas Installation.] is submitted for any facility requiring submission of plans and specifications in accordance with §9. 20 [§9.29] of this title (relating to Applications for Stationary LP-Gas Installations [Filings Required for LP-Gas Installations]).

(d) Any stationary ASME LP-gas container brought into Texas from out-of-state and intended for stationary LP-gas installation in Texas at any facility requiring submission of plans and specifications must be tested in accordance with subsection (b) of this section prior to tentative approval being granted by the commission [division]. Exception: If any stationary ASME LP-gas container which has been under continuous LP-gas vapor pressure[,] is owned by a company having a current LP-gas license in the State of Texas, such tests may not be necessary upon the receipt of an acceptable LPG Form 23 [(Statement in Lieu of Container Testing)].

(e) A calibrated pressure chart

recorder shall be used for each hydrostatic test.

§9.36. Appurtenances and Equipment.

(a) All appurtenances and equipment placed into LP-gas service shall be listed by a nationally recognized testing laboratory, i.e., Underwriter's Laboratory (UL), Factory Mutual (FM), or American Gas Association (AGA), or such other laboratories approved by the commission unless:

(1) it is specifically prohibited for use by another section of the LP-Gas Safety Rules;

(2) there is no test specification or procedure developed by the testing laboratory for the appurtenance or equipment.

(b) Appurtenances and equipment that cannot be listed but are not prohibited for use by the LP-Gas Safety Rules shall be acceptable and safe for LP-gas service over the full range of pressures and temperatures to which they will be subjected under normal operating conditions.

(c) Documentation sufficient to substantiate any claims made regarding the safety of any valves, fittings, and equipment shall be required by the commission.

(d) Compliance under this section does not ensure conformity with other state and federal regulations, such as those of the Texas Air Control Board. [All valves, fittings, and equipment (such as vaporizers, carburetors, relief valves, excess flow valves, regulators, cut-off valves, etc.) which are required in the complete assembly, shall be approved by the Railroad Commission of Texas. A LPG Form 502, Application for Liquefied Petroleum Gas equipment and Component Approval, and any other data the commission may reasonably require must be submitted to the LP-Gas Division for any equipment or components required to be approved. Exception: Valves, fittings, and equipment (excluding pressure vessels) need not be approved by the commission if they are listed by a nationally recognized testing laboratory, i.e., Underwriter's Laboratory (UL), Factory Mutual (FM), or American Gas Association (AGA), and such other laboratories approved by the LP-Gas Division provided the LP-Gas Safety Rules do not prohibit their use in LP-gas service. Approval under this section does not ensure conformity with other state and federal regulations. Any subsequent modifications to approved LP-gas systems, equipment, and components will require resubmission to the LP-Gas Division prior to installation or usage. The division will review all applications within 45

calendar days of receipt of the application. The division must mail written notification to the applicant of whether the application is accepted, rejected, or still under review within the 45-day calendar period. An application is not accepted (i.e. in compliance) until the applicant has received written notification of the acceptance.]

§9.37. Requirements for Construction of Containers.

(a) American Society of Mechanical Engineers (ASME) Containers. All containers, except those described in subsection (b) of this section, used for storing, transporting, and/or dispensing LP-gas [liquefied petroleum gas] in the State of Texas, [except containers manufactured and maintained in accordance with the requirements of the Department of Transportation.] shall be fabricated [and marked] in strict accordance with Section VIII, Division 1, [Division 1, Section VIII.] of the edition of the American Society of Mechanical Engineers, Boiler and Pressure Vessel Code in effect at the time of fabrication. [A copy of Section VIII of the ASME Boiler and Pressure Vessel Code, Division 1, is on file in the office of the LP-Gas Division of the Railroad Commission of Texas, Austin, Texas. Exception: conformity with paragraph UG-125 to UG-134 inclusive of this Code shall not be required.]

(b) Department of Transportation (DOT) containers. Containers designated for LP-gas use only and manufactured, tested, and inspected in accordance with DOT regulations and specifications are authorized for use in this state in accordance with the applicable LP-Gas Safety Rules.

(c) Any fuel cell approved by the Federal Aviation Administration (FAA) and intended to be solely used as a fuel cell for hot air balloons is outside the jurisdiction of the LP-Gas Division.

§9.69. Grounding and Electrical [Fields].

(a) (No change.)

(b) Electrical installations within the vicinity of LP-gas storage containers or LP-gas transfer, handling, or dispensing equipment shall be in accordance with the National Electric Code (NEC) for Class 1, Group D: Hazardous Locations, Division 1 area or Division 2 area. A Division 1 area is where combustible gases are normally present during operation. A Division 2 area is where combustible gases are present only under abnormal conditions. This requirement does not apply to residential installations, including manufactured housing. The vicinity of storage containers or equipment is that area indicated by the following chart:

Distance Requirements from Container
or Equipment for Class 1, Group D:
Hazardous Locations NEC Classification
Measured in all Directions

	<u>Division 1 Area</u>	<u>Division 2 Area</u>
<u>Container</u>	<u>Within 5 feet</u>	<u>5 - 10 feet</u>

§9.69 LP-GAS CHART I.

Aggregate Water Capacity	Distance Requirements from Container or Equipment for Class 1, Group D, Hazardous Locations NEC Classification Measured in all Directions
0- 500 gallons	10 feet
501- 2000 gallons	15 feet
2001 gallons and over	25 feet

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

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TRD-9325453 Mary Ross McDonald
Assistant Director, Legal
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Gas
Railroad Commission of
Texas

Earliest possible date of adoption: August 16, 1993

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

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Subchapter C. Division I

• 16 TAC §9.71

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §9.71, concerning construction and original test of cylinders, as the provisions of this section have been incorporated in §9.37 (relating to requirements for construction of containers).

Thomas D. Petru, director, Liquefied Petroleum Gas Division, 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. Petru 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 an increase in compliance due to more clearly understandable rules. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeal is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas 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.

§9.71. Construction and Original Test of Cylinders.

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

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Assistant Director, Legal
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Subchapter G. Division V

• 16 TAC §9.171

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §9.171, concerning definitions and applicability, as all definitions have been moved to §9.2 (relating to definitions).

Thomas D. Petru, director, Liquefied Petroleum Gas Division, 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. Petru 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 an increase in compliance due to more clearly understandable rules. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeal is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas 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.

§9.171. Definitions and Applicability.

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

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Assistant Director, Legal
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• 16 TAC §§9.172-9.175, 9.184, 9.187

The Railroad Commission of Texas proposes amendments to §§9.172-9.175, 9.184, and 9.187, concerning containers; safety relief valves; protection of valves and fittings; container appurtenances, installation of containers and container appurtenances; and school bus and mass transit vehicle installations.

Section 9.172 is amended to modify the section's applicability to school buses, mass transit, and special transit vehicles. School buses, mass transit, special transit, or public transportation vehicles are allowed to carry LP-gas motor fuel or mobile fuel containers with a maximum capacity of 300 water gallons. Other passenger-carrying vehicles may carry containers that do not exceed 200 water gallons. The rule also expands the type of mounting brackets that may be used with these containers.

The amendment to §9.173 reflects minor wording changes for clarification. The amendment to §9.174 modifies the type of protection that must be provided for valves and fittings.

Section 9.175 is amended to provide that LP-gas containers installed on school buses, mass transit, and special transit vehicles are to be equipped with an automatic means of preventing overfilling.

An amendment to §9.184 further clarifies the acceptable means of mounting containers on vehicles.

Section 9.187 is amended to make clear its applicability to school buses, mass transit, and special transit vehicles. It also clarifies the appropriate means of mounting containers on such vehicles. A provision is added requiring that the LP-Gas Division review all drawings, plans, reports, and specifications required to be filed by statute or rule for approval, to determine compliance with the safety rules. If the submission is not ap-

proved, it may be resubmitted, or the applicant may request a hearing. The name of the section has been amended to School Bus, Mass Transit, and Special Transit Vehicle Installations.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the rules are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the rules; however, due to the nature of the proposed changes, it is impossible to specify the amount of that impact.

Mr. Petru also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be an increase in compliance due to more clearly understandable rules and an increase safety afforded to the general public due to the updated and revised safety requirements. There will be an effect on small businesses; however, it is impossible to specify the amount of that impact. There is an anticipated economic cost to persons required to comply with the proposed rules; however, due to the nature of the proposed changes, it is impossible to specify the amount of that impact.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*. The Commission will consider all comments filed relating to the previously proposed amendments to these sections published in the January 1, 1993, issue of the *Texas Register* (18 TexReg 21).

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas 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.

§9.172. Containers.

(a) (No change.)

(b) The minimum design working pressure for DOT containers shall not be [be not] less than 240 psig. The minimum design working pressure for ASME containers shall not be less than 250 psig, except that containers installed on any vehicle within enclosed spaces (including recesses or cabinets) shall have a minimum design working pressure not less than 312 psig unless such spaces are adequately ventilated. Containers installed on school buses, mass transit, or special transit vehicles shall have a minimum design working pressure of not less than 312 psig. However, any 250 psig container approved by the commission for school buses, mass transit, or special transit vehicles and installed on such vehicle in Texas as of October 1, 1993, may remain in LP-gas service. A pickup-type vehicle,

equipped with a camper shell not used for human occupancy, shall not be required to comply with the minimum 312 psig container requirement.

(c) LP-gas motor fuel or mobile fuel containers mounted on school buses, mass transit, or special transit vehicles, or public transportation [passenger-carrying] vehicles shall not exceed 300 [200] gallons aggregate water capacity. LP-gas containers mounted on all other passenger-carrying vehicles shall not exceed 200 gallons aggregate water capacity. [No more than three containers shall be mounted on a passenger-carrying vehicle.] This subsection shall not prevent a LP-gas motor fuel line from being connected to a cargo container on a LP-gas bobtail delivery unit [properly] registered with the commission [this division].

[(d) LP-gas motor fuel containers on other than passenger vehicles normally operating on the highways shall not exceed 175 gallons individual water capacity, 300 gallons aggregate water capacity. No more than two containers shall be mounted on a vehicle.]

[(d)[(e)] All motor fuel or mobile fuel containers shall be [of 130 gallons water capacity or more shall be baffled and shall have steel pads continuously welded to the container and] supported [through an arc of 120 degrees] in such a manner as to prevent the concentration of excessive stresses in the shell plate of the container. This shall not prohibit the use of specific mounting brackets, designed and manufactured by a container manufacturer. The container fastenings and brackets shall be designed and constructed to withstand without permanent visible deformation static loading in any direction equal to four times the weight of the container filled with fuel. Each specific mounting bracket manufactured on or after January 1, 1994, must have the manufacturer's name or logo on it in order to properly identify the bracket manufacturer.

[(e)[(f)] A container having a water capacity of 30 gallons or less may be filled into the liquid space. Any other container [Containers] covered by this section shall be equipped for filling into the vapor space [only]. Motor fuel and mobile fuel containers shall not be filled in excess of the maximum permitted filling density.

§9.173. Safety Relief Valves.

(a) All ASME motor fuel and mobile fuel containers shall be equipped with internal type [spring loaded] safety relief valves which comply with §9.42 of this title (relating to Safety Relief Valves), §9.43 of this title (relating to Setting of Relief Valves), and §9.44 of this title (relating to

Construction and Markings of Safety Relief Valves).

(b) (No change.)

(c) Safety relief valve discharge shall be directed or vented [upward within 15 degrees of vertical] so that any gas released will not directly impinge upon containers, any part of the vehicle, adjacent persons or vehicles, or the inside of the passenger or luggage compartment.

(d) Safety relief valve discharge vent lines shall be metallic [steel] or approved high pressure LP-gas hose or other equivalent material sized, located, and secured so as to permit sufficient safety relief valve relieving capacity. Discharge vent lines shall be able to withstand the pressure from the relief vapor discharge when the relief valve is in the full open position. A protective cover [spring-loaded dust or rain cap] shall be provided to minimize the possibility of [the entrance of] dirt or water entering [into] either the relief valve or its discharge vent line.[.] The protective cover [and such dust or rain cap] shall remain in place except when the relief valve operates.[, in] In this event, it shall permit the relief valve to operate at sufficient capacity.

(e) (No change.)

§9.174. Protection of Valves and Fittings.

[(a)] Container valves, appurtenances, and connections shall be [adequately] protected so as to minimize the possibility of damage caused by such incidents as [due to] vehicle collisions or accidental contact with stationary objects [or objects thrown up from the ground]. This protection shall be provided by the container manufacturer by means of recessing or providing a heavy metal fitting guard [with a minimum of seven gauge thickness, adequately] extended to protect all valves when they [such valves] are in the full open position. The guard shall be permanently welded to the container or bolted to the guard tabs. [Where used, guard tabs shall have a minimum tensile strength of 55,000 p.s.i.g. and shall be welded to the vessel at the time of fabrication.] The bolts, including lock washers and nuts, or self-locking nuts, must be of a size and strength to secure the guard against displacement. If self-locking nuts are installed, such nuts shall not be reused once they are removed. [securing the guard to the container must be a minimum of 3/8 inch grade five steel machine bolts. Exception:] A motor fuel container which is located within a vehicle's interior or [an automobile's] trunk area, with parts of the vehicle providing protection and all valves and fittings protected by a vapor tight shroud, will be considered [deemed] to comply with this subsection [the foregoing requirement].

[(b)] Float gauges, relief valves, and other container appurtenances located outside the valve guard area shall be recessed inside the container or protected by a welded guard surrounding the appurtenances.]

§9.175. Container Appurtenances.

[(a)] All valves, gauging devices, and appurtenances shall have a minimum rated working pressure of 250 p.s.i.g.]

(a)[(b)] Manual shut-off valves shall be designed to provide positive closure under service conditions and shall be equipped with an internal excess flow check valve designed to close automatically at the rated flow of vapor or liquid specified by the manufacturer.

(b) [(c)] Containers shall be installed in such a manner that access to main shut-off valves is not hindered by the vehicle's frame, body, or any equipment or appurtenance attached to or mounted on the vehicle. This requirement does not [is not to be construed to] prohibit the installation of containers inside a vehicle's passenger or luggage compartments where access doors to these compartments may be locked to secure the vehicle and its contents.

(c)[(d)] Double back flow check valves shall be [of the] spring-loaded [type] and [shall] close when the flow of LP-gas is either stopped or reversed. This valve shall be installed in the fill valve opening of the container, whether used for remote or direct filling.

(d) [(e)] All motor fuel and mobile fuel containers installed on school buses, mass transit, special transit, or public transportation vehicles shall be equipped with an automatic means to prevent filling in excess of the maximum permitted filling density.

(e)[(f)] An automatic [overfilling prevention] device as described in subsection (d) shall [may] be installed on the container or exterior of the compartment when remote filling is used, provided that a double back flow check valve is installed in the remote fill valve opening.

(f) [(g)] All container openings, except those for safety relief valves and gauging devices, shall be [permanently] labeled by appropriate means to designate whether they communicate with the liquid or vapor space. As an alternative to labeling the container openings, valves may be labeled.

(g)[(h)] A solid steel plug shall be installed in unused openings.

§9.184. Installation of Containers and Container Appurtenances.

(a) Containers shall be located in a place and in a manner that minimizes [to minimize] the possibility of damage caused by such incidents as vehicle collisions or accidental contact with stationary objects to the container and its fittings. All containers shall be located within the physical limits of the vehicle and shall be protected by the vehicle's bumpers. Extending a chassis or bumper solely for the purpose of mounting containers is prohibited, except where permitted by federal law. [Containers shall not be installed less than eight inches from the engine or exhaust system or shall be shielded against direct heating to prevent increased internal pressure of the container.] To prevent increased internal pressure of the container(s), they shall not be installed less than eight inches from the engine or exhaust system unless shielded against direct heating.

(b) Containers not exceeding 85 gallons water capacity may be mounted in an elevated position, provided such containers are installed within the confines of an overhead steel framework which is common with or attached to the vehicle's frame and is capable of supporting 1.5 times the weight of the vehicle. [No container shall be located directly above another container.]

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

(e) The container, fastenings or mounting brackets shall be secured to the vehicle with bolts, lock washers and nuts, or self-locking nuts of a size and strength capable of withstanding a static force in any direction equal to four times the weight of the container filled with fuel. If self-locking nuts are installed, such nuts shall not be reused once they are removed.

§9.187. School Bus, [and] Mass Transit, and Special Transit Vehicle Installations.

(a) [The application. This section applies to LP-gas systems supplying LP-gas to propel school bus and mass transit vehicles.] Prior to the [initial installation of a] conversion to a LP-gas system of [on] any vehicle to be used as a school bus, [by either public or private educational institutions or] mass transit, or special transit vehicle[s], an applicant (the ultimate consumer or licensee, as the case may be), making the [initial installation or] conversion shall submit a LPG Form 503 [, Application to Install a LPG System on School Bus/Mass Transit Vehicles, and other information deemed necessary by the LP-Gas Division for review]

(1) An original school bus, mass transit, or special transit vehicle manufacturer shall submit an LPG Form 503 covering the model(s) of vehicle(s) to be equipped with an LP-gas system prior

to the vehicle(s) being used in LP-gas service in this state.

(2) The commission shall examine all drawings, plans, reports, and specifications required by statute or commission regulation to be submitted for approval to determine whether the design, manufacture, construction, or use of the depicted item, system, operations, procedure, or installation complies with the LP-Gas Safety Rules. A determination will also be made whether the subject of the submission poses a threat to the health, safety, and welfare of the general public. If the commission declines administratively to approve the submission, the applicant shall be notified in writing within the required time period of the deficiencies. The applicant may modify the submission and resubmit it for approval within the required time period, or may request a hearing on the matter in accordance with the General Rules of Practice and Procedure of the Railroad Commission of Texas. The subject of the submission shall not be operated or used in LP-gas service in this state until approved by the Railroad Commission of Texas following a hearing.

(b) The application process. After completion of the [division's] review [of the application] within the time described in paragraph (7) of this subsection, the commission will return the application [will be returned] to the applicant, indicating either the submission complies with the LP-gas rules or specifying what [indicating that] corrections are required[, and such corrections shall be noted specifically on the returned application].

(1)-(4) (No change.)

(5) Material variances. If the commission [division director] determines the completed installation or conversion varies materially from the application originally accepted as in compliance, correction of the variance and notification to the commission or resubmission of the specifications is required. The [division's] review of such resubmitted application will follow the [described] procedure(s) described in this section.

(6) Subsequent applications. Any subsequent [installation of a] conversion to an LP-gas system by the same applicant [for the same user] will not require resubmission of [an application,] an [(LPG Form 503)], provided the conversions are made in accordance with the application originally accepted as in compliance. However, an LPG Form 504, [Notice of Subsequent Conversion by the Same Ultimate Consumer or Applicant] must be filed with and approved by the commission [LP-Gas Division] prior to the completion of any

subsequent school bus, [or] mass transit, or special transit vehicle [installation or] conversion. The applicant shall notify the commission [division] in writing when any such subsequent [installation or] conversion is completed and ready for inspection. Subsequent conversions that differ and vary materially from the initial application as originally accepted as being in compliance will require another submission of LPG Form 503. Original school bus, mass transit, or special transit vehicle manufacturers shall submit an LPG Form 504 prior to the vehicles being used in this state.

(7) Time for review of applications. The commission [division] will review all applications within 21 [45] calendar days of their receipt [of the application]. Written [The division must mail written] notification [to the applicant] of whether the application is complete or incomplete [accepted, rejected, or still under review] shall be mailed to the applicant within the 21 [45] calendar day period. An application is not completed [accepted] (i.e., in compliance) until the applicant has received written notification [of the acceptance].

(c) Container installation. [Each container shall be fitted with an approved automatic means to prevent filling in excess of the maximum permitted filling density.] The motor fuel container(s) installed on a school bus or mass transit vehicle [container] shall be installed on the underside of the vehicle [on the streetside]. The motor fuel containers installed on a special transit vehicle may be installed in the passenger compartment, provided it complies with §9.185, (relating to Interior Container Installation), or on the underside of the vehicle. [Installation of the container on top or at the rear of the bus is prohibited.]

(d) LP-gas containers used on school buses shall not exceed 115 gallons aggregate water capacity.]

(d)[(e)] Container(s) [The container] shall be secured to the school bus, mass transit, or special transit vehicle frame (not to the floor [of the bus]) by container fastenings welded directly to the container or mounting brackets as provided in §9.172(d) of this title (relating to Containers). The fastenings or brackets must be secured to the frame or securely mounted to a supporting structure so as to not compromise the strength of that structure (i.e., backing plates or other acceptable means may be used to accomplish this purpose), as required by §9.184(e) of this title (relating to Installation of Containers and Container Appurtenances). Container(s) which are currently installed on school buses or mass transit vehicles by means of strap

mounting brackets may continue to be used. [designed with a safety factor of four, to withstand loadings in any direction equal to four times the filled weight of the container. The container shall have a minimum of two padded mounting frame brackets, continuously welded to the container at the time of manufacture, supporting the container through an arc of 120 degrees. Container brackets shall be secured in place using lock washers and double nutted 1/2 inch grade eight tensile strength bolts.]

[(f) Containers shall be installed with as much clearance as practical, but never less than the minimum normal road clearance of the vehicle under maximum load conditions. Minimum clearance shall be to the bottom of the container or to the lowest fitting on the container or housing, whichever is lower. All container valves and fittings shall be protected by means of a heavy gauge metal guard having a minimum thickness of seven gauge steel.]

(e)[(g)] If necessary, a [An eight inch by 14 inch minimum size] plumbing chamber door shall be provided in the [street] sidewall of the school bus, mass transit, or special transit vehicle to allow easy access for filling or securing the service valve in the event of an emergency. The plumbing chamber door shall be hinged and latched, but not locked.

[(h) All safety relief valves shall be vented through the street sidewall of the bus skirting. The relief valve discharge vent line shall be metallic pipe or tubing (other than aluminum) and shall be sized, located, and secured, so as not to restrict full discharge.

[(i) The relief valve discharge vent lines shall run vertically upward and shall be secured against the outside skirting, continuing upward between windows, terminating at the rolling eaves of the bus roof. A spring-loaded dust or rain cap must be provided which will not divert the discharge of LP-gas onto the container or vehicle. A flexible high pressure LP-gas hose connection shall connect the relief valve threaded collar to the discharge vent line by means of threaded fittings or manufactured hose fittings designed specifically for this purpose. The relief valve discharge vent line and the flexible high pressure LP-gas hose shall withstand the pressure from the relief discharge when the relief valve is in the full open position.]

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

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Subchapter I. Division VII

• 16 TAC §9.210

The Railroad Commission of Texas proposes an amendment to §9.210, concerning low pressure-high pressure piping.

The amendment to §9.210 moves definitions contained in the section to §9.2, relating to definitions.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Petru 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 an increase in compliance due to more clearly understandable rules and an increase in safety afforded to the general public due to the updated and revised safety requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas 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.

§9.210. Low Pressure-High Pressure Piping.

(a) (No change.)

[(b) Low pressure gas piping covers materials and installation methods for piping with pressure to 50 psig or less.]

[(b)(c)] Section 9.223 and §9.224 of this subchapter pertain to high pressure gas piping.

[(d) High pressure gas piping covers gas piping for conveying liquid LP-gas or vapor with pressure in excess of 50 psig.]

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

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Subchapter O. Division XIII

• 16 TAC §9.401

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §9.401, concerning definitions, as all applicable definitions have been moved to §9.2 (relating to definitions), and unnecessary definitions have been deleted.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, 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. Petru 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 an increase in compliance due to more clearly understandable rules. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeal is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas 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.

§9.401. Definitions.

