

Texas Register

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Texas Register



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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions

Emergency 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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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

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

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 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
40 IAC §3 704 . . . 950, 1820

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

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

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Commission**

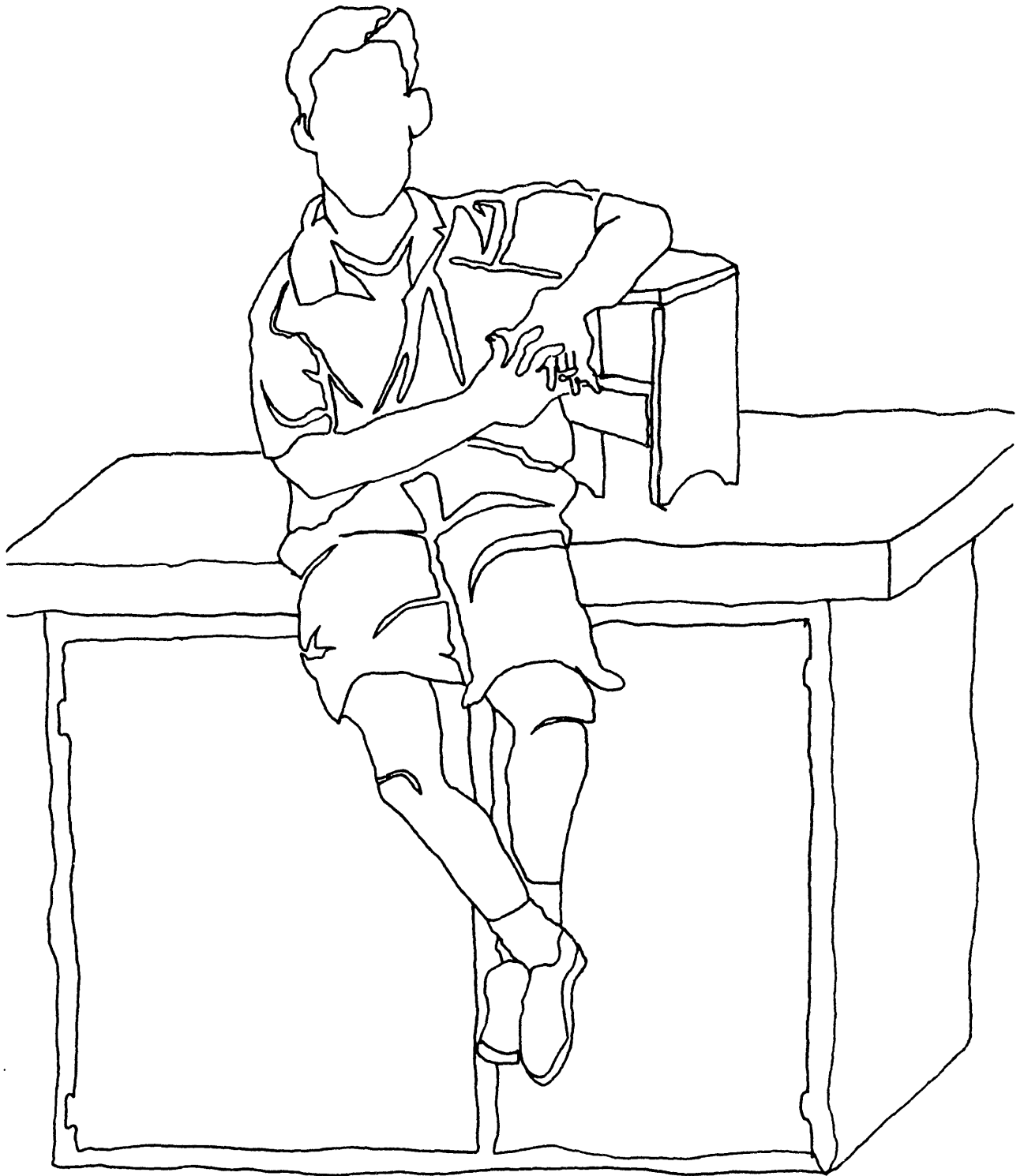
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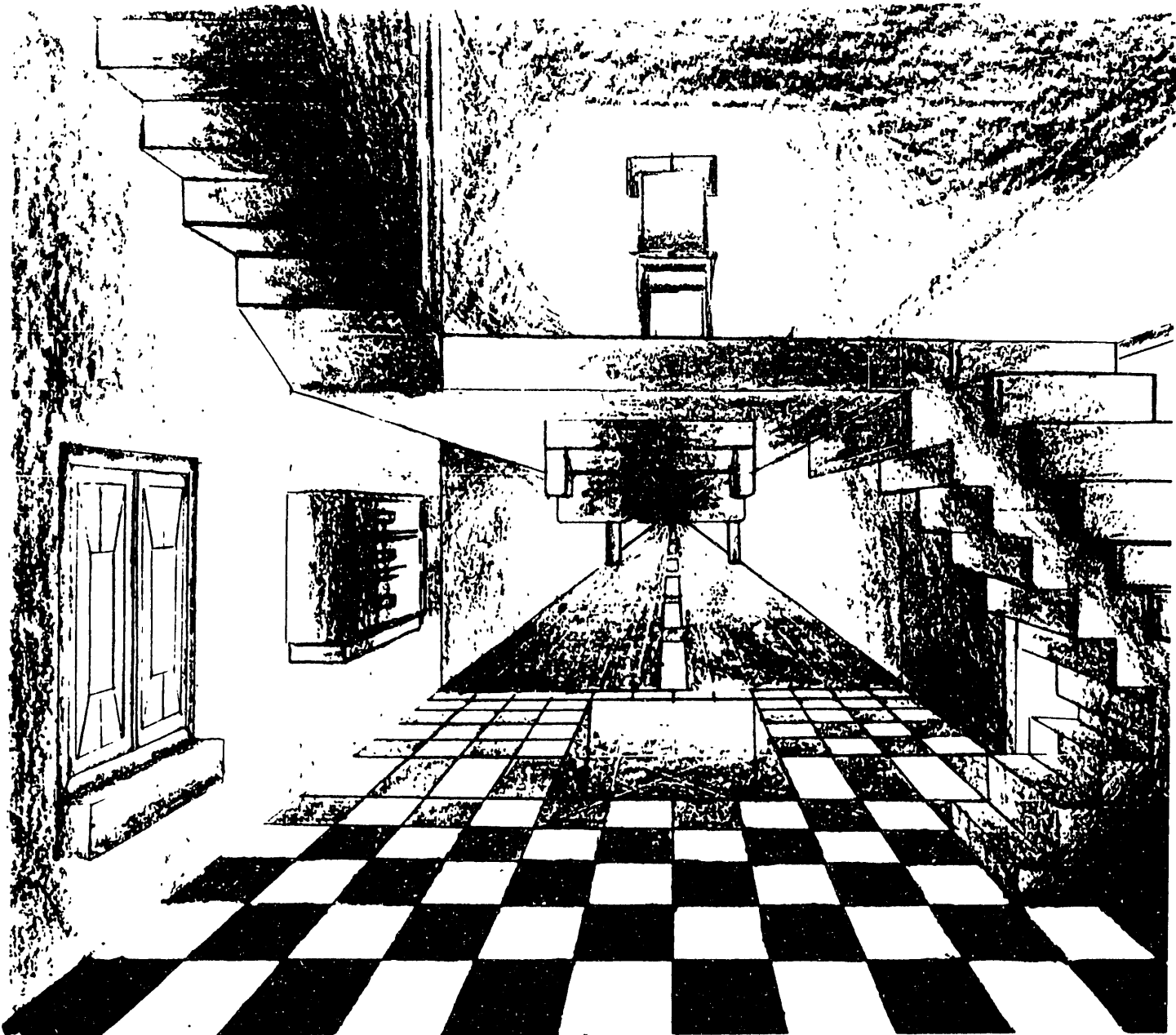
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Emergency Sections

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

Symbology in amended emergency sections. 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 22. EXAMINING BOARDS

Part XVII. Texas State Board of Plumbing Examiners

Chapter 361. Administration

General Provisions

- 22 TAC §§361.1, §361.6

The Texas State Board of Plumbing Examiners is renewing the effectiveness of the emergency adoption of amended §361.1, and §361.6, for a 60-day period effective November 27, 1993. The text of amended §361.1, and §361.6, was originally published in the August 6, 1993, issue of the *Texas Register* (18 TexReg 5171).

Issued in Austin, Texas, on October 11, 1993

TRD-9330306 Douglas A. Beran, Ph.D.
Chief Fiscal Officer/Office
Manager
Texas State Board of
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For further information, please call: (512) 458-2145

- 22 TAC §361.22

The Texas State Board of Plumbing Examiners is renewing the effectiveness of the emergency adoption of amended §361.22, for a 60-day period effective November 27, 1993. The text of amended §361.22, was originally published in the August 6, 1993, issue of the *Texas Register* (18 TexReg 5173).

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Chapter 363. Examinations

Qualifications

- 22 TAC §§363.1, 363.5, 363.7, 363.9, 363.11

The Texas State Board of Plumbing Examiners is renewing the effectiveness of the emergency adoption of amended and new §§363.1, 363.5, 363.7, 363.9, and 363.11, for a 60-day period effective November 27, 1993. The text of amended and new §§363.1, 363.5, 363.7, 363.9, and 363.11, was originally published in the August 6, 1993, issue of the *Texas Register* (18 TexReg 5173).

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Chapter 365. Licensing

License Categories; Description; Scope of Work Permitted

- 22 TAC §§365.1, 365.3-365.6, 365.9, 365.10

The Texas State Board of Plumbing Examiners is renewing the effectiveness of the emergency adoption of amended §§365.1, 365.3-365.6, 365.9, and 365.10, for a 60-day period effective November 27, 1993. The text of amended §§365.1, 365.3-365.6, 365.9, and 365.10, was originally published in the August 6, 1993, issue of the *Texas Register* (18 TexReg 5175).

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Texas State Board of
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Chapter 367. Enforcement

- 22 TAC §367.7

The Texas State Board of Plumbing Examiners is renewing the effectiveness of the emergency adoption of amended §367.7, for a 60-day period effective November 27, 1993. The text of amended §367.7, was originally published in the August 6, 1993, issue of the *Texas Register* (18 TexReg 5176).

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For further information, please call (512) 458-2145

Part XXX. Texas State Board of Examiners of Professional Counselors

Chapter 681. Professional Counselors

The Texas State Board of Examiners of Professional Counselors (the board) adopts on an emergency basis the repeal of existing §§681.2, 681.21, 681.53, 681.81, 681.98, 681.113, 681.192, and 681.216, and new §§681.2, 681.21, 681.53, 681.81, 681.98, 681.113, 681.192, and 681.216, concerning the regulation of licensed professional counselors.