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

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Chapter 13. Regulations for Compressed Natural Gas (CNG) Fuel Systems

Subchapter A. Scope and Definitions

• 16 TAC §13.3, §13.4

The Railroad Commission of Texas proposes amendments to §13.3 and §13.4, concerning definitions and compressed natural gas forms. The Commission proposes amendments to §13.3 to add 13 new definitions of terms (automatic dispenser, auxiliary engine, commercial installation, mobile fuel container, motor fuel container, motor fuel system, public transportation vehicle, Railroad Commission of Texas, representative, school, school bus, special transit vehicle, and tentative approval). An existing definition of final approval was moved from §13.25, in order to consolidate all definitions in one section for easier reference. The definitions for approved, commission, CNG system, and mass transit vehicle were revised for clarity.

Amendment to §13.4 reflects a revision in the title of CNG Form 1501, and add two new forms, CNG Form 1505, Testing Procedures Certification, and CNG Form 1016B, Application for Examination Exemption by a Master Journeyman Plumber or a Class A or B Air Conditioning and Refrigeration Contractor.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Petru also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be an increase in compliance due to more clearly understandable rules and an increase safety afforded to the general public due to the updated and revised safety requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*. The commission will consider all comments filed relating to the previously proposed amendment to these sections published in the January 1, 1993, issue of the *Texas Register* (18 TexReg 27).

The amendments are proposed under the Texas Natural Resources Code, §116.012 (Vernon Supplement 1992), 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 wel-

fare of the general public.

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

Approved-Authorized [Acceptable to] by the commission or the Railroad Commission of Texas [LP-Gas Division or the Railroad Commission].

Automatic dispenser-A CNG dispenser which is operated by a member of the general public and which requires transaction authorization.

Auxiliary engine-An engine, mounted on a vehicle, which is used for purposes other than propelling a vehicle.

Commission-An operating division of the Railroad Commission of Texas or any of the division's employees [The Railroad Commission of Texas].

CNG system-A system of safety devices, cylinders, piping, fittings, valves, compressors, regulators, gauges, relief devices, vents, installation fixtures, and other CNG equipment intended for use or used in any building or commercial installation, or used [public place by the general public] in conjunction with a motor vehicle fueled by CNG and any system of equipment designed to be used or used in the compression, sale, storage, transportation for delivery, or distribution of CNG in portable CNG cylinders, but does not include a natural gas pipeline located upstream of the inlet of the compressor.

Commercial installation-Any CNG installation located on premises other than a single family dwelling used as a residence, including but not limited to, a retail business establishment, school, convalescent home, hospital, retail CNG cylinder filling/exchange operation, service station, forklift refueling facility, or private motor/mobile fuel cylinder filling operation.

Final approval-The authority issued by the commission allowing the installation to be placed into CNG service.

Mass transit vehicle-Any vehicle which is owned or operated [used] by a political division of a state, city, or county which is primarily used in the conveyance of the general public.

Mobile fuel container-A CNG container mounted on a vehicle to store CNG as the fuel supply for uses other than motor fuel.

Motor fuel container-A CNG container mounted on a vehicle to store CNG as the fuel supply to an engine used to propel the vehicle.

Motor fuel system-A CNG system, excluding the container, which supplies CNG to an engine used to propel the vehicle.

Public transportation vehicle-Includes, but is not limited to, taxis, buses

(excluding school buses, mass transit, or special transit vehicles), airport courtesy cars, and any other vehicle for hire to transport persons.

Railroad Commission of Texas-The members of the Railroad Commission of Texas.

Representative-The person designated by a licensed applicant or licensee as the principal person in authority who is responsible for actively supervising the licensee's CNG activities.

School-A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

School bus-A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

Special transit vehicle-A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons. This type of vehicle is normally a smaller version of the standard designed school bus or mass transit vehicle.

Tentative approval-The authority issued by the commission without a hearing allowing construction of a CNG installation.

§13.4. CNG Forms. Under the provisions of the Texas Natural Resources Code, Chapter 116, the Railroad Commission of Texas has adopted by reference the following forms for use by the Liquefied Petroleum Gas Division (LP-Gas). These forms are available [to the public] upon request directed to the LP-Gas Division in Austin:

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

(8) CNG Form 1016B. Application for Examination Exemption by a Master/Journeyman Plumber or a Class A or B Air Conditioning and Refrigeration Contractor [CNG Form 1018, Statement of Lost or Destroyed License];

(9) CNG Form 1018. Statement of Lost or Destroyed License [CNG Form 1018B. Statement of Lost or Destroyed CNG Form 1004 Decal];

(10) CNG Form 1018B. Statement of Lost or Destroyed CNG Form 1004 [CNG Form 1019. Inventory of Compressed Natural Gas Cylinders];

(11) CNG Form 1019. Inventory of Compressed Natural Gas Cylinders [CNG Form 1020. Report of Compressed Natural Gas Incident/Accident];

(12) CNG Form 1020. Report of Compressed Natural Gas Incident/Accident [CNG Form 1021. Notice of Intent

to Appear];

(13) CNG Form 1021. Notice of Intent to Appear [CNG Form 1025. Application and Notice of Exception to the Regulations for Compressed Natural Gas];

(14) CNG Form 1025. Application and Notice of Exception to the Regulations for Compressed Natural Gas [CNG Form 1026. Franchise Tax Certification and Assumed Name Certificate];

(15) CNG Form 1026. Franchise Tax Certification and Assumed Name Certificate [CNG Form 1027. Application for Qualification as Self-Insurer];

(16) CNG Form 1027. Application for Qualification as Self-Insurer [CNG Form 1028. Application to use Irrevocable Letter of Credit as an Alternative to Insurance];

(17) CNG Form 1028. Application to use Irrevocable Letter of Credit as an Alternative to Insurance [CNG Form 1500. Application for Construction Approval of a CNG System Installation];

(18) CNG Form 1500. Application for Construction Approval of a CNG System Installation [CNG Form 1501. Completion Report];

(19) CNG Form 1501. Completion Report for Commercial Installations Having an Aggregate Storage Capacity of 240 Standard Cubic Feet Water Volume or Less [CNG Form 1502. Application for Compressed Natural Gas Equipment and Component Approval];

(20) CNG Form 1503. Application to Install a CNG System on School Bus. [Mass Transit, or Special Transit Vehicles];

(21) (No change.)

(22) CNG Form 1505. Testing Procedures Certification [CNG Form 1996A. Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Coverage];

(23) CNG Form 1996A. Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Coverage [CNG Form 1996B. Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Coverage];

(24) CNG Form 1996B. Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Coverage [CNG Form 1997A. Insurance Filing Certifying Motor Vehicle Bodily Injury and Property Damage Liability Insurance];

(25) CNG Form 1997A. Insurance Filing Certifying Motor Vehicle

Bodily Injury and Property Damage Liability Insurance [CNG Form 1997B. Statement in Lieu of Insurance Filing Certifying Motor Vehicle Bodily Injury Insurance and Property Damage Liability Insurance];

(26) **CNG Form 1997B. Statement in Lieu of Insurance Filing Certifying Motor Vehicle Bodily Injury Insurance and Property Damage Liability Insurance [CNG Form 1998A. Insurance Filing Certifying General Liability Insurance];**

(27) **CNG Form 1998A. Insurance Filing Certifying General Liability Insurance [CNG Form 1998B. Statement in Lieu of Insurance Filing Certifying General Liability Insurance];**

(28) **CNG Form 1998B. Statement in Lieu of Insurance Filing Certifying General Liability Insurance [CNG Form 1999. Notice of Insurance Cancellation.]**

(29) **CNG Form 1999. Notice of Insurance Cancellation.**

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

Issued in Austin, Texas, on July 8, 1993.

TRD-9325459

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

Earliest possible date of adoption: August 16, 1993

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

◆ ◆ ◆
**Subchapter B. General Rules
for CNG Equipment Qualifications**

- 16 TAC §§13.21, 13.24-13.27, 13.30, 13.31, 13.35

The Railroad Commission of Texas proposes amendments to §§13.21, 13.24-13.27, 13.30, 13.31, and 13.35, concerning applicability, school bus and mass transit installations, approval of CNG systems and equipment installation filings and inspection, design and construction of cylinders and pressure vessels, pressure relief devices, piping, valves, and application for an exception to a safety rule.

The amendment to §13.21 moves language from existing §13.23 relating to severability to §13.21, and renames the section Application and Severability.

Section 13.24 is amended to add new language similar to that proposed in amendment to the LP-Gas Safety Rules, §9.187 (School Bus and Mass Transit Installations) to be consistent with the LP-Gas Safety Rules. The

new language clarifies that: a CNG Form 1503 (Application to Install a CNG System on School Bus, Special Transit, and Mass Transit Vehicles) must be filed with the commission prior to the conversion of that type of vehicle. Original school bus, mass transit and special transit vehicles would also be required to file the form covering the model(s) of vehicles they manufacture; the commission will review all drawings, plans, reports, and specifications submitted for compliance with the Regulations for Compressed Natural Gas, and threat to the health safety, and welfare of the general public. If the commission declines administratively to approve the submission, the applicant may request a hearing; after completion of the review of the application, it will be returned to the applicant indicating it either complies with the CNG rules or specifying what corrections are necessary; if a completed application varies materially from the application accepted as in compliance, correction of the variance, notification to the commission and resubmission of an application is required; subsequent conversions will not require resubmission of CNG Form 1503 if they are made in accordance with the original application. A CNG Form 1503 (Notice of Subsequent Installation or Conversion by the same Ultimate Consumer or Applicant) must be filed. Subsequent conversions that vary materially will require resubmission of the CNG Form 1503.

The proposed amendment to §13.25 reflects a total revision of existing language to be consistent with language in the proposed amendment to §9.20 (Filings Required for Stationary LP-Gas Installations) of the LP-Gas Safety Rules, to clarify that: a CNG Form 1500, (Application for Construction Approval of a CNG Installation) must be filed with the commission prior to installation of any CNG container that would result in an aggregate storage capacity in excess of 240 standard cubic feet water volume; plans and specifications filed with an application for a Category 3 or 5 license will not be granted tentative approval until all other licensing requirements are met; a CNG Form 1500 is not required when a previously approved system is repaired, renovated, extended, or modified, provided it does not increase the CNG aggregate storage capacity at the site; a nonrefundable fee of \$26 shall be submitted with each CNG Form 1500, and a resubmission fee of \$16 will be charged; all drawings, plans, reports, and specifications required to be submitted will be reviewed for compliance with the Regulations for Compressed Natural Gas and potential threat to the health, safety, and welfare of the general public. If an application is not approved, the applicant may request a hearing; if a proposed installation is not specifically covered by the Regulations for Compressed Natural Gas or statute, the commission shall apply and require reasonable sound engineering and safety provisions; a CNG Form 1501 is required to be filed after installation of a CNG container having an aggregate storage capacity of less than 240 standard cubic feet, indicating it complies with the statutes and Regulations for Compressed Natural Gas, all necessary licenses have been obtained, and it has been placed in CNG service; if a licensee violates the provisions of this subsection, he or she may be

required to submit plans and specifications for future installations. If the licensee disagrees he or she may request a hearing; a nonrefundable fee of \$6.00 for each ASME or DOT cylinder cascade shall be submitted with the form, and a resubmission fee of \$12 will be charged; applicants will be notified of complete or incomplete forms within 21 days; tentative approval for CNG installations of aggregate storage capacity in excess of 240 standard cubic feet water volume may be granted if the application meets all CNG safety regulations and does not pose a threat to the health, safety, and welfare of the general public. Installation may not proceed until written notification is received from the commission; the commission must be notified before any field alterations or additions during construction are implemented to determine if resubmission of plans and specifications is required. After notification of an incomplete form, the applicant has 120 days to resubmit a corrected form, or request an extension of time or the application will expire. Also, if a tentatively approved installation is not completed within 1 year, the tentative approval will expire. An extension of time may be requested; if the commission does not inspect a completed installation of aggregate storage capacity in excess of 240 standard cubic feet within 30 days of receipt of written notification that it is ready for inspection, the installation may operate conditionally. If, upon inspection, a safety regulation violation is detected, the installation must cease operation until the violation is corrected; an inspection of a completed installation of aggregate storage capacity of less than 240 standard cubic feet will be conducted as soon as possible after receipt of a CNG Form 1501. If upon inspection, a safety regulation violation is detected, the installation may be removed from service until the violation is corrected; if the completed installation varies materially from the application originally accepted as in compliance, correction of the variance, notification to the commission and resubmission of the application is required; final approval of an installation may be granted following a physical inspection, if the installation complies with the plans and specifications granted tentative approval, the safety regulations, the applicable statutes, and if it does not constitute a danger to the public health, safety, and welfare; and all appurtenances and equipment used in CNG service must be listed by a nationally recognized testing laboratory, unless its use is specifically prohibited or there is not a testing specification or procedure developed. Appurtenances and equipment that cannot be tested must be able to operate at the full range of pressures and temperatures to which they will be subjected. The commission may request documentation to substantiate claims of safety, and compliance with this section does not ensure conformity with other laws or regulations.

The amendments to §13.26 establishes the requirements for vapor recovery receivers, and changes the title of the section to Design and Construction of Cylinders, Pressure Vessels, and Vapor Recovery Receivers.

The amendment to §13.27 reflects minor wording changes which clarify the proper means of installing pressure relief devices.

The amendment to §13.30 establishes requirements relating to industrial type connectors.

The amendments to §13.31 reflects language that provides a more reasonable safety factor for valves.

The amendment to §13.35 provides a time period of 21 calendar days for review of requests for exceptions to safety rules.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five year period the rules are in effect there will be fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules; however, due to the nature of the changes it is impossible to assess that impact.

Mr. Petru also has determined for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be an increase in compliance due to more clearly understandable rules and an increase safety afforded to the general public due to the updated and revised safety requirements. There is an anticipated economic cost to persons required to comply with the proposed rules; however, due to the nature of the proposed changes it is impossible to specify the amount of that impact.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

Comments will be accepted for 30 days after publication in the *Texas Register*. The Commission will consider all comments filed relating to the previously proposed amendments to these sections published in the January 1, 1993, issue of the *Texas Register* (18 TexReg 27).

The amendments are proposed under the Texas Natural Resources Code, §116. 012 (Vernon Supplement, 1992), which authorizes the Railroad Commission of Texas 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.

§13.21. *Applicability and Severability.*

(a) The provisions of this subchapter apply to pressurized components of a compressed natural gas (CNG) system, and are applicable to both engine fuel systems and compression, storage, and dispensing systems.

(b) If any item, clause, or provision of these rules is for any reason declared invalid, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

§13.24. *Filings Required for School Bus, [and] Mass Transit, and Special Transit Installations.*

(a) [The application. This section applies to compressed natural gas (CNG) systems supplying CNG to propel school bus and mass transit vehicles.] Prior to the [initial installation of or] conversion of [to a CNG system on] any vehicle to be used as a school bus, [by either public or private educational institutions or] mass transit, or special transit vehicle [vehicles], an applicant (the ultimate consumer or licensee, as the case may be) making the [initial installation or] conversion shall submit a CNG Form 1503 to the commission [Application to Install a CNG System on School Bus/Mass Transit Vehicles, and other information as deemed necessary by the division of the LP-Gas Division for review].

(1) An original school bus, mass transit, or special transit vehicle manufacturer shall submit a CNG Form 1503 covering the model(s) of vehicle(s) to be equipped with a CNG system prior to the vehicle(s) being used in CNG service in this state.

(2) The commission shall examine all drawings, plans, reports, and specifications for mobile installations required by statute or commission regulation to be submitted for tentative approval to determine whether the design, manufacture, construction, or use of the depicted item, system, operations, procedure, or installation complies with the Regulations for Compressed Natural Gas. A determination will also be made whether the subject of the submission poses a threat to the health, safety, and welfare of the general public. If the commission declines administratively to approve the submission, the applicant shall be notified in writing within the required time period of the deficiencies. The applicant may modify the submission and re-submit it for tentative approval within the required time period, or may request a hearing on the matter in accordance with the General Rules of Practice and Procedure of the Railroad Commission of Texas. The subject of the submission shall not be operated or used in CNG service in this state until approved by the Railroad Commission of Texas following a hearing.

(b) The application process. After completion of the [division's] review [of the application] within the time described in paragraph (7) of this subsection, the commission will return the application [will be returned] to the applicant, indicating either the submission complies with the CNG rules or specifying what [indicating that] corrections are required[, and such corrections shall be noted specifically on the returned application].

(1)-(4) (No change.)

(5) Material variances. If the

commission [division director] determines the completed installation or conversion varies materially from the application originally accepted as in compliance, correction of the variance and notification to the commission or resubmission of the application is required. The commission's [division's] review of such resubmitted application will follow the described procedure(s) in this section.

(6) Subsequent applications. Any subsequent [installation of or] conversion to a CNG system by the same applicant [for the same user] will not require resubmission of [an application] a CNG Form 1503, provided the conversions are made in accordance with the application originally accepted as in compliance. However, a CNG Form 1504[, Notice of Subsequent Installation or Conversion by the Same Ultimate Consumer or Applicant] must be filed with and approved by the commission [division.] prior to the completion of any subsequent school bus, [or] mass transit, or special transit vehicle [installation or] conversion. The applicant shall notify the commission [division] in writing when any such subsequent [installation or] conversion is completed and ready for inspection. Subsequent conversions that differ and vary materially from the initial application as originally accepted as in compliance will require another submission of CNG Form 1503. Original school bus, mass transit, or special transit vehicle manufacturers shall submit a CNG Form 1504 prior to the vehicles being used in this state.

(7) Time for review of applications. The commission [division] will review all applications within 21 [45] calendar days of receipt of the application. Written [The division must mail written] notification [to the applicant] of whether the application is complete or incomplete [accepted, rejected, or still under review] shall be mailed to the applicant within the 21 [45] calendar day period. An application is not complete [accepted] (i.e., in compliance) until the applicant has received written notification [of the acceptance].

§13.25. *Filings Required for Stationary CNG Installations [Approval of CNG Systems and Equipment Installation Filings and Inspection].*

(a) Aggregate storage capacity in excess of 240 standard cubic feet water volume.

(1) Prior to the installation of any CNG container which would result in an aggregate storage capacity in excess of 240 cubic feet water volume, plans and specifications for the installation must be submitted to the commission with CNG Form 1500. See subsection (f) of this sec-

tion relating to additional requirements for installations with an aggregate storage capacity in excess of 240 standard cubic feet water volume.

(2) Plans and specifications required by paragraph (1) of this section submitted with an application for a Category 3 or 5 license or for a multiple category license that includes a Category 3 or 5 license will not be granted tentative approval by the commission until all other licensing requirements are met.

(3) A CNG Form 1500 is not required when a previously approved system is repaired, renovated, extended, or modified, provided the subsequent change does not increase the CNG aggregate storage capacity at the site.

(4) A nonrefundable fee of \$26 shall be submitted with each CNG Form 1500. A nonrefundable fee of \$16 shall be submitted for each resubmitted CNG Form 1500.

(b) The commission shall examine all drawings, plans, reports, and specifications for stationary installations required by statute or commission regulation to be submitted for tentative approval to determine whether the design, manufacture, construction, or use of the depicted item, systems, operations, procedure, or installation complies with the Regulations for Compressed Natural Gas. A determination will also be made whether the subject submission poses a threat to the health, safety, and welfare of the general public. If the commission declines administratively to approve the submission, the applicant shall be notified in writing within the required time period of the deficiencies. The applicant may modify the submission and resubmit it for approval within the required time period, or may request a hearing on the matter in accordance with the General Rules of Practice and Procedure of the Railroad Commission of Texas. The subject of the submission may not be operated or used in CNG service in this state until approved by the Railroad Commission of Texas following a hearing.

(c) If a CNG stationary installation which is not specifically covered by the Regulations for Compressed Natural Gas has been or is to be installed, the commission shall apply and require any reasonable sound engineering and safety provisions which may be considered necessary to ensure the CNG installation is safe for CNG service. If the affected party disagrees with the commission's determination, he or she may request a hearing. However, the installation shall not be placed in CNG operation until the commission has determined the installation is safe for CNG service.

(d) Aggregate storage capacity of less than 240 standard cubic feet water volume.

(1) A CNG Form 1501 must be postmarked or physically delivered to the commission within 10 calendar days after completion of the installation of any CNG container(s) having an aggregate storage capacity of less than 240 standard cubic feet at a commercial installation. No CNG shall be introduced in any CNG container that is not installed in accordance with the statutes of the State of Texas, or with the Regulations for Compressed Natural Gas in effect at the time of installation. The submission of the CNG Form 1501 will indicate that:

(A) the installation is in total compliance with the statutes and the Regulations for Compressed Natural Gas;

(B) that any necessary CNG licenses have been issued; and

(C) that the installation has been placed in CNG service.

(2) If a CNG licensee violates the provisions of this subsection, the commission may require the CNG licensee to submit a CNG Form 1500, and plans and specifications for future CNG installations. The affected CNG licensee shall be notified in writing of this finding. If the CNG licensee disagrees with the determination of the commission, then that licensee may request a public hearing on the matter. Until a decision is issued by the Railroad Commission of Texas subsequent to a hearing on the matter the CNG licensee shall be required to submit plans and specifications as noted in this paragraph.

(3) A non-refundable fee of \$6.00 for each ASME container or DOT cylinder cascade listed on the form shall be submitted with each originally filed CNG Form 1501. A nonrefundable fee of \$12 shall be submitted with each resubmitted CNG Form 1501.

(e) Notice of complete or incomplete form. The commission will review all applications within 21 calendar days of their receipt. Written notification of whether the application is complete or incomplete shall be mailed to the applicant within the 21 calendar day period.

(f) Tentative approval for Stationary CNG Installations.

(1) Granting of tentative approval for CNG installations of aggregate storage capacity in excess of 240 standard cubic feet water volume. Tentative ap-

proval may be granted by the commission if it is determined that the application meets all applicable CNG Safety Regulations and statutes of the State of Texas, and that the installation does not appear to constitute a danger to the public health, safety, and welfare. The construction of the installation and the setting of the container(s) may not proceed until the applicant has received written notification of the tentative approval.

(2) Alterations or additions. The commission must be notified prior to implementation of any field alterations or additions during construction (except maintenance and repairs) related to the CNG installation in order for the commission to determine if resubmission of plans and specifications for reconsideration is required.

(g) Expiration of application; extension.

(1) When an applicant is notified of an incomplete CNG Form 1500, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, a new application must be filed should the applicant wish to reactivate commission review of the proposed installation.

(2) If the applicant requests an extension of the 120-day time period in writing. Postmarked or physically delivered to the commission before the expiration date, the application may be renewed for up to 90 days as determined by the commission.

(3) If the tentatively approved installation is not completed within 1 year from the date tentative approval was granted the application will expire. Prior to the date of expiration, the applicant may request of the commission in writing an extension of time up to 90 days to complete the installation. If the applicant fails to request an extension of time within the time period prescribed by this subsection, the applicant will be required to submit a new application if the original installation is to be installed.

(h) Physical inspection of stationary installations.

(1) Aggregate storage capacity in excess of 240 standard cubic feet water volume. The applicant shall notify the commission when the installation is ready for inspection. If the commission does not physically inspect the facility within 30 calendar days of receipt of written notice that the facility is ready for inspection, the facility may operate conditionally until the first inspection is made. If any safety regulation violation(s) exists at the

time of the first inspection, the installation shall cease operation until the violation(s) are corrected.

(2) Aggregate storage capacity of less than 240 standard cubic feet water volume. After receipt of a CNG Form 1501, an inspection will be conducted as soon as possible to verify the installation described is in compliance with the Regulations for Compressed Natural Gas. If any CNG statute or safety regulation violation exists at the time of the initial inspection at a commercial installation, the subject container, including any piping, appliances, appurtenances or equipment connected to it may be immediately removed from CNG service until the violation(s) are corrected.

(i) Material variances. If the commission determines the completed installation varies materially from the application originally accepted as in compliance, correction of the variance and notification to the commission, or resubmission of the application is required. The commission's review of such resubmitted application will follow the procedure described in this subsection.