The repeal of existing sections and new sections are adopted on an emergency basis in order to meet requirements of state law Acts 1993, 73rd Legislature, Chapter 581 (House Bill 2741), amended the Licensed Professional Counselor Act and became effective September 1, 1993. The repeals and new sections are necessary to prevent conflict between the new law and the rules and to implement new requirements of law.

The new sections define and further clarify definitions, establish a new fees schedule to reflect legislative amendments, establish application materials for a provisional license; establish requirements for a temporary li-

cense; establish guidelines for notifying examinees of test results; establish criteria for obtaining a provisional license by endorsement; establish criteria for the temporary suspension of a license on an emergency basis; and establish criteria for serving subpoenas.

Subchapter A. The Board

• 22 TAC §681.2, §681.21

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

§681.2. Definitions.

§681.21. Fees.

Issued in Austin, Texas, on October 11, 1993.

TRD-9330250 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

Effective date: October 11, 1993

Expiration date: February 9, 1994

For further information, please call: (512) 834-6658



The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

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

Act—The Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, as amended.

Accredited universities—Universities as reported by the American Association of Collegiate Registrars and Admission Officers.

APA—The Administrative Procedure Act, the Government Code, Chapter 2001.

Authorized representative—An individual authorized to act on behalf of a licensee as evidenced by a written power of attorney or the licensee's spouse.

Board—The Texas State Board of Examiners of Professional Counselors.

Client—A person who seeks or receives services from a licensee.

Counseling intern—A person who holds a temporary license to practice counseling.

Department—The Texas Department of Health.

Health care professional—A licensee or any other person licensed, certified, or registered by the State in a health related profession.

License—A regular, provisional, or temporary license issued by the board unless the content of the rule indicates otherwise.

Licensee—A person who holds a regular, provisional, or temporary license.

Recognized religious practitioner—A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(1) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally cognizable church, denomination or sect, or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, §1.6033-2(g)(5)(i), (1982);

(2) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(3) the person does not use the title of or hold himself or herself out as a professional counselor.

Supervisor—A person approved by the board as meeting the requirements set out in §681.83 of this title (relating to Supervisor Requirements), to supervise a counseling intern.

§681.21. Fees.

(a) Fees are as follows:

(1) application and temporary license fee—\$60;

(2) application and provisional license fee—\$60;

(3) application fee for a regular license—\$30;

(4) license examination fee—\$80;

(5) regular license fee—\$36;

(6) annual renewal fee—\$40;

(7) late renewal fee—(when renewed after expiration date but on or within 90 days of expiration)—\$80;

(8) license renewal penalty fee (must be paid along with renewal fee when license is renewed more than 90 days but within one year of the expiration date)—\$75;

(9) inactive status fee—\$75;

(10) license certificate or renewal card duplication or replacement fee—\$10;

(11) returned check fee—\$15;

(12) application materials fee—\$5; and

(13) examination review fee—\$25.

(b) Fees paid to the board by applicants are not refundable except in accordance with §681.22 of this title (relating to Processing Procedures).

(c) Remittances submitted to the board in payment of fees may be in the form of a personal check, cashier's check, or money order; however, a returned check fee must be in the form of a cashier's check or money order.

Issued in Austin, Texas, on October 11, 1993.

TRD-9330249 James O Mathis, Ed D
Chair
Texas State Board of Examiners of Professional Counselors

Effective date: October 11, 1993

Expiration date: February 9, 1994

For further information, please call: (512) 834-6658



Subchapter C. Application Procedures

• 22 TAC §§681.53

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

§681.53. Required Application Materials.

Issued in Austin, Texas, on October 11, 1993.

TRD-9330248 James O Mathis, Ed.D
Chair
Texas State Board of Examiners of Professional Counselors

Effective date: October 11, 1993

Expiration date: February 9, 1994

For further information, please call: (512) 834-6658



The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6 which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

§681.53 Required Application Materials

(a) General application form An application form shall contain

(1) specific information regarding personal data, employment and type of practice, other state licenses and certifica-

tions held, felony or misdemeanor convictions, educational background including practicum experience, information concerning supervised experience, and references, if applying for a regular license;

(2) a statement that the applicant has read the Licensed Professional Counselor Act (Act) and Texas State Board of Examiners of Professional Counselor (board) rules, and agrees to abide by them;

(3) the applicant's permission to the board to seek any information or references it deems fit to determine the applicant's qualifications;

(4) a statement that the applicant, if issued a license certificate, shall return the license to the board upon the revocation or suspension of the license;

(5) a statement that the applicant understands that fees submitted in the licensing process are non-refundable;

(6) the applicant's signature, dated and notarized; and

(7) a recent full-face wallet-size photograph of the applicant with the imprint of the notary seal on the edge of the photograph.

(b) Practicum documentation form if applying for a temporary or regular license. The practicum documentation form shall contain:

(1) the applicant's name;

(2) the name and address of the agency or organization where the practicum was done;

(3) the name, address, degree, position, and licensure status of the supervisor of the practicum;

(4) inclusive dates of the practicum, the number of clock-hours of practice, the number of academic semester hours awarded, and the name of the school at which the practicum was taken;

(5) the type of setting, the kinds of clients seen, and the counseling methods employed;

(6) any evaluation of the counseling skills of the applicant; and

(7) the signature of the supervisor or agency or school official who can formally attest to the applicant's practicum experience.

(c) Supervised experience documentation form if applying for a regular license. The supervised experience documentation form must be completed by the applicant's supervisor and contain:

(1) the name of the applicant,

(2) the name, address, degree, licensure status, and credentials of the applicant's supervisor;

(3) the name and address of the agency or organization where the experience was gained;

(4) the inclusive dates of the supervised experience and the total number of hours of practice;

(5) the number of hours of weekly face-to-face supervision given to the applicant, the total number of supervisory hours received by the applicant in the experience, and the types of supervision used;

(6) the applicant's employment status during supervised experience;

(7) the types of clients seen and counseling methods used;

(8) the supervisor's evaluation of the applicant's counseling skills and competence for independent or private practice;

(9) the supervisor's notarized signature; and

(10) a statement that the supervised experience complies with the rules set out in Subchapter E of this title (relating to Experience Requirements for Examination and Licensure).

(d) Supervisory contract if applying for a temporary license. An applicant for a temporary license must submit a copy of the board's supervisory contract signed by both the supervisor and applicant.

(e) Graduate transcripts. An applicant must have the official transcript(s) showing all relevant graduate work sent directly to the board from the school(s) where the applicant obtained the course work.

(f) References. An applicant for any license must have board reference forms submitted by three persons who can attest to the applicant's counseling skills and professional standards of practice.

(1) The references shall be persons who are not named elsewhere in the applicant's application and are not current members of the board.

(2) References must include at least one licensed professional counselor. All references must be from persons licensed or certified in the counseling profession or appropriately related professions.

(3) Applicants for a license shall not use current members of the board as references.

(g) Provisional license based on endorsement. Applicants for a provisional license based on endorsement must submit:

(1) a general application form as set out in subsection (a) of this section and the provisional license fee;

(2) official documentation of licensure in another state or territory;

(3) official documentation that the applicant has passed a national examination relating to counseling or an exam offered by another state or territory for licensure as a counselor; and

(4) a letter of sponsorship from a person who holds a regular license in Texas to practice counseling.

Issued in Austin, Texas, on October 11, 1993.

TRD-9330247

James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Effective date: October 11, 1993

Expiration date: February 9, 1994

For further information, please call: (512) 834-6658

◆ ◆ ◆
Subchapter E. Experience Requirements for Examination and Licensure

◆ ◆ ◆
• 22 TAC §681.81

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

◆ ◆ ◆
§681.81. Purpose.

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For further information, please call: (512) 834-6658

◆ ◆ ◆
The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

◆ ◆ ◆
§681.81. Temporary License.

(a) The board will issue a temporary license to an applicant who:

(1) has filed an application form and temporary license fee;

(2) has met all of the academic requirements for licensure; and

(3) has entered into a supervi-

sory agreement with a supervisor meeting the requirements of §681.83 of this title (relating to Supervisor Requirements); and

(4) has not failed any two successive board examinations.

(b) A person must obtain a temporary license before the person begins an internship.

(c) A temporary licensee may practice only as part of his or her internship.

(d) A counseling intern must maintain a temporary license during his or her supervised experience.

(e) A temporary license is valid for 30 months.

(f) A counseling intern who does not obtain a regular license during the 30 months may apply for a second temporary license. No more than two temporary licenses will be issued.

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For further information, please call (512) 834-6658

Subchapter F. Licensure Examinations

• 22 TAC §681. 98

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

§681.98. Notice of Results.

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The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors

§681.98. Notice of Results.

(a) The board shall notify each examinee of the examination results within 30 days of the date of the examination.

(b) No matter what numerical or other scoring system the board may use in arriving at examination results, the official notice of results to applicants shall be stated in terms of "pass" or "fail."

(c) If the notice of examination results graded or reviewed by the national testing service will be delayed for more than 90 days after the date of the examination, the board shall notify the applicant before the 90th day

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Chair
Texas State Board of
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For further information, please call (512) 834-6658

Subchapter G. Licensing

• 22 TAC §681.113

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors

§681.113. Reciprocity.

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For further information, please call (512) 834-6658

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6 which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors

§681.113 Endorsement

(a) The board may grant a provisional license to a person who holds, at the time of application, a license or certificate as a counselor issued by another state or territory that is acceptable to the board. An applicant for a provisional license must

(1) submit an application and provisional license fee;

(2) be licensed in good standing as a counselor in another state or territory that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Licensed Professional Counselor Act (Act);

(3) have passed a national examination relating to counseling or an exam offered by another state or territory for licensure as a counselor; and

(4) be sponsored by a person who holds a regular license issued by the board with whom the provisional licensee may practice.

(b) An applicant for a provisional licensee may be excused from the requirement of subsection (a)(4) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) The board must complete the processing of a provisional licensee's application for a license not later than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever is later

(d) A provisional license is valid until the date the board approves or denies the provisional licensee's application for a license.

(e) The board shall issue a regular license to the holder of a provisional license if:

(1) the provisional licensee passes the examination required by the Act §12, and

(2) the board verifies that the provisional licensee has the academic and experience requirements for a regular license

(f) The board shall consider only states and territories of the United States as acceptable for the purposes of licensure by endorsement.

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For further information, please call (512) 834-6658

Subchapter L. Complaints and Violations

• 22 TAC §681.192

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6 which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors

§681.192. Denial, Revocation, or Suspension of Licensure

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For further information, please call: (512) 834-6658

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6 which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

§681.192 Disciplinary Action; Notices

(a) The board may deny, revoke, temporarily suspend, or suspend a license, or may probate disciplinary action, or may issue a reprimand to a person who has:

(1) violated any provision of the Licensed Professional Counselor Act (Act);

(2) violated any rule adopted by the board; or

(3) is legally committed to an institution because of mental incompetence from any cause.

(b) Prior to institution of formal proceedings to revoke, or suspend a license, the board shall give written notice to the licensee by personal service or certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension; and the licensee or applicant shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(c) If denial, revocation, or suspension of a license is proposed, the board shall give written notice by certified mail, return receipt requested, regular mail; or personal delivery of the basis for the proposal and that the licensee or applicant must request, in writing, a formal hearing within 10 days of receipt of the notice, or the right to a hearing shall be waived and the license shall be denied, revoked, or suspended

(d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt.

(e) No notice or hearing is required for the board to issue a reprimand other than notice to the licensee of the board meeting where the reprimand will be considered.

(f) No prior notice or hearing is required to temporarily suspend a license; however, appropriate notice shall be given prior to the hearing held after temporary suspension of the license in accordance with the Act §16(A).

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For further information, please call: (512) 834-6658

Subchapter M. Formal Hearings

• 22 TAC §681.216

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

§681.216. Subpoenas.

Issued in Austin, Texas, on October 11, 1993.

TRD-9330238

James O. Mathis, Ed D
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For further information, please call (512) 834-6658

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4512g, §6 which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors

§681.216. Subpoenas

(a) On the hearing examiner's own motion or on the written request of any party to the hearing, the hearing examiner

shall issue a subpoena to the appropriate sheriff or constable to require the attendance of witnesses or the production of documents. A subpoena may be served by any person authorized to serve subpoenas under the Civil Practice and Remedies Code.

(b) All procedures relating to subpoenas shall be in accordance with the Administrative Procedure Act (Act).

(c) A party or witness may seek to quash the subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure.

(d) Documents include books, papers, accounts, and similar materials or objects

(e) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled shall be paid for mileage, transportation, meals, and lodging expenses and a fee of \$10 per day in accordance with the APA.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part II. Texas Rehabilitation Commission

Chapter 116. Advisory Committees/Councils

• 40 TAC §§116.1-116.8

The Texas Rehabilitation Commission adopts on an emergency basis new §§116.1-116.8, concerning advisory committees/councils. The new sections adopted on an emergency basis are contemporaneously proposed for public comment in this issue of the *Texas Register*.

The purpose of the emergency adoption is to comply with the provisions of Senate Bill 383 (73rd Legislature), which requires that the Commission outline in rule form the committees/councils which advise the Commission

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §51(d), which provide emergency rulemaking powers, and under the Texas Human Resource Code, §111.018, which provides the Texas Rehabilitation Commission with rulemaking powers

§116.1. Purpose. The purpose of this chapter is to identify the advisory committees/councils of the Texas Rehabilitation Commission.

§116.2. Rehabilitation Advisory Council.

(a) **Legal Basis.** Rehabilitation Advisory Council is created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code, §725, and the Texas Human Resources Code, §111.016. The federal law requires that the Commission establish the Texas Rehabilitation Advisory Council in order to receive financial assistance. Failure to establish the Council would prohibit federal financial assistance.

(b) **Purpose.** The Rehabilitation Advisory Council advises the Texas Rehabilitation Commission regarding the performance of the responsibilities of the Commission in the provision of services to individuals with disabilities.

(c) **Tasks.** The Council shall:

(1) review, analyze, and advise the Commission regarding the performance of responsibilities, particularly responsibilities relating to:

(A) eligibility (including order of selection);

(B) the extent, scope, and effectiveness of services provided; and

(C) functions performed by state agencies that affect or that potentially affect the ability of individuals with disabilities in achieving rehabilitation goals and objectives;

(2) advise the Commission and at its discretion, assist in the preparation of applications, the state plan, the strategic plan and amendments to the plans, reports, needs assessments, and evaluations required;

(3) to the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with:

(A) the functions performed by state agencies and other public and private entities responsible for performing functions for individuals with disabilities; and

(B) vocational rehabilitation services-

(i) provided, or paid for from funds made available, under 29 United States Code, §725 or through other public or private sources; and

(ii) provided state agencies and other public or private entities responsible for providing vocational rehabilitation services to individuals with disabilities;

(4) coordinate with other councils within the State, including the Statewide Independent Living Council established under 29 United States Code, §796d, the advisory panel established under 20 United States Code, §1431(a)(12), the State Planning Council described in 42 United States Code, §6024, and the State mental health planning council established under 42 United States Code, §300x-4(e);

(5) advise the Commission and provide for coordination and the establishment of working relationships between the Commission and the statewide Independent Living Council and centers for independent living within the state; and

(6) perform such other functions consistent with the Rehabilitation Act of 1973, as amended, as the Council determines to be appropriate that are comparable to other functions performed by the Council.

(d) **Reports.** The Council shall:

(1) prepare and submit an annual report to the Governor or appropriate state entity and the Commissioner on the status of vocational rehabilitation programs operated within the state, and make the report available to the public; and

(2) submit to the Commissioner such periodic reports as the Commissioner may reasonably request, and keep such records as the Commissioner finds necessary to verify such reports.

(e) **Funding.** The council is funded primarily by federal funds and its existence is required in order to receive and expend federal funds.

§116.3. Statewide Independent Living Council.

(a) **Legal Basis.** The Statewide Independent Living Council is created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code, §796d. Failure to establish the Council would prohibit federal financial assistance

(b) **Purpose.** The Rehabilitation Act of 1973, as amended, 29 United States Code, §796d, requires that each state shall establish a Statewide Independent Living Council

(c) **Tasks.** The Statewide Independent Living Council shall:

(1) in conjunction with the TRC, jointly develop and submit the state plan for independent living services as required by federal law,

(2) monitor, review, and evaluate the implementation of the state plan for independent living;

(3) coordinate activities with the Rehabilitation Advisory Council set out in §116.2 of this title (relating to Rehabilitation Advisory Council) and other councils that address the needs of specific disability populations and issues under other federal law;

(4) ensure that all regularly scheduled meetings of the Council are open to the public and sufficient advance notice is provided.

(d) **Reports.** Submit to the federal government such periodic reports as the federal government may reasonably request, and keep such records as the federal government finds necessary to verify such reports.

(e) **Funding.** The council is funded primarily by federal funds and its existence is required in order to receive and expend federal funds.

§116.4. Medical Consultation Advisory Committee.

(a) The Medical Consultation Advisory Committee is necessary to operate the Federal-State rehabilitation programs under the Rehabilitation Act of 1973, as amended 29 United States Code, §701 et seq and 34 Code of Federal Regulation §361.1 which mandates the use of physicians and licensed psychologists in the rehabilitation program.

(b) **Purpose.** The purpose of the Medical Consultation Committee is to bring together many of the various specialties and disciplines involved in providing medical examinations, consultations, and restorative services for the disabled, in order that their broad range of knowledge may be made available and used by those responsible for administering the medical aspects of the vocational rehabilitation program and the social security administration disability insurance program.

(c) **Tasks.**

(1) The Medical Consultation Committee advises the Commissioner concerning policies and standards for provision of quality medical care, physical restoration, fees for medical and surgical services, and rates for hospital care.

(2) The Committee assists the Commission in maintaining constructive relations with the medical profession and hospitals in the State and interpreting the vocational rehabilitation and disability determination programs to the medical profession and medical or related institutions.

(d) **Reports.** The Committee serves in a consultative role to the Commissioner

and reports directly to the Commissioner following Committee meetings and as otherwise directed by the Commissioner.

(e) Funding. The Committee is funded primarily by federal funds and its existence is essential to the receipt of federal funds.

§116.5. Community Rehabilitation Programs Advisory Committee

(a) Legal Basis. The Community Rehabilitation Programs Advisory Committee is created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code, §701 et seq, and the Texas Human Resource Code, §111 et seq. Federal law requires that the commission utilize Community Rehabilitation Programs to the maximum extent feasible and that the Commission assess the capacity and effectiveness of Community Rehabilitation Programs.

(b) Purpose. The community Rehabilitation Programs Advisory Committee advises the Texas Rehabilitation Commission regarding utilization and assessment of community Rehabilitation Programs.

(c) Tasks. The Committee advises the commission regarding:

(1) utilization of Community Rehabilitation Programs to the maximum extent feasible;

(2) establishing and monitoring of standards for the services provided by Community Rehabilitation Programs, and

(3) assessing the capacity and effectiveness of Community Rehabilitation Programs.

(d) Reports. The Committee provides recommendations to the Commission in periodic reports to the Deputy Commissioner for Rehabilitation Services.

(e) Funding. The Committee is funded primarily by federal funds.

§116.6. Increased Client Choice Advisory Committee.

(a) Legal Basis. The Increased Client Choice Advisory Committee is created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code, §701 et

seq, and the Texas Human Resource Code, §111 et seq. Federal law requires increased client choice in the vocational rehabilitation program and authorizes federal discretionary grant funds to implement increased client choice.

(b) Purpose. The committee was formed to design an application for a federal grant to increase client choice in the vocational rehabilitation program and to guide the implementation of increased client choice.

(c) Tasks. The Committee designed an application for the federal grant and will guide the implementation of increased client choice.

(d) Reports. The Committee serves in a consultative role to the Commission and reports to the Commissioner as directed by the Commissioner

(e) Funding. The Committee is funded primarily by federal funds.

§116.7. Comprehensive Rehabilitation Advisory Committee.

(a) Legal Basis. The Comprehensive Rehabilitation Advisory Committee is created by the Commissioner of the Texas Rehabilitation Commission pursuant to the authority granted to him by the Texas Human Resource Code, §111.023 and §111.060.

(b) Purpose. The purpose of the Comprehensive Rehabilitation Advisory Committee is to advise the Commissioner regarding the development and implementation of the Comprehensive Rehabilitation Program to assist individuals with closed head injuries and spinal cord injuries as described in Chapter 113 of this title.

(c) Tasks. The task of the Committee is to provide ongoing review and input regarding the goals and objectives of the Comprehensive Rehabilitation Program.

(d) Reports. The Committee serves in a consultative role to the Commission and reports to the Commissioner following Committee meetings and as otherwise directed by the Commissioner.

(e) Funding. The committee is funded through state funds from the Com-

prehensive Rehabilitation Fund created at the Texas Human Resource Code, §111.060.