(j) Final approval of stationary CNG installations. No CNG container may be placed into CNG service until after final approval has been granted. Final approval will follow a physical inspection of the completed installation. If, following the physical inspection of the installation by the commission, it is found that the installation:

(1) complies with:

(A) the plans and specifications given tentative approval by the commission; or

(B) the Regulations for Compressed Natural Gas; and

(C) the statutes of the State of Texas; and

(2) does not constitute a danger to the public health, safety, and welfare, then the commission shall issue an order granting final approval.

(k) Appurtenances and equipment.

(1) All appurtenances and equipment placed into CNG service shall be listed by a nationally recognized testing laboratory, i.e., Underwriter's Laboratory (UL), Factory Mutual (FM), American Gas Association (AGA), or Canadian Gas Association (CGA), or such other laboratories approved by the commission unless:

(A) it is specifically prohibited for use by another section of the Regulations for Compressed Natural Gas; or

(B) there is no test specification or procedure developed by the testing laboratory for the appurtenance or equipment.

(2) Appurtenances and equipment that cannot be listed but are not prohibited for use by the Regulations for Compressed Natural Gas shall be acceptable and safe for CNG service over the full range of pressures and temperatures to which they will be subjected under normal operating conditions.

(3) Documentation sufficient to substantiate any claims made regarding the safety of any valves, fittings, and equipment shall be required by the commission.

(4) Compliance under this section does not ensure conformity with other state and federal regulations, such as those of the Texas Air Control Board.

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

[(1) Construction approval—The authority issued by the commission allowing construction of a CNG installation.

[(2) Final approval—The authority issued by the commission allowing the introduction of CNG into a container, cylinder, and system.

[(b) The approval process.

[(1) Application for construction approval. A CNG Form 1500, Application for Construction Approval of a CNG System Installation, must be submitted to the division prior to construction or installation of a CNG system at a public or private school, hospital, convalescent center, and prior to construction or installation of a CNG compression, storage, or dispensing system in three circumstances:

[(A) when CNG is sold to the general public;

[(B) when a mass transit facility services its own mass transit vehicles with CNG; or

[(C) when a commercial user's CNG system has an aggregate storage capacity in excess of 12,200 standard cubic feet.

[(2) Division review. After completion of the division's review, the applica-

tion will be returned to the applicant indicating the submission complies with the CNG rules or indicating corrections are required. Such corrections shall be noted specifically.

[(3) Previously approved systems. A CNG Form 1500, Application for Construction Approval of a CNG System Installation, is not required when a previously approved system is repaired, renovated, extended, or modified, provided the subsequent change does not increase the CNG storage aggregate capacity at the site.

[(4) Notification of incomplete CNG Form 1500, Application for Construction Approval of a CNG System Installation. When an applicant is notified of a rejected CNG Form 1500, the applicant has 120 calendar days from the date of the notification letter to resubmit the application with the discrepancies corrected or the original application will expire. In order to reactivate the division's review of the proposed CNG site, a new CNG Form 1500, Application for CNG Construction Approval of a System Installation, must be filed. However, if the applicant notifies the division in writing before the expiration date and requests an extension of time following the 120 calendar days, the application may be renewed for an additional number of days stipulated by the division director.

[(5) Accepted CNG Form 1500, Application for Construction Approval of a CNG System Installation. When an applicant is notified of an accepted CNG Form 1500, the applicant may construct the CNG installation.

[(6) Delayed installations. If installation of the CNG system pursuant to an accepted CNG Form 1500, Application for Construction Approval of a CNG System Installation, is not completed within 1 year from the date of acceptance, the applicant must notify the division in writing prior to the date of expiration as defined in this subsection, whether the applicant wishes to withdraw the original application or request an extension of time to complete the installation. The division director shall make the final determination on the request for extension of time.

[(7) Material variances. If the division director determines the completed installation varies materially from the application originally accepted, resubmission of the application is required. The division's review of such resubmitted application will follow the described procedure in this subsection.

[(8) Notification. The applicant shall notify the division in writing when the system is completed and ready for inspection. The CNG system shall not be placed into CNG service until final approval is

granted by the division after a physical inspection determines the CNG system is installed in full compliance with both the accepted construction plans and specifications, and all applicable CNG safety regulations. If the division does not physically inspect the facility within 75 days of written notice that the facility is ready for inspection, the facility can operate conditionally until final inspection is made.

[(9) Inspection. Notwithstanding, the commission or division director may require an inspection of any CNG system at any time. No CNG system shall be placed into CNG service that does not comply with the rules promulgated by the Railroad Commission of Texas in effect at the time of installation.

[(10) Fees. A nonrefundable fee of \$26 shall be submitted with each CNG Form 1500, Application for Construction Approval of a CNG System Installation. A nonrefundable fee of \$6.00 shall be submitted for each resubmitted CNG Form 1500, Application for Construction Approval of a CNG System Installation.

[(c) Completion of CNG portable or stationary systems

[(1) Completion report. A CNG Form 1501, Completion Report, must be submitted to the division postmarked within 10 calendar days after completion of a CNG system at facilities where the aggregate storage capacity of a commercial user is 12,200 standard cubic feet or less, except as noted under subsection (b)(1) of this section.

[(2) Fees. A nonrefundable fee of \$6.00 shall be submitted with each CNG Form 1501, Completion Report.

[(3) Resubmission Fee. A nonrefundable fee of \$6.00 shall be submitted for each resubmitted CNG Form 1501, Completion Report.

[(d) Approval of CNG systems, equipment and components. Compressed Natural Gas systems, equipment and components (i.e., containers, pressure vessels, pressure relief devices, including pressure relief valves, pressure gauges, pressure regulators, valves, hose and hose connections, vehicle fueling connections, engine fuel systems, and electrical equipment) related to CNG systems shall be approved by the Railroad Commission for use in the State of Texas. A CNG Form 1502, Application for Compressed Natural Gas Equipment and Component Approval, must be submitted to the division for any equipment or component which is required to be approved, and other data as the commission may reasonably require. Exception: Equipment (including pressure vessels) and components need not be approved by the commission provided they are listed by a nationally recog-

nized testing laboratory, i.e., Underwriter's Laboratory (UL), Factory Mutual (FM), American Gas Association (AGA), or the Canadian Gas Association, and such other laboratories approved by the division, provided these rules do not prohibit their use in CNG service. Approval under this subsection does not ensure conformity with other state and federal regulations. Any subsequent modifications to approved CNG equipment, and components will require re-submission to the division prior to installation or usage. Devices not previously mentioned in this subsection shall be constructed to provide safety equivalent to that required for other parts of the system.

[(e) Issuance of License. If application is made for a license under any category in which plans or specifications are submitted for installation of retail storage and/or dispensing equipment, the license to operate shall not be issued before final approval of the installation has been granted by the division. Final approval will follow a physical inspection of the completed installation in accordance with subsection (b)(7) of this section.

[(f) Time for review of application. The division will review all applications within 45 calendar days of receipt of the application. The division must mail written notification of whether the application is accepted (construction approval), rejected, or still under review within the 45 calendar day period. An application is not accepted (i.e., in compliance) until the applicant has received written notification of the acceptance.

[(g) Administrative Denial. The division director or his delegate shall examine all drawings, plans, reports, and specifications required by statute or commission rules to be submitted for approval. The division director or his delegate shall determine whether the design, manufacture, construction, or use of the depicted item, system, operation, procedure, or installation complies with the division rules. The division director shall also determine whether the material submitted for acceptance is hazardous to the health, safety, and welfare of the general public. If the division director declines administratively to accept the submission, he shall notify the applicant in writing of the deficiencies. The applicant may modify and resubmit the application to be reconsidered for acceptance, or may request a hearing on the matter. The subject of the submission shall not be operated or used in CNG service in this state until approved by the commission or division director.]

§13.26. Design and Construction of Cylinders, [and] Pressure Vessels, and Vapor Recovery Receivers.

(a) (No change.)

(b) Cylinders shall be manufactured, inspected, marked, tested, and retested in accordance with United States Department of Transportation (DOT) regulations and exemptions for compressed natural gas (CNG) service. Fuel supply cylinders shall have a rated service pressure of not less than 2,400 psig at 70 degrees Fahrenheit. Cascade storage cylinders shall have a rated service pressure of not less than 3,600 psig at 70 degrees Fahrenheit. Steel cylinders shall be manufactured and tested in compliance with DOT 3AA specifications. Fiber reinforced plastic and full composite cylinders shall comply with DOT FRP1 standard. Fiber reinforced plastic and hose wrapped composite cylinders shall comply with DOT FRP2 standard. Vapor recovery receivers shall have a minimum rated service pressure of 250 Psig and be manufactured, inspected, marked, tested, and, if applicable, retested in accordance with Department of Transportation (DOT) regulations or the American Society of Mechanical Engineers (ASME) Code.

(c)-(f) (No change.)

§13.27. Pressure Relief Devices.

(a) Each fuel supply cylinder shall be fitted with a pressure relief device in accordance with the following.

(1) Pressure relief devices for cylinders shall be in accordance with Compressed Gas Association (CGA) Pamphlet S-1.1, "Pressure Relief Device Standards-Part 1, Cylinders for Compressed Gases" [and be of the CG-9 "Combination Rupture Disk- Fusible Plug CG-5" type in which the fusible plug has a nominal yield temperature of 212 degrees Fahrenheit].

(2) Cylinders manufactured under Department of Transportation exemption or special permits that require fire tests for design qualification shall be equipped with pressure relief devices in accordance with CGA S-1.1 and of the type, temperature rating, pressure rating, number, and location used in the fire tests [Only one combination rupture disk-fusible plug shall be installed in any pressure relief device opening].

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

(5) Pressure relief devices shall be located so that the temperature to which they are subjected shall be representative of the temperature to which the cylinder is subjected [The pressure relief device on cylinders shall be permanently marked with the manufacturer's name, initials, or trademark, the temperature rating (212 degrees Fahrenheit) of the fuse plug, and the maximum pressure rating of the rupture disk].

(b) Containers (other than cylinders) and pressure vessels shall be provided with one or more spring-loaded pressure relief valves set to open in accordance with the American Society of Mechanical Engineers (ASME) Code. The pressure relief devices shall be installed directly into the appropriate nozzle opening of the container. However, container(s) may have a full-area stop valve between it and its pressure relieving device for inspection and repair purposes only. When such a stop valve is provided, it shall be so arranged that it can be locked or sealed open and it shall not be closed except by an authorized person. The authorized person shall remain stationed there during the period of the vessel's operation. During operation, the valve shall remain closed, and the authorized person shall again lock or seal the stop valve in the open position before leaving the stationed area.

(c) The minimum rate of discharge of pressure relief devices shall be in accordance with Compressed Gas Association (CGA) Pamphlet S-1.1 "Pressure Relief Device Standards-Part 1, Cylinders for Compressed Gases" [(cylinders); S-1.2 (cargo and portable tanks); S-1.3 (storage cylinders)] or the ASME Code, whichever is applicable.

(d) (No change.)

[(e) Each pressure relief valve shall be plainly marked by the manufacturer of the valve, as follows:

[(1) with the pressure in pound per square inch (psi) at which the valve is set to start-to-discharge;

[(2) with the discharge capacity in cubic feet per minute (cfm); or

[(3) any other marking(s) as required by the Department of Transportation (DOT) or the ASME Code.]

§13.30. Piping.

(a) (No change.)

(b) All tubing shall be a minimum of Type 304 Stainless Steel. All tubing connectors [connections] shall be a minimum of Type 304 Stainless Steel industrial type connectors having a minimum design pressure of 5,000 psig [made of manufactured multifarrel compression fittings].

(c)-(f) (No change.)

§13.31. Valves.

(a) (No change.)

(b) Shutoff valves shall have a design working pressure not less than the rated working pressure of the entire system and shall be capable of withstanding a

hydrostatic test of at least four times the rated service pressure without failure. Leakage shall not occur at less than one and one half times the rated service pressure using dry air as the test medium [with a safety factor of four].

(c) (No change.)

(d) Valves of a design that will allow the valve stem to be removed without removal of the complete bonnet or disassembly of the valve body [and valves with valve stem packing glands which cannot be replaced under pressure] shall not be used. [Exception: Where there is a shutoff valve of acceptable type between them and the container or pressure vessel (this does not apply to service valves).]

(e) (No change.)

§13.35. Application for an Exception to a Safety Rule.

(a) Filing. Any person, firm, or corporation may apply for an exception to the provisions of this chapter by filing an application for exception with the commission [Liquefied Petroleum Gas Division].

(b) Form. The application must be typewritten on paper not to exceed 8-1/2 inches by 11 inches and have an inside margin of at least 1 inch. Annexed exhibits must be folded to the same size as the application. The content must be double-spaced and appear on one side of the paper only. In lieu of the typewritten application, a CNG Form 1025[Application and Notice of Exception to the Regulations for Compressed Natural Gas.] may be submitted.

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

(e) Commission [Division] review. The commission [division director or his delegate] shall review the application within 21 calendar days of receipt of the exception request. The commission must mail written notification to the applicant within the 21 calendar days of whether the request is complete or incomplete [when it is complete]. If the commission has received no objections from any affected parties, it [the division director] may grant the exception, unless it [the division director] determines the exception would be hazardous to the health, safety, or welfare of the general public. If the commission [division director] declines administratively to grant the exception, it [he] shall notify the applicant by certified mail, return receipt requested, of the reasons and of any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application, or may request a hearing on the matter.

(f) Hearings.

(1) (No change.)

(2) Notice. The commission [division] shall prepare a notice of hearing which shall be mailed to the applicant and all affected parties by certified mail, return receipt requested, not less than 21 calendar [10] days prior to the date of the hearing.

(g) (No change.)

(h) Finding requirement. After the hearing, exceptions to this chapter may be granted by the Railroad Commission of Texas [commission] when based upon a determination that the grant of the exception will neither imperil nor tend to imperil the health, safety, and welfare of the general public.

(i) Temporary exception. For good cause shown, the commission [division director] may grant a temporary exception, which shall not exceed 30 days, to the examination requirements for representatives and operations supervisors. Good cause shall include, but not be limited to, the death of a sole proprietor or partners, or severe economic hardship. An applicant for a temporary exception must agree to comply with all applicable safety requirements and the commission [division director] must find the exception will not be hazardous to the public.

(j) Application completion deadline. If an application for an exception is inactive for 6 months after the applicant has been notified by the commission [division] of an incomplete request, the application shall expire. Thereafter, the applicant may resubmit an exception request.

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

Issued in Austin, Texas, on July 8, 1993.

TRD-9325460

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

Earliest possible date of adoption: August 16, 1993

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

Subchapter B. General Rules for CNG Equipment

• 16 TAC §13.23, §13.37

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §13.23 and §13.37, concerning severability and franchise tax certification and

assumed name certificate.

The repeal of §13.23 is proposed as the language contained in this section is contained in proposed amendments to §13.21, relating to application, and therefore is no longer necessary.

The Commission proposes the repeal of §13.37 as this language is being proposed as new §13.75 under Subchapter C, Classification, Registration, and Examination, as the more appropriate category.

Thomas D. Petru, director, Liquefied Petroleum Gas 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. Petru 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 an increase in compliance due to more clearly understandable 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*. The Commission will consider all comments filed relating to the previously proposed amendments to these sections published in the January 1, 1993, issue of the *Texas Register* (18 TexReg 28).

The repeals are proposed under the Texas Natural Resources Code, §116.012 (Vernon Supplement 1992), which authorizes the Railroad Commission of Texas 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.

§13.23. Severability.

§13.37. Franchise Tax Certification and Assumed Name Certificate.

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

Issued in Austin, Texas, on July 8, 1993.

TRD-9325481

Mary Ross McDonald
Legal Division-General
Utilities/LP Gas
Railroad Commission of
Texas

Earliest possible date of adoption: August 16, 1993

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

Subchapter C. Classification, Registration, and Examination

• 16 TAC §§13.61, 13.62, 13.70, 13.71

The Railroad Commission of Texas proposes amendments to §§13.61, 13.62, 13.70, and 13.71, concerning licensing, insurance requirements, examination and notification generally, and denial, suspension, or revocations of licenses or certifications; hearing.

The amendment to §13.61 reflects added language from existing §13.71 relating to examination of representative and §13.72 relating to designation and testing of operations supervisors. The amendments also provide additional language regarding requirements for Category 4 licensees. Category 4 licensees must have a CNG Form 1505 (Testing Procedures Certification) on file certifying they will follow the testing procedures indicated. A Category 1 licensee must have a legible and current copy of his or her ASME certification or DOT authorization on file with the Commission at all times. Provisions are made for extensions of time to file the ASME certificate. New provisions are added regarding renewal of licenses and penalty fees for late renewals. New language is also included regarding criteria for designation of a branch outlet.

The amendment to §13.62 includes language from existing §13.65 relating to statements in lieu of insurance requirements. References to the LP-Gas Division are changed to commission to conform with the amended definition of commission, which now means an operating division of the Railroad Commission of Texas or any of the division's employees. A chart is added to reflect the minimum amounts of insurance coverage required for each category of license, forms required to be filed with the Commission, and endorsements required to be attached to the insurance policy.

The amendment to §13.70 includes language from existing §13.73 relating to examination for employees and §13.74 relating to examination fees. Amendments provide the Commission discretion to set the fee for all examinations administered and establish a late filing penalty for the certification fee if the fee is not received by the specified deadline. New language is added allowing a person licensed as a master or journeyman plumber or Class A or B Air Conditioning and Refrigeration Contractor to receive the same examination exemption as persons examined under the LP-Gas Safety Rules. A chart has been added to indicate examination requirements, examination fees, and exemptions from examination requirements.

The amendment to §13.71 replaces existing language relating to examination of representative with new language relating to denial, suspension, or revocations of licenses or certifications. The new section specifies reasons for actions relating to licensing and provides procedures for affected parties to request hearings. The title of the section is changed to Denial, Suspension, or Revoca-

tions of Licenses or Certifications; Hearings.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the rules are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the rules; however, due to the nature of the changes it is impossible to specify the amount of that impact.

Mr. Petru also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be an increase in compliance due to more clearly understandable rules and an increase safety afforded to the general public due to the updated and revised safety requirements. There is an anticipated economic cost to persons required to comply with the proposed sections; however, due to the nature of the proposed changes it is impossible to specify the amount of that impact.

Comments on the proposal maybe submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*. The Commission will consider all comments filed relating to the previously proposed amendments to these sections published in the January 1, 1993, issue of the *Texas Register* (18 TexReg 31).

The amendments are proposed under the Texas Natural Resources Code, §116.012 (Vernon Supplement 1992), which authorizes the Railroad Commission of Texas 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.

§13.61. Licensing.

(a) The Railroad Commission of Texas establishes the following classes of licenses [and license fees]. License and renewal fees are included in each category for informational purposes only. This section does not apply to an ultimate consumer who is not engaged in business in any of the following categories.

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

(b) Unless a person has obtained a license, under the provisions of these sections, that [the] person may not engage in any of the activities previously listed. If a license expires or lapses, CNG operations shall immediately cease.

(c) (No change.)

(d) A license obtained by an individual, partnership, corporation, or other legal entity extends to the entity's employees who are performing CNG work, provided that each employee is certified [qualified] as required by this chapter.

(e) Licensing Requirements are

as follows. [All licenses issued by the division expire each year at midnight on the 31st day of May. In order to continue operations without interruption, licensees must renew licenses yearly prior to the time of expiration.]

(1) All licenses issued under this chapter expire at midnight on the 31st day of August of each year. The commission shall not issue a license or license renewal unless the applicant's representative has met the requirements of paragraph (3) of this subsection.

(2) Renewals.

(A) The commission shall notify the licensee of the impending license expiration at least 15 days prior to the expiration date.

(B) All renewals must be submitted to the commission along with the renewal fee on or before the 31st day of August of each year in order for the licensee to continue CNG related activities.

(C) Failure to meet the August 31st deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any CNG related activities.

(D) If a person's license has been expired for less than 90 days, the person shall submit a late filing penalty of one-half the amount of the renewal fee. Upon receipt of the renewal fee and late filing penalty, the commission shall verify that the person's license has not been suspended, revoked, or expired for more than 2 years. After verification, if the licensee has met all other requirements for licensing, the commission shall renew the license, and the person may resume CNG related activities.

(E) If a person's license has been expired for more than 90 days but less than 2 years, the person shall submit a late filing penalty equal to the amount of the renewal fee in addition to the required renewal fee. Upon receipt of the renewal fee and late filing penalty, the commission shall verify that the person's license has not been suspended, revoked, or expired for more than 2 years. After verification, if the licensee has met all other requirements for licensing, the commission shall renew the license, and the person may resume CNG related activities.

(F) If a person's license has

been expired for more than 2 years, that person may not renew and must comply with the requirements for issuance of a new license.

(3) Company representative.

(A) Each applicant for a license or license renewal shall file with the commission a CNG Form 1001, designating a representative who shall be an owner or employee of the licensee and shall be directly responsible for actively supervising CNG operations of the licensee. A licensee may have more than one representative.

(B) An applicant for license may not engage in CNG activities governed by the Texas Natural Resources Code, Chapter 116, and the Regulations for Compressed Natural Gas, until its representative has successfully completed the management examination administered by the commission.

(C) The licensee shall notify the commission in writing upon termination of its representative of record and shall at the same time designate a replacement by submitting a new CNG Form 1001.

(D) The licensee must cease operations if, at the termination of its representative, there is no other certified representative of the licensee acknowledged and recorded by the commission at its Austin office. The licensee may not resume operation until such time as it has a certified representative.

(4) Designation of Operations Supervisor (Branch Manager).

(A) The commission shall designate whether a site is an outlet for the purpose of this chapter. Criteria used by the commission in determining the designation of an outlet includes, but is not limited to:

(i) distance from other CNG activities operated by the licensee;

(ii) whether the operation is a duplicate of the home office operation; and

(iii) whether the operation is directly supervised on a routine basis.

(B) A licensee maintaining more than one outlet shall designate a person as operations supervisor (Branch Manager) at each outlet on a CNG Form 1001A and submit the form to the com-

mission. The operations of the licensee at the outlet may not commence or continue when the operations supervisor has not passed the management examination as administered by the commission.

(C) An operations supervisor (Branch Manager) may be a representative of the licensee, however, an individual may be designated as an operations supervisor (Branch Manager) at no more than one outlet.

(D) The operations supervisor (Branch Manager) shall be directly responsible for actively supervising CNG operations of the licensee at the designated outlet.

(5) In addition to complying with other licensing requirements set out in the Texas Natural Resources Code and the Regulations for Compressed Natural Gas, an applicant for a Category 1 or 4 license or renewal shall have a properly completed CNG Form 1505 on file with the commission, certifying he or she will follow the testing procedures indicated. The CNG Form 505 must be signed by the appropriate CNG company representative(s) designated on the CNG Form 1001.

(A) An applicant for a Category 1 license or renewal shall submit a legible copy of its current American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII, Division 1 certificate of authorization and/or Department of Transportation (DOT) authorization for the manufacture of DOT cylinders for CNG service with the CNG Form 1001 if such document is not already on file with the commission.

(B) A Category 1 licensee shall have a current copy of the DOT authorization referred to in subparagraph (A) of this paragraph on file with the commission at all times.

(C) If ASME is unable to issue the certificate of authorization renewal prior to the expiration date, the licensee may request of the commission an extension of time past the expiration date, not to exceed 60 calendar days. The licensee's request for extension shall be received by the commission prior to the expiration date of the ASME certificate of authorization referenced in subparagraph (A) of this paragraph, and shall include a statement from ASME that the agency is unable to issue the renewal certificate of authorization prior to expiration and that a temporary exten-

sion will be granted for their purposes.

(6) A licensee may not continue to operate after the expiration date of a certificate of authorization:

(A) unless a temporary extension has been granted by the commission for submission of an ASME certificate of authorization; or

(B) until a current DOT certificate of authorization referenced in paragraph (5)(A) of this subsection is filed with the commission.

§13.62. Insurance Requirements.

(a) Pursuant to the Texas Natural Resources Code, Chapter 116, the Railroad Commission of Texas has adopted the minimum amounts of [following] insurance required of [requirements for] those persons or businesses licensed by the commission [Liquefied Petroleum Gas Division] to do business in Texas. The minimum amounts of insurance and other insurance requirements are specified in subsection (i)(5) (Table 1) of this section.

(b) [(1)] The commission [division] shall not issue a license authorizing activities under §13.61 of this title (relating to Licensing), or renew an existing license unless the applicant for license or license renewal provides proof of required insurance coverage with an insurance carrier authorized to do business in this state, or provides, on approval of the commission, proof of required insurance coverage issued by a surplus lines insurer that meets the requirements of the Texas Insurance Code, Article 1. 14-2, and rules adopted by the Texas Department of Insurance [State Board of Insurance] under that Article.

(c)[(2)] A licensee shall not perform any licensed activity under §13.61 of this title (relating to Licensing) unless insurance coverage required by this section is in effect.

(d)[(3)] Except as provided in [§13.65 of this title (relating to Statements in Lieu of Insurance Certificates),] the column relating to Statements in Lieu of Insurance Certificates in subsection (i)(5) (Table 1) of this section, and paragraphs (1)-(3) of this subsection, the types and amounts of insurance specified in subsection (i)(5) (Table 1) of this section [provided in paragraphs (4)-(7) of this subsection] are required while engaging in any of the activities set forth in this section or any activity incidental thereto.

(1)[(4)] A Category 3 licensee or applicant for license or ultimate consumer that does not operate or contemplate the operation of a CNG transport

and does not transport or contemplate the delivery of CNG cylinders by vehicle in any manner, may file a CNG Form 1997B in lieu of filing a certificate of motor vehicle bodily injury and property damage liability insurance. The licensee or applicant for a license must file the required insurance certificate with the commission before operating a motor vehicle equipped with a CNG cargo container or transporting CNG by vehicle in any manner. [All Category 3 licensees or ultimate consumers, who have purchased, leased, or obtained other rights in any vehicle defined as a CNG transport by this chapter, shall have motor vehicle liability coverage of a minimum of \$500,000 combined single limit for bodily injuries or death for all persons injured or killed in any accident, and loss or damage in any one accident to property of others.]

(2) [(5)] A licensee or applicant for a license that does not engage in or contemplate engaging in any operations which would be covered by general liability insurance for a period of time may file a CNG Form 1998B in lieu of filing a certificate of general liability insurance. The licensee or applicant for a license must file the required insurance certificate with the commission before engaging in any operations that require general liability insurance. [Each member of each category shall have workers' compensation coverage, including employer's liability coverage.]

(3)[(6)] A licensee or applicant for license that does not employ or contemplate the hiring of an employee or employees to be engaged in CNG related activities in Texas may file a CNG Form 1996B in lieu of filing a certificate or workers' compensation insurance, including employer's liability insurance. The licensee or applicant for a license must file the required insurance certificate with the commission before hiring any person as an employee engaged in CNG related work. [Each member of Categories 1, 3, and 4 shall have the following coverage: general liability insurance, specifically including premises and operations coverage with the following minimum amounts: \$300,000 per occurrence, with a \$300,000 policy aggregate; including completed operations and products liability coverage, \$300,000 aggregate.]

[(7)] Each member of Categories 2, 5, and 6 shall have the following coverage: general liability, including premises and operations coverage in limits not less than \$25,000 per occurrence, \$50,000 policy aggregate.]

(e)[(b)] As evidence that required insurance has been secured and is in force, certificates of insurance which are approved by the commission [division] shall be filed

with the commission [division] before licensing, license renewal, and during the entire period that the license is in effect. Any document filed with the commission [division] in a timely manner which is not completed in accordance with the instructions indicated on the insurance certificate forms supplied by the commission [division], but which complies with the substantive requirements of this section and with the rules adopted under this section, may be considered by the commission [division] to be evidence that required insurance has been secured and is in force for a temporary period not to exceed 45 days. During this temporary period, a licensee shall file with the commission [division] an amended certificate of insurance which complies with all procedural and substantive requirements of this section and the rules adopted hereunder.

(f)[(c)] All certificates filed under this section shall be continuous in duration.

(g)[(d)] Each certificate of insurance filed with the commission [this division] must have one of the [following] endorsements specified in subsection (i)(5) (Table 1) of this section attached to the policy, and may not be cancelled without cancellation of the policy to which it is attached.

[(1)] CNG Form 1996A, Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Coverage, certificate of insurance must have a Texas Notice of Material Change Endorsement Number WC 42 06 01 attached to the policy and any successor policies.

[(2)] CNG Form 1997A, Insurance Filing Certifying Motor Vehicle Bodily Injury Insurance and Property Damage Liability Insurance, certificate of insurance must have a Cancellation Provision or Coverage Change Endorsement Number TE 02 02A attached to the policy and any successor policies.

[(3)] CNG Form 1998A, Insurance Filing Certifying General Liability Insurance, certificate of insurance must have Texas Changes Amendment of Cancellation Provisions or Coverage Change Number CG 02 05 attached to the policy and any successor policies.]

(h)[(e)] Each endorsement issued and attached to a certificate of insurance noted in subsection (g) [(d)] of this section requires the insurance carrier, noted as company on the certificate of insurance to give the commission [division] 30 days written notice before the insurance cancellation. The 30 days notice commences to run from the date the notice is actually received by the division.

(i)[(f)] Cancellation of a certificate

of insurance becomes effective on the occurrence of any of the following events and not before:

(1) [division] receipt by the commission of written notice stating the insurer's intent to cancel a policy of insurance and giving a minimum of 30 days' notice before the insurance cancellation;

(2) receipt by the commission [division] of an acceptable replacement insurance certificate;

(3) voluntary surrender of a license and the rights and privileges conferred by the license;

(4) [division] receipt by the commission of a statement made by a licensee stating that the licensee is not actively engaging in any operations which require a particular type of insurance and will not engage in those operations unless and until all certificates of required insurance applicable to those operations are filed with the commission [division]; or

(5) the Railroad Commission of Texas' [commission's] cancellation by order or after hearing.

COMPRESSED NATURAL GAS (CNG) INSURANCE REQUIREMENTS

<u>CATEGORY OF LICENSE</u>	<u>TYPE OF COVERAGE</u>	<u>INSURANCE POLICY ENDORSEMENT REQUIRED</u>	<u>FORM REQUIRED</u>	<u>STATEMENT IN LIEU OF REQUIRED INSURANCE FILING</u>
ALL	Workers' Compensation, including Employer's Liability	WC42 06 01, Texas Notice of Material Change	CNG Form 1996A	CNG Form 1996B
2, 5, 6	General Liability Coverage including: Premises and operations in an amount not less than: \$25,000 per occurrence \$50,000 aggregate	CG02 05 Texas Changes Amendments or Cancellation Provisions or Coverage Change Endorsement	CNG Form 1998A	CNG Form 1998B
1, 3, 4	Completed operations and products liability in an amount not less than: \$300,000 aggregate	CG02 05 Texas Changes Amendments or Cancellation Provisions or Coverage Change Endorsement	CNG Form 1998A	CNG Form 1998B
3 Ultimate Consumer	Motor Vehicle Coverage: Minimum \$500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	TE0202A Cancellation Provision or Coverage Change Endorsement	CNG Form 1997A	CNG Form 1997B

TABLE 1

Refer to Section 13.61 for a description of each category.
See pages X1 - X67 for blank forms and instructions as to how to complete forms.

§13.70. Examination and Notification Generally.

(a) Examination General Provisions.

(1) No person may work or be employed in any capacity which requires contact with CNG or CNG systems until that person has submitted to and successfully completed a commission examination which measures the competency of that person to perform the CNG related activities anticipated, and tests working knowledge of the Texas Natural Resources Code and the Regulations for Compressed Natural Gas related to the type of CNG work anticipated. Subsection (f) (Table 1) of this section sets forth specific requirements for examination for each category of license. This section applies to all licensees and their employees who perform CNG related activities, and also applies to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this chapter and any employee of such ultimate consumer if that employee drives or in any way operates such a CNG transport. Driving a motor vehicle powered by CNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute CNG related activities. Only paragraph (2) of this subsection applies to an employee of a state agency or institution, county, municipality, school district or other governmental subdivision.

(2) Any employee of an ultimate consumer or a state agency or institution, county, municipality, school district, or other governmental subdivision not required to submit to examination under this section must be properly supervised and trained in the installation, maintenance, and storage of CNG and CNG systems, and in the operation of equipment during the filling of and dispensing from storage containers. Such training shall also include the protection of containers and equipment against mechanical injury or tampering by unauthorized persons.

(3) Each person wishing to submit to examination by the commission shall file a CNG Form 1016 with the commission prior to examination.

(4) A licensee shall notify the commission when a previously certified person is hired, by immediate filing a CNG Form 1016A with the commission. Notification must include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, name of previous

licensee-employer, and CNG related work to be performed.

(5) All examinations will be administered in Austin and at other selected sites, when appropriate, unless an applicant demonstrates good cause for administering the examination elsewhere. Good cause includes, but is not limited to, severe economic hardship.

(6) Successful completion of any required examination shall be credited to and accrue to the individual.

(7) Failure of any examination shall immediately disqualify the person from performing any CNG related activities covered by the examination which is failed. Any person who fails an examination administered by the commission may not re-take that examination for a period of at least 24 hours.

(8) Dates and locations of examinations shall be listed in a schedule made annually by the commission. The schedule shall be prepared no later than November 15th of each year. The commission shall post the schedule in its Austin office and make a copy of it available to any person who requests it.

(b) General Installers and Repairmen Exemption.

(1) Any person who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Department of Licensing and Regulation may apply for and be granted an exemption to the Category 2 and 3 service and installation employee examination requirements by submitting to the commission the following information:

(A) CNG Form 1016B;

(B) a \$15 original filing fee; and

(C) any information the commission may reasonably require.

(2) This exemption does not become effective until the examination exemption card is issued by the commission.

(3) The examination exemption accrues to the applicant and is non-transferable.

(4) Any person granted such exemption must maintain certified status at all times. Upon failure to maintain certified status, all affected CNG opera-

tions must cease immediately until proper status has been regained.

(5) In order to maintain certified status, each person issued an examination exemption card shall submit a \$10 fee annually to the commission on or before the 31st day of May of each year. If both of these items are not received by the deadline, that person shall cease performing all CNG related activities granted by this exemption and may not resume such activities until that person is in receipt of his or her examination exemption card. Late renewals are permitted for a period not to exceed 2 years by paying a late filing penalty plus the yearly renewal fee(s) as follows:

(A) the applicant's exemption has been expired for not longer than 92 days, the applicant's penalty fee is \$10 plus a \$10 annual fee;

(B) the applicant's exemption has been expired for greater than 92 days, but not longer than 2 years, the applicant's penalty fee is \$25 plus a \$10 annual fee. If an applicant's exemption has been expired for longer than 2 years, the applicant cannot renew his exemption and must apply for a new original exemption.

(6) Any person who is issued this exemption agrees to comply with the current edition of the Regulations for Compressed Natural Gas. In the event the exempt individual surrenders, fails to renew, or has the license revoked either by the Texas State Board of Plumbing Examiners or Department of Licensing and Regulation, that person will immediately cease performing any CNG activity granted by this section. The examination exemption card must be returned immediately to the commission and all rights and privileges surrendered.

(c) Trainees.

(1) Notwithstanding the examination requirements set forth in this section, a licensee or ultimate consumer may employ an individual as a trainee for a period not to exceed 45 days, without that person having successfully completed the necessary examination, subject to the following conditions.

(A) The trainee must be directly and individually supervised at all times by a person who has successfully completed the commission examination for the areas of work being performed by the trainee. Refer to subsection (f) (Table 1) of this section for those CNG related activities for which a person must be certified or a trainee can perform under

direct supervision.

(B) The licensee or ultimate consumer shall ensure that a CNG Form 1016 is on file with the commission for each employee in training prior to that employee taking the examination.

(C) No trainee may perform any work for which he or she is not currently certified while unsupervised, if such work involves CNG activities.

(2) A trainee who takes a commission examination, and who fails the examination, shall cease to perform any CNG related activities covered by the examination failed. A trainee who has been in training for a total period of 45 days, in any combination or with any number of employers, shall cease to perform any CNG activities for which he or she is not certified.

(3) A trainee who continues to work in violation of this subsection may be held responsible for the violation. An employer who employs a person in violation of this subsection may be held responsible for the violation. Possible penalties for violation are set forth in the Texas Natural Resources Code, Chapter 116. The commission may call an administrative hearing to show cause why a license should not be subject to revocation, suspension or probation, or any combination of these penalties.

(d) Examination fees. Each applicant shall pay to the commission the examination fee specified in subsection (f) (Table 1) of this section in advance for each required examination. The fee is non-refundable, and if an applicant fails an examination, they shall pay the full examination fee for each subsequent examination.

(e) Renewal of certified status.

(1) In order to maintain certified status, each person who has been certified by examination shall pay the annual fee specified in subsection (f) (Table 1) of this section to the commission on or before the 31st day of May of each year.

(2) Failure to meet the May 31st renewal deadline set forth in this section shall result in a lapse of certification. Failure to meet the August 31st of each year deadline discussed in paragraph (3) of this subsection shall result in the expiration of certification. If a person's certification has been expired for more than 2 years, that person must comply with the requirements of subsection (a) of this section. If a person's certification lapses or expires, that person shall immediately cease performance of any CNG activities that require certification. Certified status may be regained only by successfully completing the examination requirement for certification and meeting the requirements of paragraph (3) of this subsection.

(3) Any lapsed renewals submitted after May 31st of each year shall include a \$10 late filing penalty in addition to the renewal fee, proof of successful completion of the examination required for certification, and be received in the commission's Austin office no later than midnight of the 31st day of August of each year. Upon receipt of the renewal fee and late filing penalty, the commission shall verify that the person's certification has not been suspended, revoked, or expired for more than 2 years. After verification, the commission shall renew the certification and the person may resume CNG activities.

(f) Expired certification(s). Any renewal submitted after the August 31 deadline shall be considered expired. If a person wishes to renew a certification that has been expired for less than 2 years, that person shall submit the annual renewal fee and late filing penalty, and proof of successful completion of the examination required for certification. Upon verification that the person's certification has not been suspended, revoked, or expired for more than 2 years, the commission shall renew the person's certification and the person may resume CNG activities.

**COMPRESSED NATURAL GAS EXAMINATION REQUIREMENTS
CATEGORIES OF LICENSES**

TABLE I

	1	2	3	4	5	6
A. Company Representative Management Exam (\$25)	yes	yes	yes	yes	yes	yes
B. Operations Supervisor (Branch Mgr.) Management Exam (\$25)	yes	yes	yes	yes	yes	yes
C. Employee - CNG Service & Installation Exam (\$10)		yes	yes			
D. Employee - CNG DOT Cylinder Filling Exam (\$10)			yes		yes	
E. Employee - CNG Transport Driver/Service & Installation including CNG DOT Cylinder Filling Exam (\$10) Ultimate Consumer *II		yes	yes		yes	
F. File CNG Form 1016	yes	yes	yes	yes	yes	yes

CONTINUED ON NEXT PAGE

COMPRESSED NATURAL GAS EXAMINATION REQUIREMENTS

**TABLE 1
CONTINUED
CATEGORIES OF LICENSES**

	1	2	3	4	5	6
G. \$10 Renewal Fee on or before 5/31 Annually	yes	yes	yes	yes	yes	yes

H. File CNG Form 1016(B)
*I

Key

- *I. Applies to the installation, service, or repair of CNG systems and the installation of CNG cylinders, excluding the installation, service, or repair of CNG carburetion equipment for categories marked.
- *II. Any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG Transport, and any employee of the ultimate consumer that drives or in any way operates a CNG Transport must pass the CNG Transport Driver/Service & Installation including the DOT cylinder filling examination (applicable to Letter E).

[(a) Each individual wishing to submit to examination by the division shall file a CNG Form 1016, Application for Examination, with the division within any deadlines established by the division.

[(b) The division will administer all examinations in Austin, and at other selected sites, when appropriate, unless an applicant demonstrates good cause for administering examination elsewhere. Good cause includes, but is not limited to, severe economic hardship.

[(c) Satisfactory completion of any required examination shall accrue to the individual.

[(d) Failure of any examination shall immediately disqualify the individual from performing any CNG activities covered by the examination which is failed.

[(e) Information regarding examinations may be acquired from the Austin office of the LP-Gas Division.

[(f) Any individual who fails to pass any test administered by the division may not be reexamined for a period of at least 24 hours.

[(g) A licensee shall notify the division when a previously qualified person is hired. Notification will include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, name of previous licensee-employer, and CNG related work to be performed.

[(h) Any notice, application, or statement submitted to the division shall have effect only on the date of receipt in the Austin office, and not on the date of mailing. Notice may be delivered to the Austin office of the Liquefied Petroleum Gas Division by means of the United States post office, by a private postal carrier, or by any other appropriate means.

[(i) Any person required to pass an examination or participate in a seminar pursuant to these rules must renew certification by reexamination or by participation in a seminar every five years. The person must pay the current examination or seminar fee and pass the examination or participate in the seminar on or before the fifth anniversary date of that person's most recent certification.]

§13.71. Denial, Suspension, or Revocations of Licenses or Certifications; Hearing [Examination of Representative].

(a) Denial of license or license renewal.

(1) Any applicant for license or license renewal failing to meet the

requirements of §13.61 of this title (relating to Licensing), §13.70 of this title (relating to Examination and Notification Generally), or §13.62 of this title (relating to Insurance Requirements), may be denied the license or license renewal.

(2) If the commission determines that an applicant for license or license renewal has not met the requirements of §§13.61, 13.62, or 13.70, the commission shall notify the applicant in writing of the reasons for denial. The notice must advise the person that the application may be resubmitted within 30 days of receipt of the denial with all cited deficiencies corrected, or, if the person disagrees with the commission's determination, that person may request a hearing on the matter within 30 days of receipt of the notice of denial.

(3) If a person resubmits the application for license or license renewal within 30 days of receipt of the denial with all deficiencies corrected, the commission shall issue the license or license renewal.

(b) Hearing regarding denial of license or license renewal.

(1) An applicant receiving a notice of denial of a license or license renewal may request a hearing to determine whether the applicant did comply in all respects with the requirements for the category or categories of license sought. The request for hearing must be in writing, must refer to the specific requirements the applicant claims were met, and must be received in the commission's Austin office within 30 days of the applicant's receipt of the notification of denial.

(2) Upon receipt of a request complying with paragraph (1) of this subsection, the Railroad Commission of Texas shall schedule a hearing within 30 days following the receipt of the request for hearing to determine the applicant's compliance or non-compliance with the licensing requirements for the category or categories of license sought.

(3) If, after hearing, the Railroad Commission of Texas finds the applicant's claim has been supported, it shall enter an order in its records to that effect, noting the category or categories of license for which the applicant is entitled to be licensed, and the license(s) or renewal(s) shall be issued.

(4) If, after hearing, the Railroad Commission of Texas finds that the applicant is not qualified for the license or license renewal in the category or categories of license sought, it shall likewise enter an order in its records to that effect, and no license or renewal may be issued to the applicant.

(c) Suspension and revocation of licenses and certifications.

(1) If the commission finds by means including, but not limited to, inspection, review of required documents submitted, or complaint by a member of the general public or any other person, a probable or actual violation of or non-compliance with the Texas Natural Resources Code, Chapter 116, or the Regulations for Compressed Natural Gas, it shall notify the licensee or certified person of the alleged violation or noncompliance in writing.

(2) The notice shall specify the acts, omissions, or conduct constituting the alleged violation or noncompliance and shall designate a date not less than 30 days or more than 45 days after the licensee or certified person receives the notice by which the violation or noncompliance must be corrected or discontinued. If the commission determines the violation or noncompliance may pose imminent peril to the health, safety, or welfare of the general public, the commission may notify the licensee or certified person orally with instruction to immediately cease the violation or non-compliance. When oral notice is given, the commission shall follow it with written notification no later than 5 days after the oral notification.

(3) The licensee or certified person shall either report the correction or discontinuance of the violation or non-compliance within the time frame specified in the notice or request an extension of time in which to comply. The request for extension of the time to comply must be received by the commission within the same time frame specified in the notice for correction or discontinuance.

(d) Hearing regarding suspension or revocation of licenses and certifications.

(1) If a licensee or certified person disagrees with the determination of the commission under this section, that person may request a public hearing on the matter to be conducted in compliance with the Administrative Procedure and Texas Register Act, the General Rules of Practice and Procedure of the Railroad Commission of Texas, and any other applicable rules. The request must be in writing, must refer to the specific rules or statutes the licensee or certified person claims to have complied with, and must be received by the commission within 30 days of the licensee's or certified person's receipt of the notice of violation or non-compliance.

(2) If the Railroad Commission of Texas determines that the licensee

or certified person may not comply within the specified time, the Railroad Commission of Texas may enter an order calling a public hearing to be conducted in compliance with the Administrative Procedure and Texas Register Act, the General Rules of Practice and Procedure of the Railroad Commission of Texas, and any other applicable rules.

[(a) Each applicant for a license or license renewal shall file a CNG Form 1001, Application for License, with the Liquefied Petroleum Gas (LPG) Division designating a representative who shall be an owner or employee of the licensee, and who shall be directly responsible for actively supervising CNG operations of the licensee. Sole proprietors licensed as retail and/or wholesale dealers under this subchapter must pass the management examination of the division and be qualified as a representative.

[(b) A licensee may not engage in CNG related activities governed by the Texas Natural Resources Code, Chapter 116, until its designated representative has passed the management examination administered by the division. The division shall not issue or renew a license unless the representative has passed this examination.

[(c) The licensee shall notify the division in writing upon termination of its representative of record and shall at the same time designate a replacement by submitting a new CNG Form 1001, Application for License.

[(d) The licensee must cease operations if, at the termination of its representative, there is no other qualified representative of the licensee acknowledged and recorded by the division at its Austin office. The licensee may not resume operation until the licensee has a qualified representative.

[(e) A licensee may have more than one representative.]

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

Issued in Austin, Texas, on July 8, 1993.

TRD-9325464 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption: August 16, 1993

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

◆ ◆ ◆
• 16 TAC §§13.71-13.74

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §§13.71-13.74, concerning examination of representative, designation and testing of operations supervisors, examination of employees, and examination fees.

The Commission proposes the repeals as the provisions of these sections have been included in proposed amendment to §13.70, relating to examination and notification generally.

Thomas D. Petru, director, Liquefied Petroleum Gas 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. Petru 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 an increase in compliance due to more clearly understandable 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeals are proposed under the Texas Natural Resources Code, §116.012 (Vernon Supplement 1992), which authorizes the Railroad Commission of Texas 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.

§13.71. Examination of Representative.

§13.72. Designation and Testing of Operation Supervisors.

§13.73. Examination of Employees.

§13.74. Examination 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 July 8, 1993.

TRD-9325465 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption: August 16, 1993

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

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Subchapter C. Classification,
Registration, and Examination

• 16 TAC §13.75

The Railroad Commission of Texas proposes new §13.75, concerning franchise tax certification and assumed name certificate.

The new section contains provisions from §13.37. The provisions are being moved from Subchapter B, General Rules for CNG Equipment Qualification to Subchapter C, Classification, Registration and Examination, to more accurately reflect its purpose.