§116.8. Deaf-Blind Advisory Committee.

(a) Legal Basis. The Deaf-Blind Advisory Committee is created by the Commissioner of the Texas Rehabilitation Commission pursuant to the authority granted to him by the Texas Human Resource Code, §111.023 and §113.001.

(b) Purpose. The purpose of the Committee is to bring consumers together with many of the various specialists and interested parties involved in the provision of services to people who are deaf-blind multihandicapped so that the broad range of experience and knowledge of the Committee is made available and used by those responsible for administering the TRC's Deaf-Blind Program

(c) Tasks. The main task of the Committee is to provide consumer input to the Commission concerning policies, standards, and issues related to the provision of quality services to people who are deaf-blind multihandicapped, a group of persons with severe disabilities who are served by the Commission.

(d) Reports. The Committee serves in a consultative role to the Commission and reports to the Commissioner following Committee meetings and as otherwise directed by the Commissioner.

(e) Funding. The Deaf-blind Program is funded by state funds appropriated to Texas Rehabilitation Commission pursuant to the Texas Human Resource Code, §113.001.

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TRD-9330307

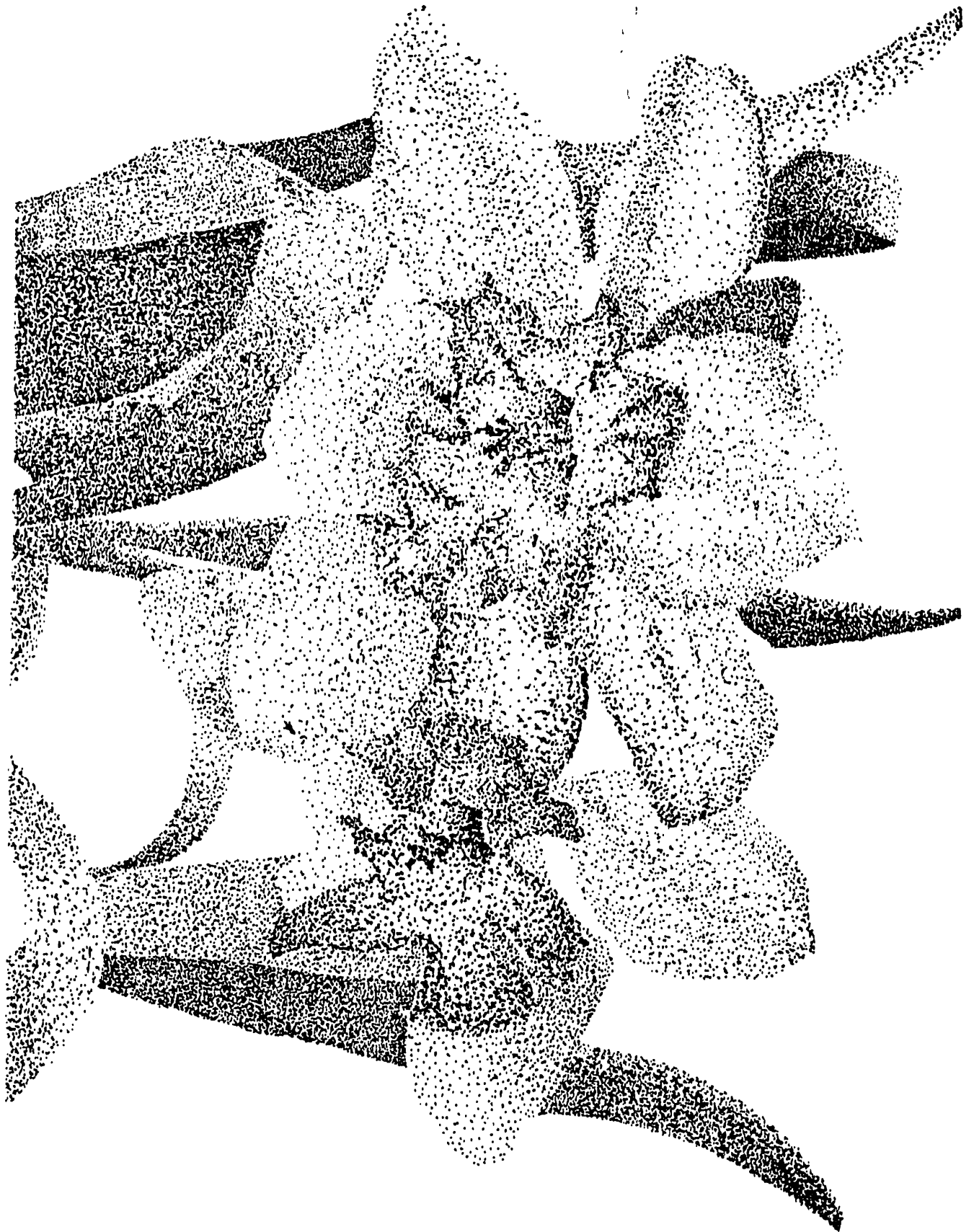
Charles W. Schlessor
Associate Commissioner
for Legal Services
Texas Rehabilitation
Commission

Effective date: October 12, 1993

Expiration date: December 12, 1993

For further information, please call: (512) 483-4051

◆ ◆ ◆



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 16. ECONOMIC REGULATIONS Part I. Railroad Commission of Texas

The following proposals submitted by the Railroad Commission of Texas are being serialized and will be published in the October 22, 1993, issue of the *Texas Register*. The earliest date of adoption is November 19, 1993.

Chapter 5. Transportation Division

- 16 TAC §§5.333, 5.346 (repeals)
- 16 TAC §§5.334, 5.335, 5.337, 5.344, and 5.347 (amendments)

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Applicability and Requirements

- 16 TAC §§9.3, 9.4, and 9.15 (amendments)

Subchapter F. Division IV

- 16 TAC §§9.653, 9.654, and 9.656 (new)

Subchapter G. Division V

- 16 TAC §9.771 (new)

Subchapter I. Division VII

- 16 TAC §§9.953, 9.956, 9.959, and 9.961 (new)

Subchapter K. Division IX

- 16 TAC §9.1255 (new)

Subchapter M. Division XI

- 16 TAC §§9.301-9.303 (repeals)
- 16 TAC §9.1451 (new)

Subchapter N. Division XII

- 16 TAC §§9.321, 9.325, 9.327, 9.329, 9.335, 9.340, 9.385, and 9.395 (repeals)
- 16 TAC §§9.1551, 9.1557, 9.1570, and 9.1571 (new)

Subchapter O. Division XIII

- 16 TAC §9.408 (repeal)
- 16 TAC §9.1659 (new)

Subchapter P. Division XIV

- 16 TAC §§9.510-9.512
- 16 TAC §§9.1759, 9.1762-9.1764 (new)

Chapter 13. Regulations for Compressed Natural Gas (CNG) Fuel Systems

Subchapter A. Scope and Definitions

- 16 TAC §§13.1, 13.3, and 13.4

Subchapter B. General Rules

- 16 TAC §13.32 and §13.34 (amendments)
- 16 TAC §13.40 (new)

Subchapter C. Classification, Registration, and Examination

- 16 TAC §13.61 (amendment)

Subchapter D. CNG Compression, Storage, and Dispensing Systems

- 16 TAC §§13.91, 13.93-13.95, 13.99-13.101, 13.104, and 13.105 (amendment)

Subchapter E. Engine Fuel Systems

- 16 TAC §13.143 (new)

Subchapter F. Residential Fueling Facilities

- 16 TAC §13.184 (amendment)

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 9 Liquefied Petroleum Gas Division

Subchapter B. Basic Rules

- 16 TAC §§9.63-9.65, 9.67, 9.68

(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 §§9.63-9.65, 9.67, and 9.68, relating to uniform protection standards, uniform safety requirements, LP-gas storage distance requirements, LP-gas storage protection, and approved gauging devices.

The commission proposes the repeal of §9.63 because the language in this section is included in proposed new §9.183, relating to uniform protection standards.

The repeal of §9.64 is proposed because the language in this section is included in proposed new §9.184, relating to uniform safety requirements.

The commission proposes the repeal of §9.65 because the language in this section is included in proposed new §9.185, relating to LP-gas storage or installation distance requirements.

The repeal of §9.67 is proposed because the language in this section is included in proposed new §9.187, relating to LP-gas storage protection.

The commission proposes the repeal of §9.68 because the language in this section is contained in proposed new §9.188, relating to approved gauging devices.

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.

Mr. Petru also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated 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 affected by the repealed sections.

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*. Comments should reference LP-Gas Docket Number 1277.

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. The repeals implement the Texas Natural Resources Code, §113.051, which requires 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.

§9.63 Uniform Protection Standards

§9.64 Uniform Safety Requirements

§9.65 LP-Gas Storage Distance Requirements

§9.67 LP-Gas Storage Protection

§9.68 Approved Gauging Devices

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 October 12, 1993

TRD-9330331 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption November 19, 1993

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

Subchapter C. Division I

• 16 TAC §9.80

(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 §9.80, relating to use of containers in buildings.

The Commission proposes the repeal because the language in this section has been included in proposed new §9.185, relating to LP-gas storage or installation distance requirements.

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.

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 the repeal 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 affected by the repeal.

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*. Comments should reference LP-Gas Docket Number 1277.

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. The repeal implements the Texas Natural Resources Code, §113.051, which requires 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.

§9.80. Use of Containers Inside Buildings.

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 October 12, 1993

TRD-9330333 Mary Ross McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Earliest possible date of adoption November 19, 1993

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

Subchapter D. Division II.

• 16 TAC §§9.101, 9.106, 9.112

(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 §§9.101, 9.106, and 9.112, relating to containers installed aboveground, painting, and mounting of containers.

The Commission proposes the repeal of §9.101 because the language in this section has been included in proposed new §9.184, relating to uniform safety requirements.

The repeal of §9.106 is proposed because the language in this section has also been included in proposed new §9.184, relating to uniform safety requirements.

The Commission proposes the repeal of §9.112, because the language in this section is also included in proposed new §9.184, relating to uniform safety requirements.

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.

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 sections 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 affected by the repealed sections.

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*. Comments should reference LP-Gas Docket Number 1277.

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. The repeals implement the Texas Natural Resources Code, §113.051, which requires 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.

§9.101 Containers Installed Aboveground

§9.106. Painting.

§9.112 Mounting 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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Mary Ross McDonald
Assistant Director, Legal
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◆ ◆ ◆
Subchapter E. Division III

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

(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 §§9.122, 9.124, 9.125, 9.129, 9.133, and 9.135, relating to installation of containers; painting; lettering; container valves and pressure gauges; loading area; and bulkheads and emergency shutoff valves.

The commission proposes the repeal of §§9.122, 9.124-9.125, and 9.133 because the language in these sections has been included in proposed new §9.184, relating to uniform safety requirements.

The repeal of §9.129 is proposed because the language in this section has been included in proposed new §9.188, relating to approved gauging devices.

The commission proposes the repeal of §9.135 because the language in this section has been included in proposed new §9.187, relating to LP-gas storage protection.

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.

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 the repeals 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 affected by the proposed repeals.

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*. Comments should reference LP-Gas Docket Number 1277.

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. The repeals implement the Texas Natural Resources Code, §113.051, which requires 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.

◆ ◆ ◆
§9.122. Installation of Containers

◆ ◆ ◆
§9.124. Painting.

◆ ◆ ◆
§9.125. Lettering.

◆ ◆ ◆
§9.129. Container Valves and Pressure Gauge.

◆ ◆ ◆
§9.133. Loading Area.

◆ ◆ ◆
§9.135. Bulkheads and Emergency Shutoff Valves.

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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Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
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For further information, please call: (512) 463-6949

◆ ◆ ◆
Subchapter F. Division IV

- 16 TAC §9.141, §9.142

(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 §9.141 and §9.142, relating to protection of safety relief valves and protection of valves and accessories.

The commission proposes the repeal of §9.141 because the language in this section is included in proposed new §9.653, relating to protection of safety relief valves.

The repeal of §9.142 is proposed because the language in this section is included in proposed new §9.654, relating to protection of valves and accessories.

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.

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 the repeals 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 affected by the proposed repeals.

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*. Comments should reference LP-Gas Docket Number 1277.

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. The repeals implement the Texas Natural Resources Code, §113.051, which requires 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.

◆ ◆ ◆
§9.141. Protection of Safety Relief Valves.

◆ ◆ ◆
§9.142. Protection of Valves and Accessories.

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 October 12, 1993.

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Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
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For further information, please call: (512) 463-6949

◆ ◆ ◆
Subchapter B. Basic Rules

- 16 TAC §§9.183-9.185, 9.187, 9.188

The Railroad Commission of Texas proposes new §§9.183-9.185, 9.187, and 9.188, relating to uniform protection standards; uniform safety requirements; LP-gas storage and installation distance requirements; LP-gas storage protection; and approved gauging devices. The commission proposes the new sections to implement public refueling of LP-gas fueled vehicles using automatic dispensers, to clarify other requirements relating to LP-gas installations, and to renumber existing safety rules to allow for future expansion.

New language in §9.183 (previously §9.63, relating to Uniform Protection Standards) clarifies the applicability of various requirements and adds a chart relating to sign and lettering requirements. The new language also clarifies that:

all LP-gas transfer systems and storage containers, except automatic dispensers, are subject to the requirements of the section. Protection requirements for automatic dispensers are contained in proposed new §9.1571, relating to protection of dispensers (previously §9.385, relating to protection of manual dispensers). A distinction is made between American Society of Mechanical Engineers (ASME) containers and portable Department of Transportation (DOT) containers to further clarify the applicability;

ASME containers or manual dispensers originally manufactured as self-contained units are exempt from fencing requirements;

vertical supports for guardrails must be anchored a minimum of 18 inches in concrete;

the top of horizontal guardrailing must be a minimum of 30 inches above the ground, and secured with welding or bolts sufficient to prevent displacement of the guardrailing;

no opening in the guardrailing may exceed 36 inches. A means of temporarily removing the guardrailing for handling of heavy equipment may be incorporated in the guardrailing;

the operating end of a container, including all material handling equipment and the entire dispensing system and any other part of the transfer system or container exposed to vehicular traffic must be protected from collision;

DOT portable containers may be stored in storage racks constructed to minimum specifications outlined in the section (e.g., must be constructed by welding, 18 gauge rolled perimeter members with 13 gauge expanded metal steel panel and 18 gauge steel roof);

guardposts may be used in place of guardrails if they meet certain minimum requirements (e.g., 3 inch Schedule 40 steel pipe, capped on top, and anchored 30 inches below ground in concrete);

DOT portable containers in storage, except those in storage racks or at private residences must be enclosed by fencing. This does not apply to containers that have been used in LP-gas service but are not awaiting use or resale;

DOT portable containers may be used but not stored inside buildings when they are required as a fuel supply container for torches being used in construction, repair or renovation. They may not have an aggregate or individual water capacity of more than 250 pounds.

New §9.185 (previously §9.65 relating to LP-gas storage distance requirements) includes requirements from several rules in other Subchapters which have been moved to this section in order to provide all relevant information in one rule. The new language includes:

reference to distance requirements from open flames, source of ignition and combustible

materials that are contained in a table in proposed new §9.185 relating to LP-gas storage or installation distance requirements (previously §9.65, relating to LP-gas storage distance requirements);

a requirement for fire extinguishers, which was previously contained in old §9.271, relating to extinguishers required;

consolidation of requirements relating to contamination of LP-gas. The person responsible for contamination must have the tests specified in the rule performed by a testing laboratory or individual qualified to do testing;

clarification that transfer hoses on LP-gas transports cannot be routed through or into any building during servicing of a container;

a requirement that a pull-away device must be provided on all refueling installations;

requirements for installation and support of aboveground containers, which were previously contained in old §§9.101, 9.112, 9.122, 9.265, and 9.511, relating to containers installed aboveground; mounting of containers; installation of containers; installation of LP-gas service station and cylinder filling storage containers; and supports-120 degree arc required, are contained in the new section. The rule requires that containers in excess of 1, 200 water gallon capacity shall be supported through an arc of 120 degrees; containers shall not be stacked unless designed for stacking by the manufacturer; the outside bottom of the container must not be more than five feet above the ground unless designed for a greater height by the manufacturer, and if containers are designed to be installed vertically, they must be installed according to specifications approved by a Registered Professional Engineer;

requirements for painting of containers which have been moved from §§9. 106, 9.124, 9.294, and 9.512, relating to painting;

referral to proposed new §9.183 for requirements for lettering, marking, or numbering of containers;

a requirement that LP-gas containers may not be covered by canopies or other coverings, moved from old §9.133, relating to loading area;

requirements that, after completing an installation of an LP-gas container, the licensee must attach a tag to the container indicating the name of the licensee, license number, and the year installed;

additional requirements for hydrostatic relief valves that discharge from a valve shall be directed so as not to impinge upon another container, part of a vehicle, adjacent persons or vehicles, or the inside of the passenger or luggage compartment of a vehicle.

Proposed new §9.185 (previously §9.65, relating to LP-gas storage distance requirements), combines all distance requirements into three tables. The tables show distance requirements for storage of DOT portable containers, installation of ASME containers or DOT portable containers, and for automatic or manual dispensers. Requirements relating to forklifts are clarified to indicate that only those containers actually in use on the forklift may be left overnight in a building.

The commission proposes new §9.187 (previously §9.67, relating to LP-gas storage protection), to add requirements that any LP-gas stationary installation of 4001 gallons or more aggregate water capacity installed after February 1, 1994, have liquid and vapor return piping and vertical bulkheads. Pneumatic or cable activated emergency shutoff valves (ESVs) must also be used. New language also clarifies other requirements relating to bulkheads and related equipment.

Proposed new §9.188 (previously §9.68, relating to approved gauging devices) contains minor wording changes which clarify its intent.

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

Persons interested in obtaining copies of the proposed rules, which indicate changes to the old rule text with underlining for new language and bracketing for deleted language, should contact Rochelle Pemberton, Program Administrator, LP-Gas Division, at (512) 463-6949. Interested parties will be charged for the cost of reproducing the document.

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*. Comments should reference LP-Gas Docket Number 1277.

The commission requests that interested parties comment specifically on language in proposed new §9.185, relating to LP-gas storage or installation distance requirements, which refers to a minimum distance of three feet between LP-gas automatic dispensers and dispensers of other flammable fuels. The commission is interested in any comments that suggest a distance greater than the three foot requirement, such as 25 feet.

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. The new sections implement the Texas Natural Resources Code, §113.051, which requires 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.

§9.183. Uniform Protection Standards.

(a) All LP-gas transfer systems and storage containers, excluding automatic dispensers, shall be protected from tampering and damage and the protection shall be maintained in good condition at all times and in accordance with one of the three standards set forth in this subsection. Portable DOT containers in storage other than storage racks described in subsection (e) of this section, referred to in subsection (d) of this section, however, shall be protected in accordance with paragraph (1) of this subsection. Automatic dispensers for general public use shall be protected against collision damage in accordance with §9.1571(a) of this title (relating to Protection of Dispensers).

(1) Fencing.

(A) Fencing material shall be chain link type with wire no smaller than 12 1/2 American wire gauge in size.

(B) Fencing shall be no less than six feet in height at all points. Fencing may be five feet in height when topped with at least three strands of barbed wire, with the strands no more than four inches apart.

(C) All uprights, braces, and/or cornerposts of the fence shall be composed of noncombustible material if located within distances required for sources of ignition or combustible materials required in Tables 1 and 2 of §9.185 of this title (relating to LP-Gas Storage or Installation Distance Requirements) of the enclosed LP-gas transfer system or LP-gas container(s).

(D) No opening in the railing may exceed 36 inches.

(E) A minimum clearance of 24 inches shall be maintained between the railing and any part of an LP-gas transfer system or container. The two posts at the ends of any railing which protects a bulkhead shall be located at 45 degree angles to the corners of the bulkhead.

(F) Fencing which is located more than 25 feet from any point of an LP-gas transfer system or container is designated as perimeter fencing. If an LP-gas transfer system or container is located inside perimeter fencing and is subject to vehicular traffic, it shall be protected against damage according to the specifica-

tions set forth in paragraph (2) of this subsection.

(G) The operating end of the container (including all material handling equipment and the entire dispensing system) shall be completely enclosed by fencing.

(H) Any ASME container or manual dispenser originally manufactured as a completely self-contained unit is exempt from complying with the fencing requirements of this section. However, such a self-contained unit shall still comply with paragraph (2) of this subsection.

(I) Any container or manual dispenser not originally manufactured as a completely self-contained unit shall comply with the fencing requirements unless approval is received from the commission prior to installation. The request for approval shall be in writing and shall specify the manner in which the valves, fittings and other appurtenances will be protected against tampering by unauthorized persons, including specifications for materials to be used. If approval is granted, the self-contained unit shall still comply with the requirements of paragraph (2) of this subsection.