Provisions are added to clarify that this rule applies to corporations and limited liability companies. A change in the name of the certificate provided by the Comptroller's Office has been made.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the rules in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Petru 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 an increase in compliance due to more clearly understandable rules and an increase in safety afforded to the general public due to the updated and revised safety requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed under the Texas Natural Resources Code, §116.012 (Vernon Supplement 1992), which authorizes the Railroad Commission of Texas 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.

§13.75. Franchise Tax Certification and Assumed Name Certificate.

(a) Any applicant for an original or renewal license that is a corporation or limited liability company must file a CNG Form 1026 with the commission prior to the issuance of such license, certifying that its Texas franchise taxes are current or such taxes are not applicable to the company. An applicant may file a Certificate of Account Status issued by the office of the Comp-

troller of Public Accounts as an alternative to filing the CNG Form 1026. Making a false statement as to franchise tax status is grounds for the denial, suspension, or revocation of the license granted by this commission.

(b) Any applicant for license must list all names on CNG Form 1001 under which CNG related activities requiring licensing are to be conducted. Any company performing CNG activities under an assumed name (doing business as) must file with this office, copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office.

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

Issued in Austin, Texas, on July 8, 1993.

TRD-9325466 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption: August 16, 1993

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

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Subchapter D. CNG Compression, Storage, and Dispensing Systems

• **16 TAC §13.102**

The Railroad Commission of Texas proposes an amendment to §13.102, concerning installation of electrical equipment.

The Commission proposes the amendment to §13.102 to reflect clarifications in the rules. The amendment clarifies the distance electrical installations must be located with respect to compressors, cascades, and dispensing equipment.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Petru 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 an increase in compliance due to more clearly understandable rules and an increase in safety afforded to the general public due to the updated and revised safety requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*. The Commission will consider all comments filed relating to the previously proposed amendments to these sections published in the January 1, 1993, issue of the *Texas Register* (18 TexReg 32).

The amendment is proposed under the Texas Natural Resources Code, §116.012 (Vernon Supplement 1992), which authorizes the Railroad Commission of Texas 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.

§13.102. Installation of Electrical Equipment.

(a) Electrical installations [equipment] located within the vicinity [15 feet] of any compressor, cascade, or dispensing equipment shall be [installed] in accordance with the National Electrical Code (NEC) for Class 1, Group D; Hazardous Locations, Division 2 area [, Division 1, locations]. A Division 2 area is where combustible gases are present only under abnormal conditions. This requirement does not apply to residential installations, including manufactured housing. The classified area shall not extend beyond an unpierced wall, roof, or vapor tight partition. The vicinity of any compressor, cascade, or dispensing equipment is that area indicated by the following chart:

Location	Division	Extent of Classified Area
<u>Containers (other than mounted fuel supply containers)</u>	<u>2</u>	<u>Within 10 ft. of container</u>
<u>Area containing compression and ancillary equipment</u>	<u>2</u>	<u>Up to 15 ft. from equipment</u>
<u>Dispensing equipment</u>		
<u>Outdoors</u>	<u>2</u>	<u>Inside dispenser cabinet</u>
<u>Outdoors</u>	<u>2</u>	<u>From 0 to 20 ft. from the dispenser</u>

CNG CHART I.

(b) (No change.)

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

Issued in Austin, Texas, on July 8, 1993.

TRD-9325462 Mary Ross McDonald
 Assistant Director, Legal
 Division-Gas Utilities/LP
 Gas
 Railroad Commission of
 Texas

Earliest possible date of adoption: August 16, 1993

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

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Subchapter E. Engine Fuel Systems

• 16 TAC §13.133, §13.136

The Railroad Commission of Texas proposes amendments to §13.133 and §13.136, concerning installation of fuel supply cylinders and installation of valves.

The Commission proposes an amendment to §13.133 to clarify the locations that fuel supply cylinders on vehicles other than school buses, mass transit, and other public transportation vehicles may be installed. It specifies that fuel supply cylinders on school buses, mass transit, and other public transportation vehicles may not be located above or within the driver or passenger compartments. The containers on a special transit vehicle may be installed in the passenger

compartment provided it meets certain requirements. Types of container fastenings or brackets used and the means of securing them are described. Motor fuel containers installed on school buses or mass transit vehicles shall be installed on the underside of the vehicle only.

The amendment to §13.136 clarifies that electronically operated cylinder service valves installed on a fuel cylinder must include a means of manually closing the valve.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the rules are in effect there will be fiscal implications for state or local government or small businesses as a result of enforcing or administering these rules; however, due to the nature of the proposed changes, it is impossible to specify the amount of that impact.

Mr. Petru also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be an increase in compliance due to more clearly understandable rules and an increase in safety afforded to the general public due to the updated and revised safety requirements. There is an anticipated economic cost to persons required to comply with the proposed sections; however, due to the nature of the proposed changes it is impossible to specify the amount of that impact.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Natural Resources Code, §116.012 (Vernon Supplement 1992), which authorizes the Railroad Commission of Texas 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.

§13.133. Installation of Fuel Supply Cylinders.

(a) Fuel supply cylinders on vehicles other than school buses, mass transit, or other vehicles used in public transportation, may be located within, below, or above the driver or passenger compartment, provided all connections to the cylinders are external to, or sealed and vented from those compartments.

(b) Fuel supply cylinders on school buses, mass transit, and other public transportation vehicles shall not be located above or within the driver or passenger compartment. The motor fuel containers installed on a special transit vehicle may be installed in the passenger compartment, provided it complies with subsection (a) of this section.

(c)-(e) (No change.)

(f) Each cylinder bracket shall be secured to the vehicle body, bed, or frame with bolts, lock washers and nuts, or self-locking nuts of a size and strength capable of withstanding a static force in any direction of eight times the weight of a fully pressurized cylinder. The cylinder

bracket shall be designed and manufactured by a cylinder manufacturer. Each specific mounting bracket manufactured on or after January 1, 1994, must have the manufacturer's name or logo on it in order to properly identify the bracket manufacturer. If self-locking nuts are installed, such nuts shall not be reused once they are removed. [Grade 5, 1/2-inch bolts (or better), three-inch diameter washers, or a solid backup plate, and self-locking nuts to prevent damage from road hazards, slippage, loosening, or rotation and shall be capable of withstanding a static force in any direction of eight times the weight of a fully pressurized cylinder.] The container mounting brackets shall prevent the container from jarring loose, slipping or rotating.

(g) Each fuel supply cylinder shall be secured in the mounting brackets by bolts, lock washers and nuts, or self-locking nuts of a size and strength [Each fuel supply cylinder in the bracket shall be secured to its cradle with Grade 5, 1/2-inch bolts (or better), and self-locking nuts and shall be] capable of withstanding a static force applied in any direction eight times the weight of the fully pressurized cylinder. If self-locking nuts are installed, such nuts shall not be reused once they are removed.

(h)-(k) (No change.)

(l) Containers shall be secured to a school bus, mass transit, or special transit vehicle frame (not the floor) by container fastenings or mounting brackets described in subsection (f) of this section. The fastenings or brackets must be secured to the frame or securely mounted to a supporting structure so as not to compromise the strength of that structure (i.e., backing plates or other acceptable means may be used to accomplish this purpose). Container(s) which are currently installed on school buses or mass transit vehicles by means of strap mounting brackets may continue to be used.

(m) The motor fuel container(s) installed on a school bus or mass transit vehicle shall be installed on the underside of the vehicle.

(n) If necessary, a plumbing chamber door shall be provided in the sidewall of the school bus, mass transit, or special transit vehicle to allow easy access for filling or securing the service valve in the event of an emergency. The plumbing chamber door shall be hinged and latched, but not locked.

§13.136. Installation of Valves.

(a) A manually or electronically operated cylinder service valve shall be in-

stalled on each fuel cylinder. Any electronically operated cylinder service valve shall incorporate in the design a means of manually closing the valve should the valve fail to close electronically.

(b)-(g) (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 July 8, 1993.

TRD-9325463

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

Earliest possible date of adoption: August 16, 1993

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

Part II. Public Utility Commission

Chapter 23. Substantive Rules

Quality of Service

• 16 TAC §23.61

The Public Utility Commission of Texas proposes an amendment to §23.61, concerning the telecommunications service quality rules for telephone utilities in Texas. This proposal is formulated subsequent to the publication of questions and receipt of comments concerning revisions to service quality standards. An informal workshop was held to explain the staff's intent for revising the standards

This proposal provides for enhancing the current standards and deleting certain obsolete standards. The proposed changes include: surveillance standards for monitoring the service quality on an exchange by exchange basis to minimize the masking effect of averages inherent in current service quality reporting standards; requirement for availability of single-party line service on request by a subscriber by the end of 1996; requirement for 2400 bits per second data transmission capability over public switched voice circuits, by the end of 1996, when connected through an industry standard modem or a facsimile device; requirement for eliminating open wire transmission media by the end of 1998; and, impulse noise limits for public switched network services to minimize the degradation of data transmission over switched voice networks.

Mr. Harish Dhingra, Assistant General Counsel, has determined that for the first five-year period the rule is in effect, there will be minimal fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Dhingra 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 enhanced quality of telecommunications service in the State of Texas. There will be no effect on small businesses as a result of enforcing the rule. The anticipated economic cost to telecommunications utilities who are required to comply with the proposed changes will be the cost of funding network upgrades to meet enhanced service quality standards, and increased reporting requirements.

Mr. Dhingra has also determined that for each of the first five years the section is in effect, there will be no effect on employment in the geographical areas affected by implementing the requirements of this section.

Comments on the proposed amendment (13 copies) may be submitted to John M. Renfrow, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 11541

The amendment is proposed under Texas Civil Statutes, Article 1446c, §§18(a), 35(c), and 35(b), which provide the Public Utility Commission of Texas with the authority to make and to enforce rules establishing statewide telecommunications service quality standards

§23.61. Telephone Utilities

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

(1) Base rate area-A specific area within an exchange service area as set forth in the local exchange carriers' tariffs, maps or descriptions. Local exchange service within this area is furnished at uniform rates without extra mileage charges.

(2) Baud-Unit of signaling speed. Speed expressed in baud is the number of discrete conditions or signal events per second.

(3) Bit Error Ratio-Bit Error Ratio (BER) is the ratio of the number of bit digital errors to the total number of bits transmitted in a given time interval.

(4) Bit Rate-The rate at which data bits are transmitted over a communications path, normally expressed in bits per second. The bit rate is not to be confused with the data signaling rate (baud), which measures the rate of signaling elements being transmitted.

(5)[(2)] Business service-A telecommunications service provided a customer where the use is primarily of a business, professional, institutional or otherwise occupational nature.

(6)[(3)] Busy hour-The clock hour each day during which the greatest usage occurs.

(7)[(4)] Busy season-That period of the year during which the greatest

volume of traffic is handled in the office.

(8)[(5)] Central office—A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only.

(9)[(6)] Class of service—A description of telecommunications service furnished a customer which denotes such characteristics as nature of use (business or resident) or type of rate (flat rate or message rate). Classes of service are usually subdivided in "grades," such as individual or multiparty line.

(10)[(7)] Competitive exchange service—Any of the following services, when provided on an inter- or intrastate basis within an exchange area:

(A) services for which local exchange carriers have been granted authority to enter into customer-specific contracts pursuant to the Act, §18 (e)(3)(B), as those services are described in §23.27 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges);

(B) services for which a local exchange carrier has been granted authority to engage in pricing flexibility pursuant to §23.27 of this title;

(C) private line services or virtual private line services;

(D) resale or sharing of local exchange service, where that resale or sharing is allowed by commission approved tariffs;

(E) dark fiber services;

(F) non-voice data transmission services;

(G) dedicated or virtually dedicated access services;

(H) any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the local exchange carrier(s) certificated to provide service within that exchange; or

(I) any service that the commission determines by final order in a docketed proceeding is not local exchange service.

(11)[(8)] Complex service—The provision of a circuit requiring special treatment, special equipment, or special engineering design. This includes private lines, WATS, PBX trunks, rotary lines, special assemblies, etc.

(12)[(9)] Customer access line—A unit of measurement representing a telecommunications circuit designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer premises equipment connected to each circuit. In the case of multi-party lines, each party shall be counted as a separate customer access line.

(13)[(10)] Customer trouble report—Any oral or written report from a customer or user of telecommunications service received by any telecommunications utility relating to a physical defect, difficulty, or dissatisfaction with the service provided by the telecommunications utility's facilities. A separate report shall be counted for each telephone or PBX switchboard position reported in trouble when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.

(14) dBrn—A unit used to express noise power relative to one Pico watt (90 dBm).

(15) dBrnC—Noise power in dBrn, measured with C-message weighting.

(16) dBrnCO—Noise power in dBrnC referred to or measured at a zero transmission level point.

(17)[(11)] Dominant carrier—

(A) a provider of any particular communication service which is provided in whole or in part over a telephone system who as to such service has sufficient market power in a telecommunications market as determined by the commission to enable such provider to control prices in a manner adverse to the public interest for such service in such market;

(B) any provider of local exchange telephone service within a certificated exchange area as to such service.

(18)[(12)] Exchange Area—The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office. An

exchange area may also be referred to as an exchange.

(19)[(13)] Grade of service—The number of customers a line is designated to serve.

(20) Impulse Noise—Any momentary occurrence of the noise on a channel significantly exceeding the normal noise peaks. It is evaluated by counting the number of occurrences that exceed a threshold. This noise degrades voice and data transmission.

(21)[(14)] Intercept service—A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, or discontinued, or changed to another number, or that calls are being received by another telephone, etc.

(22)[(15)] Line—A circuit or channel extending from a central office to the customer's location to provide local exchange service. One line may serve one individual line customer, or all customers served by a multiparty line.

(23)[(16)] Local calling area—The area within which telecommunications service is furnished customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.

(24)[(17)] Local exchange company—A telecommunications utility which provides local exchange service within the state. A local exchange company is also referred to as local exchange carrier.

(25) [(18)] Local exchange service—

(A) telecommunications service provided within an exchange for the purpose of establishing connections between customer premises within the exchange, including connections between a customer premises and a long distance service provider serving the exchange. Local exchange service may also be referred to as local exchange telephone service;

(B) notwithstanding subparagraph (A) of this paragraph, a competitive exchange service is not local exchange service;

(C) the provisions of paragraphs (7) and (18)(B) of this subsection shall be liberally construed to encourage a competitive marketplace.

(26)[(19)] Local message—A completed call between customer access

lines located within the same local calling area.

(27)[(20)] Local message charge—The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.

(28) [(21)] Local service charge—The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local service area. This local service calling area may include one or more exchange service areas.

(29)[(22)] Long distance telecommunications service—That part of the total communication service rendered by a telecommunications utility which is furnished between customers in different local service areas in accordance with the rates and regulations specified in the utility's tariff.

(30)[(23)] Message—A completed customer telephone call

(31)[(24)] Message rate service—A form of exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.

(32)[(25)] Nondominant carriers—Interexchange telecommunications carriers (including resellers of interexchange telecommunications services), specialized communications common carriers, resellers of communications, and other communications carriers who convey, transmit, or receive communications in whole or in part over a telephone system, and providers of operator services (except that subscribers to customer-owned pay telephone service shall not be deemed to be telecommunications utilities) who are not dominant carriers.

(33) [(26)] Out-of-service trouble report—An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.

(34)[(27)] Primary service—The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer or the move of an existing customer to a new premises, but does not include complex services.

(35)[(28)] Private line—A trans-

mission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.

(36)[(29)] Public telephone service—An individual line customer service equipped with a coin collecting or coinless public telephone instrument installed for use of the general public in locations where the general public has access to these telephones.

(37)[(30)] Regrade—An application for a different grade of service.

(38)[(31)] Repeated trouble report—A customer trouble report regarding a specific line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.

(39)[(32)] Station—A telephone instrument or other terminal device.

(40)[(33)] Telecommunications utility—Dominant carriers and nondominant carriers.

(41)[(34)] Trunk—A circuit facility connecting two switching systems.

(42)[(35)] Virtual private line—Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.

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

(e) Service objectives and Surveillance Levels. This section establishes [establish] service objectives that [which] should be provided by a dominant carrier, as applicable. The rules also include surveillance levels that indicate a need for the utility to investigate, take appropriate corrective action, and provide a report of such activities to the commission. The objective service levels are based on monthly averages, except for dial service and transmission requirements, which are based on specific samples. Local exchange carriers shall make measurements to determine the level of service quality for each item included in these rules. Each local exchange carrier shall provide the commission with the measurements and summaries thereof for any of the items included herein on request of the commission. Records of these measurements and summaries shall be retained by the local exchange carrier as specified by the commission.

(1) Single Party Line Service and Voice Band Data.

(A) Beginning January 1, 1997, one-party line service will be made available to all subscribers of local exchange service upon request. [On rural

lines, where multiparty service is provided, no more than eight customer access lines shall be connected to any one circuit, unless such action is approved by the commission. The local exchange carrier may regroup customer access lines in such a way as may be necessary to carry out provisions of this section.]

(B) All open wire transmission media shall be replaced with more reliable and better quality transmission media by the end of 1998, unless otherwise exempted by the commission. Upon completion or delay in the meeting of this requirement, a report to that effect shall be filed with the commission.

(C) All switched voice circuits shall be adequately designed and maintained to allow transmission of at least 2400 bits of data per second when connected through an industry standard modem or a facsimile machine, by the end of 1996, unless otherwise exempted by the commission.

(2) Installation of service. Unless otherwise provided by the commission.

(A) Ninety-five percent of the local exchange carrier's service orders for installing primary service shall be completed within five working days, excluding those orders where a later date was specifically requested by the customer. Surveillance Level: 85% in any exchange area for a period of three consecutive months.

(B) Ninety percent of the local exchange carrier's service orders for regular service installations shall be completed within five working days, excluding those orders where a later date was specifically requested by the customer. This includes orders for primary and other services [service], installations, moves, or changes, but not complex services. Surveillance Level: 85% in any exchange area for a period of three consecutive months.

(C) Each local exchange carrier shall establish and maintain installation time commitment guidelines for the various complex services contained in its tariff. Those guidelines should be available for public review and should be applied in a nondiscriminatory manner.

(D) The installation interval measurements outlined in subparagraphs (A)-(C) of this paragraph shall commence with either the date of application or the date on which the applicant qualifies for service, whichever is later.

(E) If the local exchange carrier elects, it may collect data on the basis of seven calendar days. In that case, these requirements shall pertain to seven calendar days in lieu of five working days.

(F) The local exchange carrier shall provide to the customer a due date on which the requested installation or change shall be made. If a customer requests that the work be done on a regular working day later than that offered by the local exchange carrier, then the customer's requested date shall be the commitment date. If a premises visit is required, the local exchange carrier shall establish an appointment period with the customer for morning or afternoon, on the due date. Where an appointment cannot be kept by the local exchange carrier, the local exchange carrier shall attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment period, the local exchange carrier representative shall leave a notice at the premises advising the customer how to reschedule the work.

(G) Ninety percent of the local exchange carrier's commitments to customers as to the date of installation of service orders shall be met excepting customer-caused delays. **Surveillance Level: 88% in any exchange area for a period of three consecutive months.**

(H) The installation interval and commitment requirements of subparagraphs (A)-(G) of this paragraph do not include service orders either to disconnect service or to make only record changes on a customer's account.

(I) A held regrade order is one not filled within 30 days after the customer has made application for a different grade of service except where the customer requests a later date. In the event of the local exchange carrier's inability to so fill such an order, the customer will be advised and furnished the date when it will be available. The number of held regrade orders shall not exceed 1.0% of the total number of customer access lines served.

(3) Operator handled calls.

(A) Dominant carriers shall maintain adequate personnel to provide an average operator answering performance as follows for each exchange on a monthly basis.

(i) Eighty-five percent of toll and assistance operator calls answered within ten seconds, or average answer time

shall not exceed 3.3 seconds. **Surveillance Level: 80% (or equivalent) at any answering location for a period of four days within any given month.**

(ii) Ninety percent of repair service calls, calls to the business office, and other calls shall be answered within 20 seconds (equivalent measurements may be used). **Surveillance Level: 85% (or equivalent) at any answering location for a period of four days within any given month.**

(iii) Eighty-five [eighty] percent of directory assistance calls shall be answered within ten seconds or the average answer time shall not exceed 7.4 seconds. **Surveillance Level: 80% (or equivalent) at any answering location for a period of four days within any given month.**

(B) An "answer" shall mean that the operator or representative is ready to render assistance and/or ready to accept information necessary to process the call. An acknowledgement that the customer is waiting on the line shall not constitute an "answer."

(C) Dominant carriers may measure answer time on a toll center or operating unit basis in lieu of measuring answer time in each exchange unless specifically requested by the commission.

(4) Local dial service. Sufficient central office capacity and equipment shall be provided to meet the following requirements during the busy season:

(A) dial tone within three seconds on 98% of calls. For record-keeping and reporting purposes, 96% in three seconds during average busy season, busy hour, shall be acceptable as complying with this requirement;

(B) completion of 98% of intraoffice calls (those calls originating and terminating within the same central office building) without encountering an equipment busy condition (blockage) or equipment failure;

(C) availability factor for stored program controlled digital and analog switching facilities shall be 99.99%, or the total unscheduled outage shall not exceed 53 minutes per year.

(5) Local interoffice dial service.

(A) Each local exchange carrier shall provide and maintain interoffice trunks on its portion of the local exchange service network so that 97% of the interof-

fice local calls excluding calls between central offices in the same building are completed without encountering equipment busy conditions or equipment failures. For local exchange carriers' testing, record-keeping, and reporting purposes, local exchange carriers are not required to separate local dial service results from local interoffice dial service results unless specifically requested by the commission.

(B) The availability factor for stored program controlled digital and analog switching and interoffice transmission facilities for end to end transmission shall be 99.93%, or the total unscheduled outage shall not exceed 365 minutes per year.

(6) Direct distance dial service. Engineering and maintenance of the trunk and related switching components in the toll network shall be such as to permit 97% [95%] completion on properly dialed calls, without encountering failure because of blockages or equipment irregularities.

(7) Customer trouble reports

(A) The local exchange carrier shall maintain its network service in such a manner that the average monthly rate of customer trouble reports, excluding customer premises equipment (CPE) reports, per 100 customer access lines does not exceed [.] six. **Surveillance Level: eight per 100 access lines per month per exchange for a period of three consecutive months.**

(i) eleven in exchanges serving fewer than 300 customer access lines;

(ii) nine in exchanges serving between 300 and 2,000 customer access lines; and

(iii) seven in exchanges serving more than 2,000 customer access lines.

(B) The local exchange carrier shall maintain its service in such a manner that the average monthly rate of customer trouble reports for regulated customer premises equipment (CPE), excluding coin telephone equipment, does not exceed four trouble reports per 100 company provided stations.]

(B)[(C)] The local exchange carrier shall provide to the customer a commitment time by which the trouble will be cleared. If a premises visit is required, the local exchange carrier shall establish an appointment period with the customer for the morning or afternoon. When an appointment cannot be kept by the local exchange carrier, the local exchange carrier shall at-

tempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment period, the local exchange carrier representative shall leave a notice at the premises advising the customer how to reschedule the work.

(C)(D) At least 90% of out-of-service trouble reports on service provided by a local exchange carrier shall be cleared within eight working hours, except where access to the customer's premises is required but not available or where interruptions are caused by unavoidable casualties and acts of God affecting large groups of customers. Surveillance Level: 85% in any exchange area for a period of three consecutive months.

(D)(E) Each local exchange carrier shall establish procedures to insure the prompt investigation and correction of trouble reports so that the percentage of repeated trouble reports on residence and single line business lines does not exceed 22% of the total customer trouble reports on those lines.

(8) Transmission requirements.

(A) Requirements All voice-grade trunk facilities shall conform to accepted transmission design factors and shall be maintained to meet the following objectives when measured from line terminals of the originating central office to the line terminals of the terminating central office.