(J) The gate in the fence where a bulkhead is installed must be located directly in front of the bulkhead. The width of the gate shall be sufficient to prevent binding of the transfer hose(s) on the gate posts and to insure breaking of the bulkhead pipe risers(s) nipple(s) in the event of a pull-away.

(2) Guardrails.

(A) Where fencing is not used to protect the installation as provided in paragraph (1) of this subsection, then valve locks, a means of locking the electric control for the pump(s) or compressor(s), or other suitable means shall be provided to prevent unauthorized withdrawal of LP-gas.

(B) Vertical supports for guardrails shall be a minimum of three-inch schedule 40 steel pipe, or material with equal or greater strength. The vertical supports shall be capped on the top and anchored below the ground a minimum of 18 inches in concrete, with a minimum height of 30 inches above the ground. Supports shall be spaced no more than four feet apart.

(C) The top of the horizontal guardrailing shall be secured to the vertical supports a minimum of 30 inches above the ground. The horizontal guardrailing shall be

no less than three-inch schedule 40 steel pipe, or material with equal or greater strength. The horizontal guardrailing shall be welded or bolted to the vertical supports with bolts of sufficient size and strength to prevent displacement of the horizontal guardrailing.

(D) No opening in the horizontal guardrailing, except the opening directly in front of a bulkhead, may exceed 36 inches. A means of temporarily removing the horizontal guardrailing and/or vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrailing and vertical supports. In no case shall the protection provided by the horizontal guardrailing and vertical supports be decreased. Transfer hoses from the bulkhead shall only be routed through the 45 degree opening in front of the bulkhead, or over the horizontal guardrailing.

(E) A minimum clearance of 24 inches shall be maintained between the railing and any part of an LP-gas transfer system or container. The two posts at the ends of any railing which protects a bulkhead shall be located at 45 degree angles to the corner of the bulkhead.

(F) The operating end of the container (including all material handling equipment and the entire dispensing system) and any part of the LP-gas transfer system or container which is exposed to vehicular traffic must be protected from damage by the vehicular traffic. The protection shall extend at least 24 inches beyond any part of the LP-gas transfer system or container which is exposed to vehicular traffic.

(3) Fencing and Guardrails. A combination of the protection standards authorized by paragraphs (1) and (2) of this subsection shall not result in less protection than either standard.

(4) Exemptions. This subsection does not apply to the following:

(A) LP-gas systems and containers located at a private residence;

(B) LP-gas systems and containers which service vapor systems, where the aggregate storage capacity of the installation is less than 4,001 gallons, and where the transfer system is not subject to vehicular traffic;

(C) LP-gas piping which contains no valves and which complies with the provisions of §9.959 of this title (relating to Exterior Piping); and

(D) LP-gas storage containers located on a rural consumer's property from which engine or motor fuel containers are filled.

(b) The provisions of this section notwithstanding, the commission may require an installation to be protected in accordance with subsection (a) of this section

when evidence exists that because of exceptional circumstances, added safeguards are needed to adequately protect the health, safety, and welfare of the general public. If a person owning or operating such an installation disagrees with the determination made under this subsection, then that person may request a public hearing on the matter. However, until a decision is issued subsequent to a hearing on the matter, the instal-

lation shall either be protected in the manner prescribed by the commission, or closed with all product withdrawn from it.

(c) Table 1 of this section specifies requirements for signs at certain LP-gas installations or storage areas and lettering of certain LP-gas containers. The requirements in Table 1, items 1, 2, or 3, do not prohibit combining all lettering for the signs onto one sign.

SIGNS/LETTERING
§9.183

Requirement	Automatic Dispenser Area	Storage Rack(s) For Portable DOT Containers	Licensee or Non-Licensee ASME 4001 + Gal. A.W.C.1	Any Licensee Installation (DOT Container Filling, or Service Station Only)
A. Sign with red letters at least 2 inches high, on white or aluminum background - NO SMOKING	●	●	●	●
B. Sign with letters at least 4 inches high, on white or aluminum background; red letters - WARNING-FLAMMABLE GAS; black letters - NO TRESPASSING			●	
C. Sign with letters at least ½ inch high - EXTINGUISH ALL PILOT LIGHTS AND OPEN FLAMES; VEHICLES MUST BE VACATED DURING FILLING PROCESS; TURN OFF ENGINE	●			●
D. Letters at least 2 inches high - PROPANE (on each operating side of the dispenser)	●			
E. Sign with letters at least 2 inches high, white letters on red background - PROPANE EMERGENCY VALVE; PUSH	●			

TABLE 1

(Continued on next page)

● = Requirement applies

SIGNS/LETTERING
§9.183

Requirement	Automatic Dispenser Area	Storage Rack(s) For Portable DOT Containers	Licensee or Non-Licensee ASME 4001 + Gal. A.W.C. ¹	Any Licensee Installation (DOT Container Filling, or Service Station Only)
F. Letters on container at least 4 inches high indicating nature of contents (e.g. LP-Gas, Butane, Propane)			● 2	● 2
G. Lettering at least 4 inches high indicating name of licensee			● 2	● 2
H. Lettering at least 2 inches high on operating end of container - WORKING PRESSURE PSIG _____			●	●
I. Lettering at least 2 inches high on operating end of container - CONTAINER (OR TANK) NO. _____			● 3	● 3

TABLE 1

NOTES TO §9.183, TABLE 1

1. Applies to installation of 4,001 gallons or more aggregate water capacity protected by guardrailing and bulkheads as required by §9.183 at commercial, bulk storage, cylinder filling or forklift installations.
2. Lettering shall be in sharp contrast to background and shall be readily visible to the public.
3. Applies at a facility which has two or more containers.

(d) Stationary ASME container(s) and DOT portable container(s) that contain LP-gas or have been used in LP-gas service shall be stored or installed in accordance with the distance requirements specified in Tables 1 and 2 of §9.185 of this title (relating to LP-Gas Storage or Installation Distance Requirements).

(e) A storage rack may be used to store 20 pound DOT portable or forklift containers. Welding shall be used to construct the storage rack, and it shall be constructed of a minimum:

(1) 18 gauge rolled perimeter members with 13 gauge expanded metal steel panel;

(2) 18 gauge steel roof; and

(3) padlock loop (welded on). The storage rack shall also meet the Occupational Safety and Health Administration (OSHA) standards.

(f) A storage rack with a solid steel back constructed of a minimum 18 gauge steel may be located against a combustible wall.

(g) A storage rack used to store 20 pound DOT portable containers that is not installed against the wall of a building shall be protected against vehicular damage by:

(1) meeting the guardrail requirements of subsection (a)(2) of this section; or

(2) substituting guardposts in lieu of guardrails if:

(A) the guardposts are a minimum three inch Schedule 40 steel pipe, capped on top and anchored in concrete a minimum of 30 inches below ground with a minimum height of 30 inches above the ground; or

(B) in the event the guardposts cannot be anchored in concrete a minimum of 30 inches below ground, they are constructed of a minimum of four inch Schedule 40 steel pipe attached by welding to an eight inch by eight inch steel plate a minimum of one-half inch thick. The guardpost and steel plate shall be installed so that they cannot be displaced.

(h) All service valves on DOT portable containers that are in storage shall be in the closed position at all times.

(i) Any DOT portable container in storage, except those in storage racks or at single family dwellings used as private residences, shall be enclosed by fencing meeting the requirements of paragraph (2) of subsection (a) of this section. This does not apply to DOT portable container(s) that have been used in LP-gas service but are not awaiting use or resale.

(j) DOT portable containers may be used but not stored inside a building when the container is required as a fuel supply container for approved torches being used in the construction, repair, or improvement of the building or structure and its fixtures and equipment, or for other industrial uses. Such installation shall comply with the following additional requirements.

(1) The regulator shall be connected directly to the container valve(s).

(2) Containers shall not have an aggregate or individual water capacity in excess of 250 pounds.

(3) Such containers, while being used in a building, shall not be placed so that they are subject to excessive rises in temperature, mechanical injury, or to tampering by unauthorized persons.

§9.184. Uniform Safety Requirements.

(a) General.

(1) Open flames and other sources of ignition. No source of ignition may be located within the vicinity of an LP-gas container or an LP-gas transfer system except in accordance with the distances set forth in Table 1, 2, or 3 of §9.185 of this title (relating to LP-Gas Storage or Installation Distance Requirements).

(2) Combustible materials. The vicinity of a stationary LP-gas container and transfer or dispensing equipment shall be kept clear of all types of combustible materials as specified in Table 1, 2, or 3 of §9.185 of this title (relating to LP-Gas Storage or Installation Distance Requirements).

(3) Storage of LP-gas next to flammable liquids. Suitable means shall be taken by provision of a dike, diversion curbs, and grading to prevent the accumulation of flammable liquids such as gasoline, diesel, etc., under LP-gas storage containers. LP-gas containers shall not be located within a dike area. The minimum separation between LP-gas containers, automatic dispensers or manual dispensers and flammable liquid containers shall be as specified in Table 4 of §9.185 of this title (relating to LP-Gas Storage or Installation Distance Requirements).

(4) Extinguishers required. Each LP-gas service station or portable DOT container filling installation shall be provided with at least two hand fire extinguishers, one of a type and size not less than five pounds capacity, and one of 15 or 20 pounds capacity, suitable for extinguishing LP-gas fires. Extinguishers shall be fully charged at all times and shall be kept in good working condition.

(5) Transfer or dispensing of LP-gas. During the transfer or dispensing of LP-gas, excluding dispensing from an automatic dispenser, which includes the time

period from connection to disconnection, at least one person shall remain in the immediate vicinity of the transfer or dispensing equipment in a position to monitor the flow of fuel and to control the transfer or dispensing equipment.

(6) Lifting lugs. Lifting lugs in good repair on an ASME container filled to no more than 5.0% of its maximum water capacity may be used for lifting or lowering. Additional means of lifting or lowering shall be utilized when lifting or lowering an ASME container containing more than 5.0% of its maximum water capacity.

(7) Contamination. Any transport, stationary, portable, mobile fuel, or motor fuel container that may have contained product other than LP-gas shall be thoroughly cleaned and purged prior to introducing LP-gas into such container. Only grades of LP-gas determined to be "non-corrosive" may be introduced into any container. "Non-corrosive" means the corrosiveness of the gas does not exceed the limitation for classification 1 of the American Society of Testing Material (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases." LP-gas may not contain anhydrous ammonia, hydrogen sulfide, or any other contaminant.

(A) If it is known or suspected that the LP-gas has been or may be contaminated, the person responsible for the contamination shall have one or more of the test(s) contained in "Liquefied Petroleum Gas Specifications for Test Methods, Gas Processors Association (GPA) 2140" performed by a testing laboratory or individual qualified to perform the test(s). The commission may request information necessary to determine the qualification of any testing laboratory or individual.

(B) The test results shall certify whether the LP-gas is contaminated or corrosive, whether the use of the LP-gas in the container(s) will damage either the stationary or non-stationary container(s) or the container valves, fittings or appurtenances, or whether the contaminated product or container or container valves, fittings, or appurtenance will endanger the health, safety, and welfare of the general public.

(C) Based on the test results, the commission may require that the LP-gas be removed immediately from the container or that the container be removed immediately from LP-gas service.

(8) Transfer hoses. LP-gas transfer hoses on LP-gas transports shall not be routed in or through any building for the purpose of servicing an LP-gas container.

(9) Lighting. If LP-gas transfer operations are routinely conducted during other than daylight hours at any LP-gas installation having an aggregate water capacity of 8,000 water gallons or greater, sufficient light shall be provided to ensure a safe transfer operation.

(10) Length of flexible connectors. Flexible connectors, other than LP-gas transfer hoses in excess of 3/4 inch in diameter shall not exceed 42 inches in length and shall not be used in lieu of pipe fittings to change direction in liquid or vapor piping.

(11) Pull-away device. Each LP-gas private or public motor/mobile or forklift refueling installation which includes a liquid dispensing system shall incorporate into that dispensing system a pull-away device. This requirement is not applicable to the LP-gas transport transfer operation at a bulk storage installation.

(12) Support of aboveground containers. All LP-gas storage containers, except skid containers, shall be provided with substantial masonry or noncombustible structural supports on a firm masonry foundation so that the bottom of the container is not in contact with the ground. The use of tile or hollow brick is not permitted.

(A) Except as modified by the note set forth in subparagraph (ii) of this paragraph, aboveground containers shall be supported as follows.

(i) All horizontal stationary LP-gas containers in excess of 1,200 water gallon capacity shall be supported through an arc of 120 degrees (which is 60 degrees either side of vertical based on the center line at the bottom of the container) so as to prevent the concentration of excessive loads on the supporting portion of the shell. The mounting shall be in such a manner as to permit expansion and contraction of the container and mounting due to fluctuations in temperature. Structural metal supports may be employed when they are protected against fire. That portion of the container in contact with the foundation or saddles shall be protected against corrosion.

(ii) When installed for use, containers shall not be stacked one upon another except when designed by the manufacturer for stacking. The outside bottom of a container shall not be more than five feet above the ground unless a greater distance is recommended by the manufacturer. If the container is installed more than five feet above the ground, it shall be supported to avoid displacement of the container.

(B) Containers originally manufactured to be installed in a vertical position may be installed vertically, pro-

vided that such a container is mounted in accordance with sound engineering practices approved by a Registered Professional Engineer.

(13) Painting of containers. All ASME containers, except vaporizer and motor/mobile fuel containers installed in accordance with Subchapter G of this chapter (relating to Division V), shall be painted white or aluminum. LP-gas transports shall be painted in accordance with §9.512 of this title (relating to Painting).

(14) Lettering, marking, and numbering of containers. All containers shall be lettered, marked, or numbered in accordance with the requirements set forth in Table 1 of §9.183 of this title (relating to Uniform Protection Standards).

(15) Covering LP-Gas Containers. No canopies or coverings are allowed over any LP-gas container or over loading and unloading areas where LP-gas transport transfer operations are performed. Non-combustible wind breaks and other weather protection may be installed to provide employees and customers protection against the elements of weather, but shall not be installed over any portion of an LP-gas container.

(16) Underground containers. A container designed for underground installation only shall not contain liquid fuel at any time the container is aboveground or uncovered.

(17) Identification of installations. Upon completing the installation of an LP-gas container, except those used for bulk storage or retail DOT container filling/service station installations, the licensee making the installation shall attach to the container a tag of metal or other permanent material indicating the name of the LP-gas licensee, current LP-gas license number, and the year installed. For requirements regarding identification of conversions of motor vehicles, see §9.771 of this title (relating to Identification Labels).

(b) Valves.

(1) Valves in closed position. Except in vaporizers and vapor systems, all vapor and liquid container shutoff valves shall be kept in the fully closed position when the LP-gas installation is unattended.

(2) Hydrostatic relief valve. Any closed portion of liquid piping or hose designed to operate up to 350 psig shall be equipped with a hydrostatic relief valve having a pressure setting of not less than 400 psig or more than 500 psig, or a bypass valve installed according to the manufacturer's instructions. Liquid piping or hose designed to operate above 350 psig shall be equipped with a hydrostatic relief valve having a pressure setting of not less than 110% or more than 125% of the system

design pressure, or a bypass valve installed according to the manufacturer's instructions. Hydrostatic relief valve discharge shall be directed or vented so that any gas released will not directly impinge upon containers, any part of a vehicle, adjacent persons or vehicles, or the inside of the passenger or luggage compartment of a vehicle.

(3) Container filling and vapor return outlet requirements. Filling and vapor return outlets shall be provided with valves to prevent back flow.

(4) Container discharge outlet requirements. The discharge outlet shall be provided with an excess flow valve or an internal valve(s) with excess flow capabilities.

(5) Other container outlet requirements. All other outlets to containers, except relief valves, filling connections, and liquid level gauging devices shall be equipped with excess flow valves.

(6) Excess flow valve design requirements. Excess flow valves, where required by these standards, shall be designed to close automatically and shut off the gas or liquid flow in case:

(A) the flow through the valve exceeds a predetermined rate, which must be less than the pipe line capacity to and from such excess flow valve; or

(B) the pressure on the inlet side of the excess flow valve exceeds by a certain designated number of pounds per square inch the pressure in pounds of the outlet of such valve.

(7) Excess flow valve bypass requirements. Excess flow valves may be designed with a bypass, not to exceed a Number 60 drill size opening, to allow equalization of pressure.

(8) Location of excess flow and back-pressure check valve. An excess flow and back-pressure check valve, where required by these standards, shall be located inside the container or at a point outside where the piping enters the container; in the latter case, installation shall be made such that any undue strain beyond the excess flow or back-pressure check valve will not cause breakage between the container and such valve. An excess flow valve must be installed immediately upstream from the point at which manual dispenser is connected to the supply piping. Gauging devices which do not involve the flow of liquid or which are constructed so that outward flow of container contents shall not exceed that passed by a Number 54 drill size need not be equipped with an excess flow valve.

(9) Location of shutoff valves. All connections to containers except pressure relief connections, gauging devices, filler valves and vapor return valves shall have shutoff valves located as close to the container as practicable.

(c) Pumps.

(1) Pump and Pump Accessories. Only positive displacement pumps, equipped with a proper operating pressure activated bypass valve installed in accordance with the manufacturer's instructions shall be used in LP-gas service.

(2) Pump and manual dispenser mounting. Pumps and manual dispensers shall be secured against displacement and shall be mounted on a noncombustible support or base.

(3) A retail operated DOT portable container filling installation and/or service station installation shall be equipped with a pump. A remote control shall be provided outside the dispensing device so that the source of power to the pump may be readily shut off in the event of an accident.

§9.185. LP-Gas Storage or Installation Distance Requirements.

(a) LP-gas containers shall be stored or installed in accordance with the distance requirements specified in Table 1, 2, or 3 of this section. Containers used on operating industrial lift trucks may be stored inside buildings, but are limited to those containers actually in use on the industrial lift truck. The operating industrial lift truck shall be stored in an area that will reduce the likelihood of an accident.

**MINIMUM DISTANCE REQUIREMENTS FOR INSTALLATION OF
PORTABLE DOT CONTAINERS
§9.185**

		Containers with Individual (I) or Aggregate (A) Water Capacity of:					
		Less than 2 lbs.(I) Less than 721 lbs.(A)	721 lbs.(A) to 2501 lbs.(A)	2501 lbs.(A) to 6000 lbs.(A)	6001 lbs.(A) to 10,000 lbs.(A)	10,000 lbs.(A) or more	Single Family Dwelling Used as Resident - 100 lbs. or less
A. Outdoors - Minimum Distance From:							
1.	Nearest Building Doorway or Building Opening	5 ft	5 ft	10 ft	20 ft	25 ft	5 ft
2.	Nearest source of ignition/ combustible materials ^{2,1}	5 ft	5 ft	5 ft	5 ft	5 ft	5 ft
3.	Dispensing installation	5 ft	10 ft	10 ft	20 ft	25 ft	N/A
4.	Building constructed of combustible material	5 ft	5 ft	10 ft	20 ft	25 ft	N/A
5.	Adjoining property line	N/A	10 ft	10 ft	20 ft	25 ft	N/A
6.	Roadway; highway; railroad; pipeline; utility right-of-way	N/A	10 ft	10 ft	20 ft	25 ft	N/A

TABLE 1
(Continued on next page)

**MINIMUM DISTANCE REQUIREMENTS FOR INSTALLATION OF
PORTABLE DOT CONTAINERS
§9.185**

		Containers with Individual (I) or Aggregate (A) Water Capacity of:					
		Less than 2 lbs.(I) Less than 721 lbs.(A)	721 lbs.(A) to 2501 lbs.(A)	2501 lbs.(A) to 6000 lbs.(A)	6001 lbs.(A) to 10,000 lbs.(A)	10,000 lbs.(A) or more	Single Family Dwelling Used as Resident - 100 lbs. or less
B. Manufactured Housing (Additional Requirements)							
1.	From manufactured Housing						10 ft ³
2.	When 10 ft distance cannot be obtained						3-10 ft ⁴
3.	Source of ignition ¹						10 ft

TABLE 1

NOTES TO §9.185, TABLE 1

1. Source of ignition includes, but is not limited to, an open flame, open knife switch, all smoking materials, pilot lights, and non-explosion proof lights. Combustible materials include, but are not limited to, trash, weeds, and wood.
2. Also applies to any LP-gas transfer system while LP-gas is being transferred, including the time of connection and for a reasonably safe period of time after transfer is complete. This does not prohibit operation of a transport engine which is required for the transfer of LP-gas. Vaporizers, tank heater burners and pilot lights shall be extinguished during transfer operations unless they meet the minimum distance requirements as they relate to the filling connection of the container.
3. Applies to containers of 105 lbs. capacity or less. The aggregate water capacity shall not exceed 300 pounds. Distance from source of ignition of 10 feet still applies.
4. When the distance requirement cannot be obtained, ASME containers of 500 gallons or less water capacity may be located within the 3-10 ft. distance.
N/A = Not Applicable

**MINIMUM DISTANCE REQUIREMENTS FOR STORAGE OF
PORTABLE DOT CONTAINERS
§9.185**

Containers with Individual (I) or Aggregate (A) Water Capacity of:					
	Maximum 2½ lbs.	Less than 720.99 lbs.	721 lbs. to 2,500.99 lbs.	2,501 lbs. to 6,000.99 lbs.	6,001 lbs. and over
I. Outdoors - Minimum Distance From:					
A. Nearest Building of Non-Combustible Material	N/A	0 feet	10 feet	15 feet	25 feet
B. Nearest Building Doorway, or Building Opening	N/A	5 feet	10 feet	15 feet	25 feet
C. Nearest source of ignition or combustible material ¹	N/A	5 feet	10 feet	15 feet	25 feet
D. Dispensing installation	N/A	5 feet	10 feet	15 feet	25 feet
E. Building constructed of combustible material	N/A	5 feet	10 feet	15 feet	25 feet
F. Adjoining property line	N/A	5 feet	10 feet	15 feet	25 feet
G. Roadway; highway; railroad; pipeline; utility right-of-way	N/A	5 feet	10 feet	15 feet	25 feet
II. Inside Building:					
A. Stored or displayed in building provided aggregate water capacity does not exceed 200 lbs.	Yes ²	N/A	N/A	N/A	N/A

TABLE 2

NOTES TO §9.185, TABLE 2

- Source of ignition includes, but is not limited to, an open flame, open knife switch, all smoking materials, pilot lights, and non-explosion proof lights. Combustible materials include, but are not limited to, trash, weeds, and wood.
- Applies to containers with a maximum water capacity of 2½ lbs. used with a completely self-container hand torch, or similar applications.