(i) Interoffice local exchange service calls. Excluding calls between central offices in the same building, 95% of the measurements on the network of a local exchange carrier should have from two to ten decibels loss at 1000+20 hertz and no more than 30 decibels above reference noise level ("C" message weighting).

(ii) Direct distance dialing. Ninety-five percent of the transmission measurements should have from three to 12 decibels loss at 1000+20 hertz and no more than 33 decibels above reference noise level ("C" message weighting).

(B) Subscriber lines. All newly constructed and rebuilt subscriber lines shall be designed for a transmission loss of no more than eight decibels from the serving central office to the customer premises network interface. All subscriber lines shall be maintained so that transmission loss does not exceed ten decibels. Subscriber lines shall in addition be constructed and maintained so that metallic noise does not exceed 30 decibels above reference noise level ("C" message weighting) on

90% of the lines. Metallic noise shall not exceed 35 decibels above reference noise level [lever] ("C" message weighting) on any subscriber line.

(C) PBX, key, and multiline trunk circuits. PBX, key, and multiline trunk circuits shall be designed and maintained so that transmission loss at the subscriber station does not exceed eight decibels. If the PBX or other terminating equipment is customer owned and if transmission loss exceeds eight decibels the local exchange carrier's responsibility shall be limited to providing a trunk circuit with no more than five decibels loss from the central office to the point of connection with customer facilities [, or 6.5 decibels loss if through a local exchange carrier-provided coupler].

(D) Impulse Noise Limits. The requirements for impulse noise limits shall be as follows:

(i) for switching offices, the noise level count shall not exceed five pulses above the threshold in any continuous five minute period on 50% of test calls. The reference noise level threshold shall be less than: 54 dBrnC for Crossbar switch, 59 dBrnC for step-by-step switch, and 47 dBrnC for electronic or digital switch;

(ii) for trunks, the noise level count shall not exceed five pulses above the threshold in any continuous five minute period on 50% of trunks in a group. The reference noise level threshold shall be less than 54 dBrnCO for voice frequency trunks, and 62 dBrnCO for digital trunks;

(iii) for loop facilities, the noise level count shall not exceed 15 pulses above the threshold in any continuous 15 minute period on any loop. The reference noise level threshold shall be less than 59 dBrnC when measured at central office (CO), or referred to CO through 1004 Hz loss.

(f)-(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 July 9, 1993.

TRD-9325537

John M. Renfrow
Secretary
Public Utility Commission
of Texas

Earliest possible date of adoption: August 16, 1993

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

TITLE 22. EXAMINING BOARDS

Part XIV. Texas Optometry Board

Chapter 273. General Rules

• 22 TAC §273.4

The Texas Optometry Board proposes an amendment to §273.4, concerning the setting of fees. Section 273.4 identifies those fees which will be assessed to candidates and licensees. Such rule change is necessitated due to the passage of House Bill 1479, amending the Texas Optometry Act.

Lois Ewald, executive director, has determined that for the first five-year period the rule is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the rule. The estimated cost to state government for the first five-year period the rule will be in effect will be \$394,362 in 1994, \$376,216 in 1995, \$376,216 in 1996, \$376,216 in 1997, and \$376,216 in 1998. The estimated increase in revenue during the same five-year period will be \$394,362 in 1994, \$376,216 in 1995, \$376,216 in 1996, and \$376,216 in 1998. The revenue generated will offset appropriations/costs

Ms. Ewald 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 that fees generated from fee increases will allow the agency to be self-supporting in meeting appropriations obligations, with no assistance from General Revenue. There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the rule as proposed will vary.

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 substantive and procedural rules.

§273.4. Fees (Not Refundable).

- (a) Examination Fee-\$150.
- (b) Initial Therapeutic License-\$50.
- (c) Provisional License-\$75.
- (d) Limited Faculty License-\$50.
- (e) Duplicate License (lost, destroyed, or name change)-\$25.
- (f) Duplicate/Amended Renewal Certificate (lost, destroyed, inactive, active)-\$25.
- (g) License Renewal-\$140.
- (h) Late fees (for all renewals, one to 90 days)-\$75.

(i) Late fees (for all renewals (90 days to 1 year)-\$150.

(j) Late fees (for all renewals with delayed continuing education-\$140.

(k) Therapeutic Certification Application-\$55.

(l) Therapeutic Certificate-\$25.

(m) Certificates of Licensure Status-\$25.

[(a) Examination Fee (First)-\$55.

[(b) Examination Fee (Second)-\$20.

[(c) Examination Fee (Third and Subsequent)-\$55.

[(d) License-\$25.

[(e) License Renewal-\$125.

[(f) Duplicate License (lost, destroyed, or name change)-\$10.

[(g) Late fees (for all renewals), One to 180 days-\$27.50; 181 days to less than three years-\$55.

[(h) Therapeutic Certification Application-\$55.

[(i) Therapeutic Certificate-\$25.]

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

Issued in Austin, Texas, on July 2, 1993.

TRD-9325286

Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption: August 16, 1993

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



• 22 TAC §273.8

The Texas Optometry Board proposes new §273.8, concerning procedural rules for renewal of a license. The rule will inform licensees of procedures for renewing a license, appropriate fees and penalties provided in regard to such renewal, and required education. The new rule is required as a result of House Bill 1479, Acts of the 73rd Legislature, amending the Texas Optometry Act.

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

Ms. Ewald 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 the general public will be assured that optometrists are maintaining current licensure standards with the Texas Optometry Board. There will be no effect on small businesses. There is no anti-

ipated economic cost to persons who are required to comply with the rule 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 new section is proposed under Texas Civil Statutes, Article 4552, §2. 14, which provide the Texas Optometry Board with the authority to promulgate substantive and procedural rules.

§273.8. Renewal of License.

(a) Expired license.

(1) If a license is not renewed on or before January 1 of each year, it becomes expired.

(2) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license as established by §273.4 of this title, (relating to Optometry Fees).

(3) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(4) If a person's license has been expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to re-examination and complying with the requirements and procedures for obtaining an initial license.

(5) The board, however, may renew without examination an expired license of a person who was previously licensed in Texas, is currently licensed in another state, and has been in practice for two years immediately preceding application for renewal. The person shall be required to furnish documentation of continuous practice for the two-year period, pay the renewal fee as established by §273.4, of this title, and a fee that is equal to the examination fee for the license.

(6) The annual renewal application will be deemed to be written notice of the impending license expiration forwarded to the person at the person's last known address, according to the records of the board.

(b) Mandatory continuing education for renewal of license.

(1) The board may not issue a renewal license to a licensee who has not complied with the mandatory continuing education requirements unless an exemption provided by §275.1 of the title (relating to General Requirements) is applicable.

(2) If a licensee has not fulfilled the required continuing education requirements within the calendar year preceding the license renewal date, the license shall expire. To renew that expired license, the licensee may obtain and provide the Board with certified attendance records that the licensee has, since the expiration of the license, completed sufficient hours of approved continuing education courses to satisfy any deficiency in the previous year. Education obtained for renewal of an expired license cannot be applied toward renewal of license for the following year.

(3) The licensee cannot practice optometry until such time as education is obtained and the expired license has been renewed.

(4) The licensee must pay to the Board the license renewal fee plus a penalty in an amount equal to the amount of the license renewal fee.

(5) The executive director shall determine if all requirements for renewal of license have been fulfilled, and will notify the licensee when the practice of optometry can resume.

(6) To practice optometry with an expired license shall constitute the practice of optometry without a license.

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

Issued in Austin, Texas, on July 2, 1993.

TRD-9325287

Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption: August 16, 1993

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



Part XXI. Texas State Board of Examiners of Psychologists

Chapter 473. Fees

• 22 TAC §473.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.5, concerning miscellaneous fees. The Board is setting a fee for hand scoring of the Jurisprudence Examination and is increasing the amount charged for returned checks.

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

Ms. Forkner 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 that the board will generate adequate funds to function efficiently and to ensure that the Board has an adequate cash balance to carry out the mandates of the Psychologists' Certification and Licensing Act. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the rule as proposed will be \$50 for each hand-scoring of the examination requested and \$25 per individual for each check returned by that individual.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Austin, Texas 78758, (512) 835-2036.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

**§473.5. Miscellaneous Fees (Not Refundable).*

- (a)-(c) (No change.)
- (d) Returned check fee—\$25 [\$50].
- (e) (No change.)
- (f) Hand Scoring of Jurisprudence Examination—\$50.

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

Issued in Austin, Texas, on July 5, 1993.

TRD-9325314 Rebecca E. Forkner
Acting Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: August 16, 1993

For further information, please call: (512) 835-2038

◆ ◆ ◆
TITLE 28. INSURANCE
Part I. Texas Department
of Insurance
Chapter 5. Property and
Casualty Insurance
Subchapter B. Insurance Code,
Chapter 5, Subchapter B
Procedure for (a) Rated Expo-
sure
• 28 TAC §5.1001, §5.1002

(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 Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The State Board of Insurance of the Texas Department of Insurance proposes the repeal of §§5.1001-5.1002 relating to approval of General Liability (a) rate or individual risk filings and the distribution of these filings upon approval by the Board. The sections are proposed for repeal because the (a) rate filing procedure is no longer applicable to these types of individual risks. With the enactment of the Insurance Code, Article 5.13-2, general liability rates are now regulated under a file and use system. Article 5.15 relating to the filing of individual risk submissions, including those for general liability, and on which this regulation is based, is no longer applicable to these types of risks.

David Durden, deputy commissioner for the property-casualty program, has determined that, for the first five-year period the proposed repeal will be in effect, there will be no fiscal implications for state or local government resulting from enforcement or administration of the repeal, and there will be no effect on local employment or the local economy.

David Durden, deputy commissioner for the property-casualty program, has also determined that, for each year of the first five-years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal is the elimination of an unnecessary regulation from this title of the Texas Administrative Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments must be submitted within 30 days after publication in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, P.O. Box 149104, MC #113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to David Durden, Deputy Commissioner for the Property-Casualty Program, MC #103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Requests for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The repeal is proposed pursuant to the Insurance Code, Articles 5.98, 5. 13-2, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 5.98 authorizes the Board to adopt reasonable rules appropriate to accomplish the purposes of Chapter 5 of the Insurance Code. Article 5.13-2 authorizes the State Board of Insurance to approve or disapprove rate filings for general liability insurance. Article 1.04(b) authorizes the State Board of Insurance to determine rules and rates in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this repeal: §5.1001-Insurance Code, Articles 5.15 and 5.13-2;

§5.1002-Insurance Code, Article 5.15 and 5.13-2.

§5.1001. Approval of (a) Rate Filings.

§5.1002. Distribution of (a) Rates.

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

Issued in Austin, Texas, on July 12, 1993.

TRD-9325606 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: August 16, 1993

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

◆ ◆ ◆
Subchapter D. Fire and Allied
Lines Insurance
Rate Deviation Rules
• 28 TAC §5.3102

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

The State Board of Insurance of the Texas Department of Insurance proposes the repeal of §5.3102. Section 5.3102 specifies rate deviation regulations for fire, extended coverage, homeowners, and farm and ranch owners insurance. The section is proposed for repeal because rate deviations are no longer applicable to these lines of insurance. With the enactment of Articles 5.101 and 5.13-2 of the Insurance Code by the 72nd Texas Legislature, these lines are now regulated under the flexible rating program and the file and use system. The Insurance Code, Article 5.28, relating to deviations from the promulgated maximum rate and on which this regulation is based, is no longer applicable to the rate regulation of these lines.

Lyndon Anderson, associate commissioner for the property-casualty program, has determined that, for the first five-year period the proposed repeal will be in effect, there will be no fiscal implications for state or local government resulting from enforcement or administration of the repeal, and there will be no effect on local employment or the local economy.

Lyndon Anderson, associate commissioner for the property-casualty program, also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal is the elimination of an unnecessary regulation from this title of the Texas Administrative Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply

with the proposed repeal.

Comments must be submitted within 30 days after publication of the proposed section in the Texas Register to Linda K. von Quintus-Dorn, Chief Clerk, P.O. Box 149104, MC #113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Lyndon Anderson, Associate Commissioner for the Property-Casualty Program, MC #103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Requests for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The repeal is proposed pursuant to the Insurance Code, Articles 5.98, 5.101, 5.13-2, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 5.98 authorizes the State Board of Insurance to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5 (Rating and Policy Forms) of the Insurance Code. Article 5.101, §3, authorizes the State Board of Insurance to promulgate a benchmark rate and a flexibility band for all lines of residential property insurance. Article 5.13-2 authorizes the State Board of Insurance to approve or disapprove rate filings for commercial property insurance. Article 1.04(b) authorizes the State Board of Insurance to determine rules and rates in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this repeal: §5.3102-Insurance Code, Articles 5.26, 5.101, and 5.13-2.

§5.3102. Rate Deviation Rules.

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

Issued in Austin, Texas, on July 12, 1993.

TRD-9325805 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: August 16, 1993

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

• 28 TAC §5.3103

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

The State Board of Insurance of the Texas Department of Insurance proposes the repeal of §5.3103. Section 5.3103 specifies rate deviation regulations for commercial multiperil insurance. The section is proposed for repeal

because rate deviations are no longer applicable to this line of insurance. With the enactment of the Insurance Code, Article 5.13-2, by the 72nd Texas Legislature, commercial property regulation was changed to a file and use system. Pursuant to the authority granted to the Board in Article 5.81, which authorizes the Board to approve rules for regulating commercial multiperil insurance that are in the best judgment of the Board necessary and desirable in carrying out the purposes and objectives of Article 5.81, the Board adopted the file and use system for commercial multiperil insurance as provided in §5.9101 of this title. Article 5.26 of the Insurance Code, relating to deviations from the promulgated maximum rate and on which the section proposed for repeal is based, is no longer applicable to the rate regulation of commercial multiperil insurance.

Lyndon Anderson, associate commissioner for the property-casualty program, has determined that, for the first five-year period the proposed repeal will be in effect, there will be no fiscal implications for state or local government or small businesses resulting from enforcement or administration of the repeal, and there will be no effect on local employment or the local economy.

Lyndon Anderson, associate commissioner for the property-casualty program, also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal is the elimination of an unnecessary regulation from this title of the Texas Administrative Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments must be submitted within 30 days after publication of the proposed section in the Texas Register to Linda K. von Quintus-Dorn, Chief Clerk, P.O. Box 149104, MC #113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Lyndon Anderson, Associate Commissioner for the Property-Casualty Program, MC #103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Requests for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The repeal is proposed pursuant to the Insurance Code, Articles 5.81, 5.13-2, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 5.81 authorizes the Board to approve rules for regulating commercial multiperil insurance that are in the best judgment of the Board necessary and desirable in carrying out the purposes and objectives of Article 5.81. Article 5.13-2 authorizes the State Board of Insurance to approve or disapprove rate filings for commercial property insurance. Article 1.04(b) authorizes the State Board of Insurance to determine rules and rates in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this repeal: §5.3103-Insurance Code, Articles 5.81, 5.13-2 and 5.26.

§5.3103. Rate Deviation; Texas Commercial Multiperil Insurance.

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

Issued in Austin, Texas, on July 12, 1993.

TRD-9325804 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: August 16, 1993

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

Subchapter I. Rules Supplementary to the Insurance Code, Chapter 5, Subchapter L

Notice To Advisory Organizations

• 28 TAC §5.8002

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

The State Board of Insurance of the Texas Department of Insurance proposes the repeal of §5.8002 concerning the notice requirements for advisory organizations on matters filed pursuant to the Insurance Code, Articles 5.96 and 5.97. The section is proposed for repeal because the special notice requirements of this section are no longer necessary. The Insurance Code, Article 5.73, relating to advisory organizations and on which this regulation is based, was amended pursuant to House Bill 2 by the 72nd Texas Legislature to greatly diminish the role of advisory organizations in the regulatory process. The State Board of Insurance will follow the same notice requirements and procedures for advisory organizations as for other persons interested in matters considered by the Board pursuant to Articles 5.96 and 5.97.

Lyndon Anderson, associate commissioner for the property-casualty program, has determined that, for the first five-year period the proposed repeal will be in effect, there will be no fiscal implications for state or local government resulting from enforcement or administration of the repeal, and there will be no effect on local employment or the local economy.

Lyndon Anderson, associate commissioner for the property-casualty program, has determined that, for each year of the first five-years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal

is the elimination of an unnecessary regulation from this title of the Texas Administrative Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments must be submitted within 30 days after publication in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, P.O. Box 149104, MC #113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Lyndon Anderson, associate commissioner for the property-casualty program, MC #103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Requests for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The repeal is proposed pursuant to the Insurance Code, Articles 5.98, 5.73, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 5.98 authorizes the State Board of Insurance to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5. Article 5.73 grants the State Board of Insurance regulatory authority over advisory organizations. Article 1.04(b) authorizes the State Board of Insurance to determine rules, rates and forms in accordance with the laws of this state Texas Civil Statutes, Article 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this repeal: §5.8002-Insurance Code, Articles 5.73, 5.96, and 5.97.

§5.8002. Notice to Advisory Organizations.

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

Issued in Austin, Texas, on July 12, 1993.

TRD-9325603 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: August 16, 1993

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

Chapter 1. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.4

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2025, scheduled for 9:00 a.m. August 25, 1993, in Room 100 of

the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed amendment to §7.4, concerning admissible assets of insurance companies. The amendment clarifies the authority of the commissioner of insurance to establish a time by which an insurance company must dispose of an asset that does not qualify as a legal investment.

Sandra Autry, associate commissioner for the financial program, has determined that, for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule and there will be no effect on local employment or local economy. Enforcement and administration will be performed by existing staff of the Texas Department of Insurance.

Ms Autry 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 more effective regulation of insurers. On the basis of cost per hour of labor, there is no anticipated difference in cost of compliance between small and large businesses. There is no anticipated economic cost to persons or entities who are required to comply with the rule.

Comments on the proposal, to be considered by the State Board of Insurance, must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Sandra Autry, Associate Commissioner, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 3.33 and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 3.33, §9, authorizes the board to adopt rules which are appropriate for the implementation of Article 3.33. Article 1.04(b) authorizes the board to determine rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribe the procedure for adoption of rules of a state administrative agency.

Cross Reference to Statute. The following are the Articles of the Insurance Code that are affected by these rules: §7.4-Texas Insurance Code, Article 3.33; §7.4-Texas Insurance Code, Article 1.10

§7.4. *Admissible Assets.* This section is promulgated in reference to Attorney General Opinion WW-293-A. The portion of any asset not qualifying as a legal investment shall not be admitted. The companies shall dispose of such inadmissible assets or take such action as is necessary to bring the investment into legal compliance. Companies will not be required to dispose of inadmissible contributed assets. The

commissioner of insurance may order a company to dispose of assets not qualifying as a legal investment.

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

Issued in Austin, Texas, on July 9, 1993.

TRD-9325556 Linda K von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: August 16, 1993

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

• 28 TAC §7.27

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2024, scheduled for 9:00 a.m. August 25, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin to consider proposed amendment to §7.27 concerning the regulation of accounting for reinsurance agreements by insurers. The amendment is necessary to more effectively regulate the accounting of agreements represented to be reinsurance when such arrangements, despite their legal form, are in substance and effect financing arrangements, which have the principal purpose of producing increased surplus for the ceding insurer, typically on a temporary basis, but which provide little or no indemnification of insurance risks by the reinsurer. The proposed amendment identifies accounting requirements of insurers subject to provisions of §7.27. The proposed amendment identifies agreements to which the amended section will apply. The proposed amendment identifies certain types of risk associated with certain types of insurance policies which must be transferred by the ceding insurer to the reinsurer in order that reserve credit may be granted to the ceding company.

Sandra Autry, associate commissioner for the financial program, has determined that for the first five-year period the rule is in effect there will be no fiscal implications to state or local government. There will be no effect on local employment or local economy. There is no anticipated difference in cost of compliance between small and large business.

Ms. Autry 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 more efficient administrative regulation of insurers and the methods insurers use in accounting for the affects of reinsurance on the insurer's surplus; as well as possibly minimizing the impact to this state's guaranty funds in the event of insolvency of the ceding insurers. There may be certain economic costs to insurers who are required to comply with the rule, as proposed. The anticipated costs include the cost to identify and amend those agreements which do not comply with the section. Such cost may range from \$100 to \$25,000. These

costs are an estimate and will vary widely depending upon the complexity of the insurer's reinsurance program, the number of reinsurance agreements, and the person selected to perform the tasks desired by the insurer.

Comments on the proposal to be considered by the State Board of Insurance must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, Mail Code, 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to M. J. (Mike) Arendall, Acting Manager, Reinsurance Activity, Mail Code 305-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 3.10, 5.75-1, 1.32, 3.60, 14.33, 21.21, and 22.12, and Texas Civil Statutes, Article 6252-13a, §§4 and 5. The Insurance Code, Articles 3.10 and 5.75-1 authorizes rules relating to accounting and financial statement requirements and the treatment of reinsurance agreements between insurers. Articles 1.32, 3.60, 14.33, and 22.12 relate to the evaluation of the financial condition of insurers. Article 21.21 relates to unfair competition and unfair practices in the business of insurance. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The proposed section affects the accounting for reinsurance by insurers under the Insurance Code, Articles 3.10 and 5.75-1.

Cross Reference to Statute. The following are the Articles of the Insurance Code that are affected by this rule: §7.27—Texas Insurance Code, Articles 3.10 and 5.75-1

§7.27. *Regulation of Accounting for Reinsurance Agreements by [Life, Accident and Health, and Annuity] Insurers.*

(a) Preamble.

(1) The Texas Department [State Board] of Insurance recognizes that licensed [life, accident and health, and annuity] insurers routinely enter into reinsurance agreements, contracts, treaties or arrangements (hereinafter referred to as agreements) that yield legitimate relief to the ceding insurer from strain to surplus.

(2) However, it is improper for a licensed insurer [The State Board of Insurance, however, has become aware that some life, accident and health, and annuity insurers], in the capacity of ceding insurer, to enter [have at times entered] into reinsurance agreements primarily as financing arrangements which have the principal purpose of producing increased surplus for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business

being reinsured, and which provide little or no indemnification of policy benefits by the reinsurer. In substance or effect, the expected potential liability to the ceding insurer remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival. In addition, the Texas Department [State Board] of Insurance is concerned with reserve credits taken under reinsurance agreements, [hereinafter referred to as contract,] which provide some indemnification of policy benefits where those policy benefits are not included in the gross reserves established by the ceding insurer, such as catastrophic mortality or extraordinary survival. The terms of such agreements [contracts] do not comply in substance with the requirements of subsection (c) of this section and violate one or more of the following:

(A) the Insurance code, Articles 1.32, [3.55-1,] 3.60, 14.33, 21.21, and 22.12, concerning financial condition of insurers, thus[,] resulting in distorted financial statements which do not properly reflect the financial condition of the ceding insurers;

(B) the Insurance Code, Articles [Article] 3.10 and 5.75-1 [3.10A], relating to credit for reinsurance [reinsurance reserve credits], thus[,] resulting in a ceding insurer improperly reducing liabilities or establishing assets for reinsurance ceded; and

(C) the Insurance Code, Articles 1.32[, 3.55-1,] and 21.28-A, concerning creating a situation that may be hazardous to policyholders and the people of this state.

(b) Scope. This regulation shall apply to all [domestic] insurers licensed in this state and operating under the Insurance Code, Chapters 3, 5, 10, 11, 12, 13, 14, 20, or [and] 22, including property and casualty insurers, as respects their direct accident and health business. This section shall not apply to [and to all] licensed foreign insurers who are [not] subject to a substantially similar regulation in their domiciliary state and who are operating in this state under such chapters. To pursue the exception to this section, the foreign ceding insurer shall provide to the commissioner of insurance upon request, evidence of similarity in the form of statutes, regulations, and interpretation of the standards utilized by its state of domicile. This regulation shall not apply to assumption reinsurance agreements, yearly renewable term reinsurance, or certain nonproportional reinsurance agreements such as stop loss or catastrophe reinsurance agreements.

(c) Accounting requirements.

(1) No insurer subject to this section shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Department [State Board of Insurance] if the agreement [contract] includes, in substance or effect, any of the [following] conditions addressed in subparagraphs (A)-(M) of this paragraph.[:]

(A) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are insufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims, and maintenance expected by the company at the time the business is reinsured. [the primary effect of the contract is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a risk charge and the contract does not provide for significant participation by the reinsurer in one or more of the following risks: mortality, morbidity, investment, or surrender benefit;]

[(B) the reserve credit taken by the ceding insurer is not in compliance with the Texas Insurance Code, or with rules or regulations, including actuarial interpretations or standards, adopted by the State Board of Insurance;]

(B)[(C) The [the] reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding insurer supporting the policy obligations transferred under the contract.[:]

(C)[(E)] The [the] ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer; except that termination of the reinsurance agreement [contract] by the reinsurer for non-payment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be such a deprivation of surplus or assets.

(D) The [the] ceding insurer is required to reimburse the reinsurer for negative experience under the agreement

[contract], except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience. [; provided, further, that any offsetting provisions shall be limited to such contract and are specifically between the ceding insurer and the reinsurer and are provided for in such contract;] Voluntary termination does not include situations where termination occurs because of provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to levels forcing the ceding company to prematurely terminate the reinsurance treaty.

(E)[(F)] The [the] ceding insurer must, at specific points in time scheduled in the agreement [contract], terminate or automatically recapture all or part of the reinsurance ceded. [in a manner which deprives the ceding insurer of surplus;]

(F)[(H)] The [the] reinsurance agreement [contract] involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company.

(G) The agreement does not transfer all of the significant risk inherent in the business being reinsured. Clause (i) of this subparagraph identifies

for a representative sampling of products or type of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with those identified in clause (i) of this subparagraph.

(i) Risk categories:

RISK CATEGORY

<u>TYPE OF BUSINESS OR PRODUCT</u>	<u>RISK</u>					
	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
<u>Health Insurance - other than LTC/LTD*</u>	<u>+</u>	<u>0</u>	<u>+</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Health Insurance - LTC/LTD*</u>	<u>+</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>0</u>
<u>Immediate Annuities</u>	<u>0</u>	<u>+</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>0</u>
<u>Single Premium Deferred Annuities</u>	<u>0</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>
<u>Flexible Premium Deferred Annuities</u>	<u>0</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>
<u>Guaranteed Interest Contracts</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>
<u>Other Annuity Deposit Business</u>	<u>0</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>
<u>Single Premium Whole Life</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>
<u>Traditional Non-Par Permanent</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>
<u>Traditional Non-Par Term</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Traditional Par Permanent</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>
<u>Traditional Par Term</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Adjustable Premium Permanent</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>
<u>Indeterminate Premium Permanent</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>
<u>Universal Life Flexible Premium</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>
<u>Universal Life Fixed Premium</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>
<u>Universal Life Fixed Premium (dump-in premiums allowed)</u>	<u>0</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>	<u>+</u>

+ = Significant 0 = Insignificant

*LTC = Long Term Care Insurance

*LTD = Long Term Disability Insurance

(I) morbidity;

(II) mortality;

(III) lapse. The risk that a policy will voluntarily terminate prior to the recoument of a statutory surplus strain experienced at issue of the policy;

(IV) credit quality.

The risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate;

(V) reinvestment.

The risk that interest rates will fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase;

(VI) disintermediation.

The risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

(H) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subparagraph (I) of this paragraph) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account.

(I) The associated formula for determining the reserve interest rate adjustment must use a formula which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. (The exhibit, line and column number reflect the appropriate reference in the 1992 Annual Statement for Life and Accident and Health Insurers and the 1992 Annual Statement for Fire and Casualty Insurers as adopted by the Board.) The following is an acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where for Life and Accident and Health Insurers:

I is the net investment income (Exhibit 2, Line 16, Column 7)

CG is capital gains less capital losses (Exhibit 4, Line 10, Column 6)

X is the current year cash and invested assets (Page 2, Line 10A, Column 1)

plus investment income due and accrued (Page 2, Line 16, Column 1)

less

borrowed money (Page 3, Line 22, Column 1)

Y is the same as X but for the prior year:

Where for Fire and Casualty Insurers:

I is the net investment income earned (Underwriting and Investment (U and

I) Exhibit, Part 1 - Interest, Dividends and Real Estate Income, Line

15,

Column 8)

CG is capital gains less capital losses (U and I Exhibit, Part 1A, Line 10,

Column 7)

X is the current year cash and invested assets (Page 2, Line 8a) plus
interest, dividends and real estate income due and accrued (Page

2, Line 15) less

borrowed money (Page 2, Line 7)

Y is the same as X but for the prior year:

Notwithstanding the requirements of subparagraph (H) of this paragraph, the assets supporting the reserves for classes of business identified in clauses (i)-(vi) of this subparagraph and any classes of business which do not have a significant credit quality, reinvestment, or disintermediation risk may be held by the ceding company without segregation of such assets:

- (i) Health Insurance - LTC/LTD;
- (ii) Traditional Non-Par Permanent;
- (iii) Traditional Par Permanent;
- (iv) Adjustable Premium Permanent;
- (v) Indeterminate Premium Permanent; and
- (vi) Universal Life Fixed Premium (no dump-in premiums allowed).

(J)[(G)] No[no] cash payment is due from the reinsurer, throughout the lifetime of the contract with all settlements prior to the termination date of the agreement made only in a reinsurance account, and no funds in such account are available for the payment of benefits. [; or]

(K) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(L) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

(M) The reinsurance agreement is entered into for the principal purpose of producing increased surplus for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

(2) Notwithstanding paragraph (1) of this subsection, an insurer subject to this section may, with the prior approval of the commissioner of insurance, take such reserve credit or establish such asset as the commissioner may deem consistent with the Insurance Code, agency rules and regulations, including actuarial interpretations or standards adopted by the Department [reduce its liability or establish an asset in an amount as the commissioner

may allow. All its statements shall thereafter identify such reduced liability or increased asset established on the financial statement].

(d) Applicable Agreements.

(1) Agreements entered into after the effective date of this regulation which involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within 30 days from its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this regulation and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with this department. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this regulation.

(2) Any increase in surplus net of federal income tax resulting from arrangements described in paragraph (1) of this subsection shall be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account, page 4 of the Annual Statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "Reinsurance ceded" line, page 4 of the Annual Statement as earnings emerge from the business reinsured. (For example, on the last day of calendar year N, Company XYZ pays a \$20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is \$13.2 million (\$20 million - \$6.8 million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus account. \$6.8 million (34% of \$20 million) is reported as income on the "Commissions and expense allowances on reinsurance ceded" line of the Summary of Operations. At the end of the year N+1 the business has earned \$4 million. ABC has paid \$.5 million in profit and risk charges in arrears for the year and has received a \$1 million experience refund. Company ABC's annual statement would report \$1.65 million (66% of (\$4 million - \$.5 million) up to a maximum of \$13.2 million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Opera-

tions, and \$1.65 million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus account. The experience refund would be reported separately as a miscellaneous income item in the Summary of Operations.)

(e)[(d)] Written agreements [contracts].

(1) No agreement [contract] or amendment to any such agreement [contract] may be used to reduce any liability or to establish any asset in any financial statement filed with the Department [State Board of Insurance], unless the agreement [contract] or amendment thereto or a binding letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement, except for facultative certificates duly executed by the reinsurer or its duly appointed agent, no later than the "as of date" of the quarterly or annual financial statement. A letter of intent may consist of a cover note or placement slip signed by the assuming insurer or its designated agent and accepted in writing by the ceding insurer.

(2) In the case of a letter of intent, a contract or an amendment to a contract must be executed within a reasonable period of time, not exceeding 90 days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded. This provision shall govern unless it is explained to the satisfaction of the Texas Department of Insurance why such contract has not been executed within 90 days. The Texas Department of Insurance may, at its discretion, allow an additional period of time for execution not to exceed an additional 90 days (for a total of 180 days) from the execution date of the letter of intent.

(3) The reinsurance agreement shall contain provisions which provide that:

(A) the agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

(B) any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by both parties.

(f)[(e)] Existing agreements [contracts]: Insurers subject to this section shall reduce to zero by December 31, 1995, or such later date approved by the commissioner of insurance as a result of an ap-

plication made by the ceding insurer within 120 days of the adoption date of this section, any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this regulation which, under the provisions of this regulation would not be entitled to recognition of the reserve credits or assets provided that each of the requirements in paragraphs (1)-(4) of this subsection is met.

(1) The reinsurance agreements shall have been in compliance with laws or regulations in existence immediately preceding the effective date of this section. [may continue to reduce liabilities or establish assets in financial statements filed with the State Board of Insurance for reinsurance ceded under types of contracts described in paragraph (2) of subsection (a) of this section and in subsection (c) of this section, provided;]

(2)[(1)] The [the] agreements [contracts] were executed and in force prior to May 1, 1993. [the date of the initial notice and publication of this proposed rule in the Texas Register, which date is January 30, 1987;]

(3)[(2)] No [no] new business is ceded under the agreements [contracts] after the effective date of this section.

(3) the reduction of the liability or the asset established for the reinsurance ceded is reduced to zero by December 31, 1989, or such later date approved by the commissioner of insurance as a result of an application made by the ceding insurer within 120 days of the adoption date of this section;

(4) the reduction of the liability or the establishment of the asset is otherwise permissible under all other applicable provisions of the Insurance Code or rules or regulation, including actuarial interpretations or standards, adopted by the State Board of Insurance; and]

(4)[(5)] The [the] Reinsurance Activity [Corporate Activities Division] of the Texas Department [State Board] of Insurance is notified, within 90 days following the effective date of this section, of the existence of such agreements [contracts] and all corresponding credits taken in the ceding insurer's 1992 [1986] annual statement and all subsequent financial statements.

(g)[(f)] Effective date. This section becomes effective September 1, 1993 [April 30, 1987].

(h)[(g)] Severability. If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of the provisions of this

section which can be given effect without the invalid provisions or application. To this end, all provisions of this section are declared to be severable.

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

Issued in Austin, Texas, on July 9, 1993.

TRD-9325555 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: August 16, 1993

For further information, please call: (512) 463-6328

Subchapter C. Transfer of Securities Under Certain Agreements

• 28 TAC §7.306

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2026, scheduled for 9:00 a.m. August 25, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed amendment §7.306 concerning the transfer of securities under certain agreements. This section is obsolete and is in conflict with the NAIC Accounting Manuals which have been adopted by the State Board of Insurance.

Sandra Autry, associate commissioner for the financial program, Texas Department of Insurance, 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.

Sandra Autry, associate commissioner for the financial program, Texas Department of Insurance, has determined that for each year of the first five years the amendment of the section is in effect the public benefit anticipated as a result of the amendment will be the elimination of confusion caused by conflicting rules. There will be no effect on small business. There is no anticipated economic cost to persons required to comply with the amended Section.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the Texas Register to Linda K. von Quintus-Dorn, Chief Clerk, P. O. Box 149104, MC #113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Sandra Autry, Associate Commissioner for the Financial Program, P. O. Box 149104, MC #305-2A, Austin, Texas 78714-9104.

The amendment is under authority of the Insurance Code, Articles 1.11 and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 1.11 authorizes the board to adopt rules which are appropriate for the implemen-

tation of Article 1.11. Article 1.04(b) authorizes the board to determine rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribe the procedure for adoption of rules of a state administrative agency.

Gross Reference to Statute. The following are the articles of the Insurance Code that are affected by these rules: §7.306 - Texas Insurance Code, Article 1.11.

§7.306. Reporting of Loaned Securities.

(a) Reporting of Loaned Equity Securities. Paragraphs (1) and (2) of this subsection shall be applicable to loaned equity securities.

(1) The book value of equity securities loaned to the broker shall be treated as an admitted asset, if otherwise eligible.

(2) Each insurer shall identify the collateral and any reinvestment of such collateral in its annual statement notes. If the collateral consisting of cash and/or cash equivalents is available for the general use of the insurance company, such collateral shall be recognized as an asset of the insurance company and a liability for the return of that collateral shall be established. Noncash collateral shall not be recognized as an asset of the company. If balance sheet accounts are used for noncash collateral control, then a contra account shall be used to zero out the balance sheet accounts so that net asset value as related to the noncash collateral is not shown as an asset of the insurance company.

(b) Reporting of Loaned Fixed Income Securities. When a bond is loaned to the broker, collateral consisting of cash and/or cash equivalents shall be pledged. The pledged collateral shall be maintained in an escrow account. The value of the fixed income security loaned to the broker by the insurance company continues to be treated as an admitted asset, if otherwise eligible.

(c) Income and Expense Treatment. Income received during the year on the collateral or received on any reinvestment of the collateral is reported in the investment income exhibit of the annual statement as a separate item, specifically identified. Amounts remitted to the broker as compensation are reported as an investment expense in the appropriate exhibit, to the annual statement.

(d) Return of Loaned Securities. Upon return to the insurance company of the loaned securities, such securities are presented in the annual statement in the

same form and at the same values as such securities would have been presented prior to the transaction.

[(a) Each insurer shall identify in its annual statement the collateral or any reinvestment of such collateral. If not reinvested, the collateral consisting of cash is presented at face amount and the collateral consisting of United States Government securities is reflected at fair market value at the date of the transaction. If the insurer has reinvested the collateral, the assets representing such reinvestment shall be presented in accordance with the principles of statutory accounting approved by the State Board of Insurance for similar assets.

[(b) The insurance company presents the difference between the fair market values of the collateral and the securities loaned as a separate item on the asset side of the annual statement, which values are determined as of the date the securities and collateral are originally transferred. The difference between the fair market values of the collateral and securities loaned is shown as a deduction from the asset as described in subsection (a) of this section.

[(c) The book value of the securities loaned to the broker is treated as a nonadmitted asset in exhibits relating to assets in the annual statement.

[(d) Income received during the year on the collateral or received on any reinvestment of the collateral is reported in the investment income exhibit as a separate item specifically identified as such. Amounts remitted to the broker as compensation are reported as an investment expense in the appropriate exhibit.

[(e) The entries in the annual statement referring to the items described in subsections (a)-(d) of this section are identified with a mark and described in a footnote referring to the schedules providing detailed information concerning securities loaned to brokers and not returned before year end. An illustrative example of these schedules is available at the offices of the State Board of Insurance.

[(f) Upon return to the insurance company of the loaned securities, such securities are presented in the annual statement in the same form and at the same values as such securities would have been presented prior to the transaction.

[(g) An illustration of a sample annual statement reflecting the accounting procedures required by this section for "securities lending" is available at the offices of the State Board of Insurance. A comparable prior year annual statement identical in every way to Exhibit B-1 except for the recording of the securities loans is available at the offices of the State Board of Insurance.]

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

Issued in Austin, Texas, on July 9, 1993.

TRD-9325553 Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: August 16, 1993

For further information, please call: (512) 463-6328

Chapter 15. Surplus Lines of Insurance

Subchapter A. General Regulation of Surplus Lines of Insurance

• 28 TAC §15.17

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2023, scheduled for 9:00 a.m. August 25, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed amendment to §15.17. The amendment would add a new subsection (d) which would require the records of a surplus lines agent to be maintained in one location. The amendment is necessary to assure efficient audits of surplus lines agents.

Sandra Autry, associate commissioner for the financial program, has determined that for the first five-year period the new subsection is in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this subsection, and there will be no effect on local employment or local economy.

Ms. Autry also has determined that for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing the amendment will be the conduct of the efficient and effective examinations. There will be no effect on small business. There is no anticipated economic cost to persons who are required to comply with the subsection as proposed.

Comments on the proposal, to be considered by the State Board of Insurance, must be submitted in writing within 30 days after the publication of the proposed section in the Texas Register to Linda K. von Quintus-Dom, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78781-49104. An additional copy of the comments should be submitted to Sandra Autry, Associate Commissioner, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Article 1.14-2 and Article 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.14-2, §3A, provides the State Board of In-

surance with the authority to adopt rules to enforce Article 1.04(b), authorizes the State Board of Insurance to determine rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribe the procedures for adoption of rules of a state administrative agency.

CROSS REFERENCE TO STATUTE. The following is the Article of the Insurance Code that is affected by this rule: §15.17(d), Insurance Code, Article 1. 14-2

§15.17. General.

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

(d) Location of Records. The records required by subsection (a) of this section and §15.20 of this title (relating to agency accounting records) shall be located at only one location which shall be designated in writing to Texas Department of Insurance.

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

Issued in Austin, Texas, on July 9, 1993.

TRD-9325554 Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

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For further information, please call: (512) 463-6328

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 115. Control of Air Pollution From Volatile Organic Compounds

Subchapter D. Petroleum Refining and Petrochemical Processes

Fugitive Emission Control in Petroleum Refineries

The Texas Air Control Board (TACB) proposes amendments to §§115.324, 115.334, and 115.344, concerning Inspection Requirements for Fugitive Monitoring. The proposed changes have been developed in response to a request by the Texas Chemical Council. The proposed rule would allow credit for previously earned skip credits required by New Source Performance Standards (NSPS) or

National Emission Standards for Hazardous Air Pollutants (NESHAPS).

The proposed §§115.324, 115.334, and 115.344, concerning Inspection Requirements for Fugitive Emission Control in Petroleum Refineries, Chemical Plants, and Natural Gas/Gasoline Processing Operations all add a clause (iii) which allows for the substitution of leak detection skip period requirements required by any NSPS or NESHAPS for the requirements in clauses (i) and (ii) of those subparagraphs dealing with leak detection skip periods.

Lane Hartsock, deputy director of air quality planning, has determined that for the first five-year period the rules are in effect, the annual cost to state and local governments are estimated to be minimal.

Mr. Hartsock also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be in minimizing the cost to the regulated community while maintaining the same level of emission control.

Public hearings on this proposal are scheduled for the following times and places: August 4, 1993, 6:30 p.m., City of El Paso Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso; August 5, 1993, 2:30 p.m., City of Arlington Council Chambers, 101 West Abram Street, Arlington; August 5, 1993, 6:30 p.m., Houston-Galveston Area Council, Second Floor, Conference Room A, 3555 Timmons Lane, Houston; August 6, 1993, 11:30 a.m., John Gray Institute, 855 Florida Avenue, Beaumont.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TACB Central Office in Austin no later than August 13, 1993. Material received by the Regulation Development Division by 4:00 p.m. on that date will be considered by the Board prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Division of the TACB Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753, and at all TACB regional offices. For further information, contact Eddie Mack at (512) 908-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

• 31 TAC §115.324

The amendment is proposed under the Texas Health and Safety Code, (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and

purposes of the TCAA.

§115.324. Inspection Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas, the owner or operator of a petroleum refinery shall conduct a monitoring program consistent with the following provisions:

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

(8) the monitoring schedule of paragraphs (1)-(3) of this subsection may be modified as follows.

(A) After completion of the required annual and quarterly inspections for a period of at least 2 years, the operator of a refinery may request in writing to the Texas Air Control Board (TACB) that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that have been developed to justify the following modifications in the monitoring schedule.

(i)-(ii) (No change.)

(iii) Leak detection skip period requirements for any New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants may be substituted for clauses (i) and (ii) of this subparagraph.

(B) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on July 12, 1993.

TRD-8325575 Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Proposed date of adoption: November 12, 1993

For further information, please call: (512) 908-1451

◆ ◆ ◆
Fugitive Emission Control in Synthetic, Organic, Chemical Polymer, Resin, and Methyl Tert-Butyl Ether Manufacturing Processes

• 31 TAC §115.334

The amendment is proposed under the Texas

Health and Safety Code, (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.334. Inspection Requirements. For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas, the following inspection requirements shall apply.

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

(3) The monitoring schedule of paragraph (1)(A)-(C) of this section may be modified as follows.

(A) After completion of the required annual and quarterly inspections for a period of at least 2 years, the operator of a synthetic organic chemical, polymer, resin, or methyl tert-butyl ether manufacturing facility may request in writing to the Texas Air Control Board (TACB) that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that have been developed to justify the following modifications in the monitoring schedule.

(i)-(ii) (No change.)

(iii) Leak detection skip period requirements for any New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants may be substituted for clauses (i) and (ii) of this subparagraph.

(B) (No change.)

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

Issued in Austin, Texas, on July 12, 1993.

TRD-8325576 Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Proposed date of adoption: November 12, 1993

For further information, please call: (512) 908-1451

◆ ◆ ◆
• 31 TAC §115.344

The amendment is proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.344. Inspection Requirements. For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas, the following inspection requirements shall apply.

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

(3) The monitoring schedule of paragraph (1)(A)-(C) of this section may be modified as follows.

(A) After completion of the required annual and quarterly inspections for a period of at least 2 years, the operator of a natural gas/gasoline processing facility may request in writing to the Texas Air Control Board (TACB) that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that have been developed to justify the following modifications in the monitoring schedule.

(i)-(ii) (No change.)

(iii) Leak detection skip period requirements for any New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants may be substituted for clauses (i) and (ii) of this subparagraph.

(B) (No change.)

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

Issued in Austin, Texas, on July 12, 1993.

TRD-9325577

Lane Hartssock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Proposed date of adoption: November 12, 1993

For further information, please call: (512) 908-1451

◆ ◆ ◆
Subchapter J. Administrative Provisions

Alternate Means of Control

• 31 TAC §115.910

The Texas Air Control Board (TACB) proposes an amendment to §115.910, concerning Alternate Means of Control. The TACB proposes to delete Hardin and Montgomery Counties from the list of ozone attainment or unclassified counties in subsection (b). Subsection (b) allows the executive director to exempt specific compounds or specific vent

gas streams from the application of Chapter 115 (Regulation V, concerning Control of Air Pollution From Volatile Organic Compounds) if it can be demonstrated that the emissions from the compound or specific vent gas stream will not make a significant contribution to air contaminants in the atmosphere. The United States Environmental Protection Agency (EPA) will not approve rules which provide the availability of such exemptions for Hardin and Montgomery Counties because these two counties have been designated by EPA as part of the Beaumont/Port Arthur and Houston/Galveston ozone nonattainment areas. Ozone nonattainment counties are not allowed to use the exemption identified in subsection (b) because of the potential for exceedances of the ozone standard. The TACB also proposes to amend §115.901(a) to delete the requirement for EPA approval of alternate means of control equivalency approvals issued by the executive director.

Lane Hartssock, deputy director of air quality planning, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Hartssock 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 implementing the rule will be clarification of existing requirements. There will be no fiscal implications for small businesses or facilities affected by the proposed rule.

Public hearings on this proposal are scheduled for the following times and places: August 4, 1993, 6:30 p.m., City of El Paso Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso; August 5, 1993, 2:30 p.m., City of Arlington Council Chambers, 101 West Abram Street, Arlington; August 5, 1993, 6:30 p.m., Houston-Galveston Area Council, Second Floor, Conference Room A, 3555 Timmons Lane, Houston; August 6, 1993, 11:30 a.m., John Gray Institute, 855 Florida Avenue, Beaumont.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TACB Central Office in Austin no later than August 13, 1993. Material received by the Regulation Development Division by 4:00 p.m. on that date will be considered by the Board prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Division of the TACB Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753, and at all TACB regional offices. For further information, contact Eddie Mack at (512) 908-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 908-1815. Requests should be made as far in

advance as possible.

The amendment is proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.910. Procedure.

(a) Any person affected by any control requirement of this chapter may request the Executive Director to approve alternate methods of control. The Executive Director shall approve such alternate methods of control if it can be demonstrated that such control will result in substantially equivalent emission reductions as the methods of control specified in this regulation. Approval by the United States Environmental Protection Agency is not required. [Executive Director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this chapter.]

(b) For persons in Aransas, Bexar, Calhoun, [Hardin,] Matagorda, [Montgomery,] San Patricio, and Travis Counties, the Executive Director, after consultation with appropriate local governmental agencies, may exempt a specific compound or a specific vent gas stream from the application of this chapter (Regulation V) if it can be demonstrated that the emissions from the compound or specific vent gas stream will not make a significant contribution to air contaminants in the atmosphere.

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

Issued in Austin, Texas, on July 12, 1993.

TRD-9325578

Lane Hartssock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Proposed date of adoption: November 12, 1993

For further information, please call: (512) 908-1451

◆ ◆ ◆
Compliance and Control Plan Requirements

• 31 TAC §§115.930, 115.932, 115.940

The Texas Air Control Board (TACB) proposes amendments to §115.930 and §115.932 and new §115.940, concerning Compliance and Control Plan Requirements. The changes have been proposed to clarify that control plans developed by affected in-

dustries need not be submitted unless requested. This change is proposed in order to minimize unnecessary paperwork, since the existing rule appears to require submittal in all cases.

The proposed changes to §115.930, concerning Compliance Dates, delete the reference to control plan submittal. The proposed changes to §115.932, concerning Control Plan Procedure, specify that control plans must be submitted upon request by the TACB. A new §115.940, concerning Equivalency Determination, allows the use of a federal requirement in lieu of a Chapter 115 requirement.

Lane Hartsock, deputy director of air quality planning, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Hartsock also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of existing requirements and elimination of unnecessary paperwork. There will be no fiscal implications for small businesses or facilities affected by the proposed rules.

Public hearings on this proposal are scheduled for the following times and places: August 4, 1993, 6:30 p.m., City of El Paso Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso; August 5, 1993, 2:30 p.m., City of Arlington Council Chambers, 101 West Abram Street, Arlington; August 5, 1993, 6:30 p.m., Houston-Galveston Area Council, Second Floor, Conference Room A, 3555 Timmons Lane, Houston; August 6, 1993, 11:30 a.m., John Gray Institute, 855 Florida Avenue, Beaumont.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TACB Central Office in Austin no later than August 13, 1993. Material received by the Regulation Development Division by 4:00 p.m. on that date will be considered by the Board prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Division of the TACB Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753, and at all TACB regional offices. For further information, contact Eddie Mack at (512) 908-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

The amendments and new section are proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TACB

with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.930. Compliance Dates. For all counties affected by this chapter, the final compliance [and control plan submittal] dates for revisions to control requirements are given within the section relating to counties and compliance schedules in each undesignated head if the final compliance date of any provision is after the date of adoption of the current revision to this chapter. If the compliance dates are not specified for any provision, the compliance date is past and all affected persons must be and remain in compliance with the provision as of the original compliance date.

§115.932. Control Plan Procedure. Within 30 days of a request by the Texas Air Control Board (TACB), the owner or operator of any facility affected by the requirements of any undesignated head in this chapter (Regulation V) shall submit a [A] control plan for compliance [shall be submitted on] which includes the compliance status of all emission controls required by this regulation, and a detailed description of the method to be followed to achieve compliance, specifying the exact dates by which the following steps will be taken to achieve compliance:

(1)-(4) (No change.)

§115.940. Equivalency Determination. Upon final adoption of any volatile organic compound program of general applicability by the United States Environmental Protection Agency (EPA), the Executive Director may review the provisions of the program to determine if it is at least as stringent as the requirements of this chapter. If the Executive Director determines that the EPA program is at least as stringent as the requirements for this subchapter, the Executive Director by notice published in the *Texas Register* may deem compliance with the new EPA program to be compliance with the applicable provision of this chapter. Notice of intent to publish such equivalency determination shall be provided to the appropriate EPA regional office 45 days prior to publication. The Executive Director shall review any objection from EPA prior to final publication. The Executive Director may also make a similar equivalency determination that compliance with an EPA program shall be deemed compliance with the appropriate provisions of this chapter.

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

Issued in Austin, Texas, on July 12, 1993.

TRD-9325579

Lane Hartsock

Deputy Director, Air Quality
Planning
Texas Air Control Board

Proposed date of adoption: November 12, 1993

For further information, please call: (512) 908-1451

General Permits

• 31 TAC §115.950

The Texas Air Control Board (TACB) proposes new §115.950, concerning General Construction Permits for Volatile Organic Compounds (VOC) Control Projects. The proposed changes have been developed in response to requirements by the United States Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (FCAA) Amendments to apply reasonably available control technology (RACT) requirements to major sources of VOCs in the following ozone nonattainment counties: Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, and Waller.

The proposed new section establishes a general permit procedure for permitting VOC abatement equipment required to be installed by Chapter 115, concerning Control of Air Pollution From Volatile Organic Compounds. Use of the general permit allows exemption from the requirements of Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification. The rule specifies certain conditions under which the general permit is applicable.

Lane Hartsock, deputy director of air quality planning, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Hartsock 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 satisfaction of FCAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard. There will be no effect on small businesses. Economic costs to persons required to implement the proposed modified emission specifications are expected to be minimal, since the difference between the applicable permit limits and the RACT limits are small. Persons subject to the proposed revisions to the Administrative Provisions are expected to experience a reduction in economic costs associated with rule compliance, since these changes add flexibility in acceptable methods of reducing emissions, allow for additional time to comply with the requirements, and reduce the need for obtaining construction permits as a consequence of the rule. There are no costs anticipated beyond 1996.

Public hearings on this proposal are scheduled for the following times and places: August 4, 1993, 6:30 p.m., City of El Paso Council Chambers, Second Floor, 2 Civic

Center Plaza, El Paso; August 5, 1993, 2:30 a.m., City of Arlington Council Chambers, 101 West Abram Street, Arlington; August 5, 1993, 8:30 p.m. Houston-Galveston Area Council, Conference Room A, 3555 Timmons Lane, Houston; August 6, 1993, 11:30 a.m., John Gray Institute, 855 Florida Avenue, Beaumont.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. The hearings are structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings may be submitted to the TACB Central Office in Austin through August 13, 1993. Material received by the Regulation Development Division by 4:00 p.m. on that date will be considered by the Board prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Division of the TACB Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753, and at all TACB regional offices. For further information, contact Amba Mann, (512) 908-1930.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

The new rule is proposed under the Texas Health and Safety Code (Vernon 1990), Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.950. General Construction Permits for Volatile Organic Compounds (VOC) Control Projects.

(a) In lieu of complying with the permitting requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), any person who installs VOC abatement equipment or implements a VOC control technique in order to comply with the requirements of this chapter shall be entitled to a general permit under the following conditions.

(1) The change must not result in an increase of the unit's or the facility's production capacity.

(2) Any emission increase of an air contaminant other than VOC must be a direct result of and incidental to installing VOC abatement equipment or implementing a VOC control technique.

(3) If installation of VOC abatement equipment or implementation of a VOC control technique will result in a significant net increase in emissions of any

criteria pollutant, a person claiming a general permit shall submit information sufficient to demonstrate that the following conditions will be met:

(A) Considering the VOC reductions that will result from implementation of the requirements of this part, the emissions increase shall not cause or contribute to a violation of any national ambient air quality standard.

(B) The emissions increase shall not cause or contribute to a violation of any Prevention of Significant Deterioration (PSD) of Air Quality regulation increment.

(C) The emissions increase shall not cause or contribute to a violation of a visibility limitation.

(4) For purposes of this undesignated head, "significant net increase" means an increase of emissions equal to or greater than the amount specified in the MAJOR MODIFICATION column of Table I of §101.1 of this title (relating to Definitions).

(5) Notice of the intent to be covered by a general permit shall be filed with the Agency before a general permit can be claimed. Such notice should be filed on or before the compliance date of the applicable rule. Information required under paragraph (3) of this subsection must be submitted no later than 14 days prior to the commencement of construction for the installation of VOC abatement equipment or implementation of a VOC control technique.

(b) Unless notified by the executive director to the contrary, any person who submits notice of the intent to be covered by the general permit is authorized to emit the increase in the quantity of pollutants emitted or change in the type of pollutants emitted under the terms and conditions of this permit 14 days after the date that the notice of intent is postmarked, if all required submissions have been made. The Executive Director may deny coverage under this permit at any time upon a determination that the terms and conditions of this permit are not being met and may require submittal of a permit or permit amendment application for a permit under Chapter 116 of this title. Emissions covered by a general permit must comply with all rules and regulations of the Texas Air Control Board.

(c) For purposes of compliance with the PSD and nonattainment new source review provisions of Chapter 116 of this title, an increase that satisfies the requirements for a general permit shall not constitute a physical change or a change in the

method of operation. For purposes of compliance with the Standards of Performance for New Stationary Sources regulations promulgated by the United States Environmental Protection Agency at 40 Code of Federal Regulations (CFR) 60.14, an increase that satisfies the requirements for a general permit shall satisfy the requirements of 40 CFR 60.14(e)(5).

(d) All representations made in association with a notice of intent to claim a general permit become conditions upon which the VOC abatement equipment covered by the general permit shall be constructed and operated or the VOC control technique implemented. It shall be unlawful for any person to vary from such representations if the change in conditions will affect that person's right to claim a general permit under this section. Any change in conditions such that a person is no longer eligible to claim a general permit under this section requires submission of a permit or permit amendment application for a permit under Chapter 116 of this title.

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

Issued in Austin, Texas, on July 12, 1993.

TRD-9325580 Lane Hartssock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Proposed date of adoption: November 12, 1993

For further information, please call: (512) 908-1451

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 2. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

Subchapter D. Reimbursement Methodology

• **40 TAC §27.413, §27.415**

The Texas Department of Human Services (DHS) proposes amendments to §27.413 and §27.415, concerning rate setting methodology and ICF-MR/RC VIII experimental class, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) chapter. The purpose for the amendment to §27.413(c)(3)(B) is to delete from the reimbursement methodology the name of a facility which recently changed from a large facility to a six-bed facility and is no longer eligible for the children's facility rate class. The purpose

for the amendment to §27.413(f) and §27.415(c)(1)(B) is to incorporate changes resulting from implementation of the new Form 3650, Level of Care. These changes amend the qualifying scores for supplemental reimbursement for high-need ICF-MR VI clients and supplemental payments for qualifying ICF-MR clients with related conditions.

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

Mr. Raiford also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of which facilities are in the children's rate class and continuation of appropriate reimbursement for high-need clients. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Questions about the content of the proposal may be directed to Glenn Hart at (512) 450-4049 in DHS's Provider Reimbursement Department. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-170, 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 amendments are 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.

§27.413 Rate Setting Methodology.

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

(c) Rate determination. The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under the provisions of Chapter 24 of this title (relating to Reimbursement Methodology). The Texas Board of Human Services determines particular reimbursement rates for each class of ICF-MR provider by class of service based on consideration of DHS staff recommendations. To develop a separate set of reimbursement rate recommendations for each class of service within each provider class, DHS staff apply the following procedures.

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

(3) Alternate children's facility reimbursement rates for selected children's facilities are determined as follows, effective January 1, 1992.

(A) (No change.)

(B) Determination of eligibility. To be considered eligible for alternate children's facility reimbursement rates, a facility must be one of the selected facilities listed in clause (i) of this subparagraph and must meet the definition of a large children's facility as defined in clause (ii) of this subparagraph.

(i) Selected facilities. Selected facilities must be one of the following facilities covered by the Royal Thomas v. Marlin Johnston lawsuit Settlement Agreement.

(I)-(III) (No change.)

(IV) Human Development Center, Vendor Number 3751; and

(V) [Crossroads Development Center, Vendor Number 3756; and] [

(VI)] Denton Development Center, Vendor Number 3764.

(ii) (No change.)

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

(d)-(e)(No change.)

(f) Supplemental reimbursement rate determination. The reimbursement rate for community based ICF-MR VI individuals whose needs require a significantly greater than normal amount of care is supplemented on an individual client basis when the appropriate score is indicated for all of the six criteria on the level-of-care assessment form.

(1) The level-of-care assessment form must indicate the client meets the qualifying criteria by having the following scores on all of the items indicated [The client must meet all of the following six criteria on the level-of-care assessment form]:

Item [Conditions/Procedures]	Qualifying Score
51 [Mobility/Ambulation]	5 [6]
53 [Transferring]	4 [7]
55 [Bathing]	3 or 4 [7]
56 [Dressing/Grooming]	4 or 5 [7]
59 [Eating]	4 or 5 [6]
60 [Toileting]	4 or 5 [7]

(2) (No change.)

§27.415. ICF-MR/RC VIII Experimental Class.

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

(c) Supplemental rate determination. In order to obtain a Level-of-Care VIII assignment, the ICF-MR/RC facility must complete DHS's level-of-care assessment form for every Medicaid client living in the facility. DHS reimbursement rates for the ICF-MR/RC program vary according to the assessed characteristics of each client. Each client is eligible for a base rate. The reimbursement rate for persons whose needs require a significantly greater than normal amount of care is composed of the base rate plus one or more supplemental payment rates. These supplemental payments are determined on an individual basis when criteria are met for selected items on DHS's level of care assessment form.

(1) The supplemental rate classification system. The ICF-MR/RC rate structure consists of a base rate and seven separate supplemental amounts. The base rate is based on the standard costs of providing care and active treatment in a six-bed facility. The supplemental amounts target specific characteristics of certain related conditions that are known to require more facility space or equipment, additional staffing time, or additional professional staff time.

(A) (No change.)

(B) The seven supplemental rate classifications are based on the following criteria on DHS's level of care assessment form:

(i) Supplement 514 is applicable when Item 74 = 4 or 5; and Item 53 = 3 [Item 32 equals 5 or 6, and Item 33 equals 5].

(ii) Supplement 515 is applicable when Item 51 = 4 or 5; and Item 53 = 4 or Item 44 and 45 = 4 [Item 32 equals 5 or 6, and Item 33 equals 6, or Item 52 equals 8].

(iii) Supplement 516 is

applicable when Item 56 = 4 or 5 [Item 37 equals 6].

(iv) Supplement 517 is applicable when Item 63 = 4; and Item 64 = 3, 4, or 5 [Item 39 equals 6, and Item 40 equals 5 or 6 or 7].

(v) Supplement 518 is applicable when Item 71 = 4 or 5; or Item 72 = 4 or 5; or Item 73 = 4 or 5; or Item 74 = 4 or 5 [Item 82 equals 8 or 9, or Item 83 equals 7 or 8, or Item 85 equals 8 or 9, or Item 86 equals 8 or 9].

(vi) Supplement 519 is applicable when Item 74 = 7 [Item 83 equals 9].

(vii) Supplement 520 is applicable when Item 41 = 3 [Item 64 equals 3].

(2)-(5) (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 July 6, 1993.

TRD-9325343

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

Proposed date of adoption: August 31, 1993

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

**Chapter 4. Community Care
for Aged and Disabled**

**Medicaid Waiver Program for
Persons with Related Condi-
tions**

• 40 TAC §48.2103

The Texas Department of Human Services (DHS) proposes an amendment to §48.2103, concerning participant eligibility criteria, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to allow certain foster care children and Aid to Families with Dependent Children recipients to receive Community Living Assistance and Support Services (CLASS) waiver services.

Burton F. Raiford, commissioner, has determined that for the first five-year period the

proposed rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Raiford 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 to allow qualified individuals to receive needed waiver services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rule.

Questions about the content of the proposal may be directed to Barbara Stegall at (512) 450-3228 in DHS's Community Care Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-162, 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.

§48.2103. Participant Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for waiver program services, an applicant must:

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

(4) be an individual who would be financially eligible for Medicaid if residing in a Medicaid-certified institution. For these individuals, the policies specified in subparagraphs (A) and (B) of this paragraph apply.

(A) Spousal impoverishment provisions.

(i)-(iv) (No change.)

(B) Calculation of participant copayment.

(i)-(ii) (No change.)

(iii) Participants must pay the copayment amount to the provider

contracted to deliver authorized waive services; or [.]

(5) be an individual under age 19;

(A) for whom the Texas Department of Protective and Regulatory Services (TDPRS) assumes financial responsibility for, in whole or in part (not to exceed level II foster care payment); and

(B) who is being cared for in a family foster care home licensed or certified and supervised by:

- (i) TDPRS; or
 - (ii) a licensed public or private nonprofit child placing agency; or
- (6) be a member of a family

that receives Medicaid as a result of qualifying for AFDC.

(b)-(c) (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 July 7, 1993.

TRD-8325357 Nancy Murphy
 Section Manager, Policy
 and Document Support
 Texas Department of
 Human Services

Proposed date of adoption: October 1, 1993

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



Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L.

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

The State Board of Insurance, of the Texas Department of Insurance at a Board meeting scheduled for 1:30 p.m. August 19, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider the adoption of amendments to the Texas General Basis Schedules and the Texas Personal Lines Manual. These amendments are made necessary because of the withdrawal of the Texas Fire Record Sys-

tem as an acceptable and recognized rating system for applying debits and credits to the fire premiums charged for risks located within cities and towns in Texas. The amendments consist of the elimination of rules governing the method of determining a fire record for individual cities and towns in Texas, contained in the Texas General Basis Schedules and the elimination of rules governing the application of a fire record to risks insured under a residential policy, as outlined in the Personal Lines Manual. Revised provisions contained in House Bill 2, enacted by the 72nd Legislature, make the application of a fire record system inappropriate and will produce excessive or inadequate premiums for homeowners insurance. In addition, the determination of fire records under the fire record system is not actuarially based and is no longer reflective of the fire protection afforded a city or town.

Copies of the full text of the amendments are available for review in the office of the Chief Clerk of the State Board of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the text, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number P-0693-14-1)

The notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on July 9, 1993.

TRD-9325551 Linda K. von Quintus-Dorn
 Chief Clerk
 Texas Department of
 Insurance

For further information, please call: (512) 463-8328



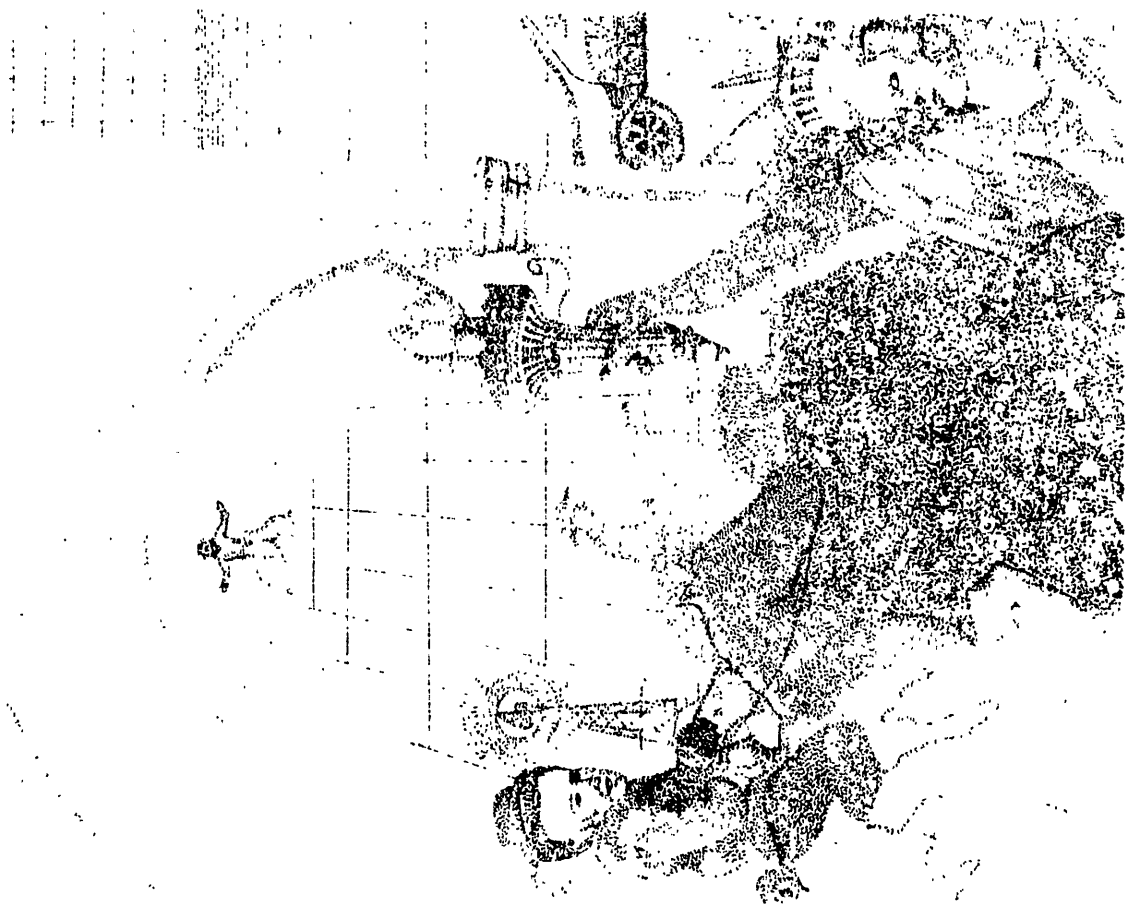
Insurance

For further information, please call: (512)
463-6328





Name: Carie Clouse
Grade: 12
School: Plano East Senior High, Plano ISD



Name: Kris Ardis
Grade: 11
School: Plano East Senior High, Plano ISD

Withdrawn Sections

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

TITLE 22. EXAMINING BOARDS

Part XIV. Texas Optometry Board

Chapter 273. General Rules

- 22 TAC §273.4

The Texas Optometry Board has withdrawn from consideration for permanent adoption a proposed amendment §273.4 which appeared in the July 6, 1993, issue of the *Texas Register* (18 TexReg 4378). The effective date of this withdrawal is July 5, 1993.

Issued in Austin, Texas, on July 5, 1993.

TRD-9325288 Lois Ewald
Executive Director
Texas Optometry Board

Effective date: July 5, 1993

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

- 22 TAC §273.8

The Texas Optometry Board has withdrawn from consideration for permanent adoption a proposed new §273.8 which appeared in the July 6, 1993, issue of the *Texas Register* (18 TexReg 4379). The effective date of this withdrawal is July 5, 1993.

Issued in Austin, Texas, on July 5, 1993.

TRD-9325289 Lois Ewald
Executive Director
Texas Optometry Board

Effective date: July 5, 1993

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

TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 473. Fees

- 22 TAC §473.5

The Texas State Board of Examiners of Psychologists has withdrawn from consideration

for permanent adoption a proposed amendment to §473.5 which appeared in the April 9, 1993, issue of the *Texas Register* (18 TexReg 2351). The effective date of this withdrawal is July 27, 1993.

Issued in Austin, Texas, on July 6, 1993.

TRD-9325313 Rebecca E. Fortner
Acting Executive Director
Texas State Board of
Examiners of
Psychologists

Effective date: July 27, 1993

For further information, please call: (512) 835-2036

TITLE 25. HEALTH SER- VICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter G. Community Mental Health and Mental Retardation Centers

- 25 TAC §§401.463-401.465

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration for permanent adoption a proposed new §§401.463-401.465 which appeared in the May 25, 1993, issue of the *Texas Register* (18 TexReg 3344). The effective date of this withdrawal is July 9, 1993.

Issued in Austin, Texas, on July 9, 1993.

TRD-9325518 Ann K. Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Effective date: July 9, 1993

For further information, please call: (512) 465-4516

TITLE 37. PUBLIC SAFETY AND CORREC- TIONS

Part I. Texas Department of Public Safety

Chapter 3. Traffic Law Enforcement

Traffic Supervision

- 37 TAC §3.62

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91.24(b), the proposed amendment to §3.62, submitted by the Texas Department of Public Safety has been automatically withdrawn, effective July 9, 1993. The amendment as proposed appeared in the January 8, 1993, issue of the *Texas Register* (18 TexReg 157).

TRD-9325545

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