N/A = Not Applicable

**MINIMUM DISTANCE REQUIREMENTS FOR
AUTOMATIC OR MANUAL DISPENSERS
§9.185**

	LP-Gas or Other Flammable Fuel Storage Container A.W.C. 0-2000.99 Gal.	LP-Gas or Other Flammable Fuel Storage Container A.W.C. 2001- 8000.99 Gal.	LP-Gas or Other Flammable Fuel Storage Container A.W.C. 8001 + Gal.	Building, Property Lines, Roadway, Highway, Railroad, Pipeline Right-of-Way	Other Flammable Fuel Dispensers
A. Automatic Dispenser	3 feet	5 feet	10 feet	10 feet	3 feet
B. Manual Dispenser or Pipe Riser Associated with Manual Dispenser	N/A	N/A	N/A	15 feet	15 feet

TABLE 3

A.W.C. = Aggregate Water Capacity

(b) No stationary LP-gas storage container shall be placed in any area directly beneath an electric transmission or distribution line (does not include a customer service line) and that area which is six feet to either side of the line. If this distance is not adequate to prevent the broken ends of the electric transmission line(s) and voltage from contacting the LP-gas container in the event of breakage of any conductor, then other suitable means of protection designed and constructed so as to prevent such contact with the container may be used if approval is received from the commission. The request for approval must be in writing and specify the manner in which the container will be protected from contact, including specifications for the materials to be used. If approval is not received from the commission, the container must be located a sufficient distance from the transmission line to prevent such contact.

(c) An LP-gas liquid dispensing installation other than a retail operated DOT

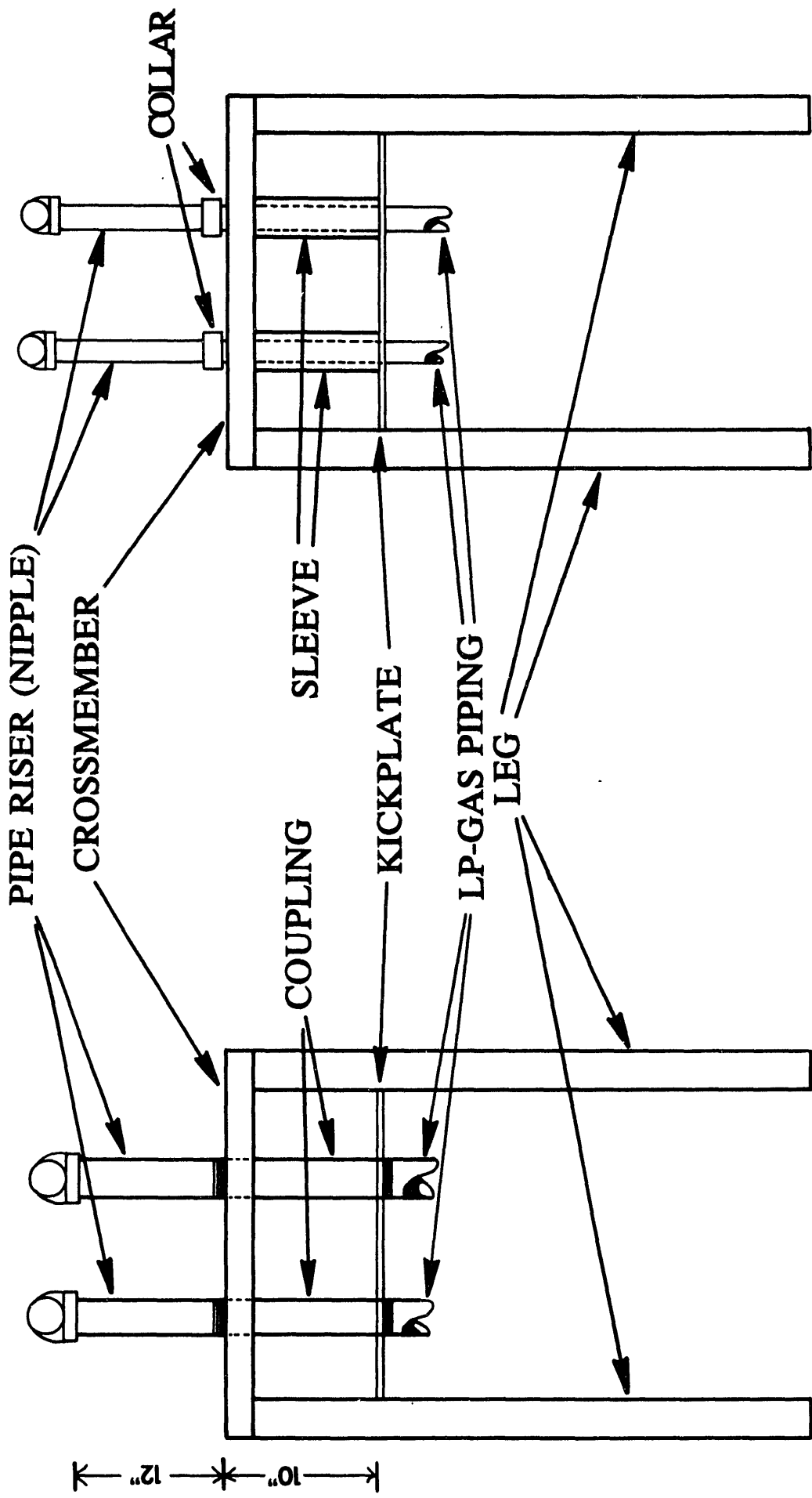
portable container filling/service station installation need not have a pump, provided that the storage container(s) are located one and one half times the required distances as shown in Table 1, 2, or 3 of subsection (a) of this section.

(d) Any LP-gas container constructed prior to 1970 which has an odd-numbered water gallon capacity (e.g., 517 water gallons instead of 500 water gallons) that is not more than 10% greater than the standard water gallon capacity may be installed utilizing the minimum distance requirement based on the standard water gallon capacity.

§9.187. LP-Gas Storage Bulkhead Protection.

(a) Each LP-gas stationary installation of 4,001 gallons or more aggregate water capacity installed on or after February 1, 1994, shall incorporate in its design vertical bulkheads installed not less than ten feet from the container for liquid and vapor return piping installed not less than ten feet

from the container. Additionally, pneumatic or cable activated emergency shutoff valves (ESVs) shall be used for liquid piping and vapor return piping. See Figure 1 of this section for design requirements. A horizontal bulkhead shall not be made into a vertical bulkhead. The top of the crossmember of a vertical bulkhead shall not be more than 28 inches above ground level. Each bulkhead at a licensee location shall include liquid and vapor transfer hose, and only one transfer hose may be attached to each pipe riser. Non-licensee installations are not required to provide liquid and vapor transfer hoses if the liquid and vapor pipe risers are equipped with a filler valve on the liquid pipe riser and a vapor return valve on the vapor pipe riser threaded directly into the elbow or other similar fitting described in subsection (b)(1) of this section. NOTE: This section shall not apply where the liquid and vapor return transfer hoses are connected directly to a 1 3/4 inch or less acme-threaded filler and vapor return valve when the valve(s) are installed directly into the container.



TYPICAL
VERTICAL BULKHEAD
WITH COUPLINGS

TYPICAL
VERTICAL BULKHEAD
WITH SLEEVES

FIGURE 1
§9.187

(b) Bulkheads shall be anchored in reinforced concrete to prevent displacement of the bulkhead, piping, and fittings in the event of a transport pull-away while the transfer hose is connected. Bulkheads shall be constructed by welding and the following materials or their equivalent or greater shall be used:

- (1) six inch steel channel iron;
- (2) legs of four inch Schedule 80 piping;

(3) top crossmember of six inch standard weight steel channel iron. If channel iron is used for the crossmember it shall be installed so the channel portion of the channel iron is pointing downward, to prevent the accumulation of water;

(4) kick plate of 1/4 steel plate installed a minimum of 10 inches from the top of the bulkhead crossmember. A kick plate is not required if the crossmember is constructed so as to prevent torsional stress from being placed on the piping to the pipe riser(s);

(5) a Schedule 40 pipe sleeve or 3,000 pound coupling installed between the top crossmember and the kick plate by means of welding to the crossmember and kick plate. If a sleeve is used it shall have a clearance of no more than 1/4 inch for the piping to the pipe riser, and the piping shall terminate through the bulkhead with a Schedule 80 pipe collar, a 12 inch length of Schedule 80 threaded (not welded) pipe riser (nipple), and an elbow or other fitting between the bulkhead and hose coupling. If a 3,000 pound coupling is used, no collar is required; however, the requirement for a 12 inch length of Schedule 80 threaded (not welded) pipe riser (nipple) and an elbow or other fitting between the bulkhead and hose coupling is required. The purpose of the elbow or other similar fitting is to direct the transfer hose from vertical to prevent binding or kinking of the hose. The elbow or other fitting(s) shall meet the requirements set forth in Subchapter I of this chapter (relating to high pressure pipe fittings).

(c) Emergency shutoff valves (ESVs) shall be installed in fixed piping of

the transfer system upstream of the bulkhead and within four feet of the bulkhead with a flexible wire braided hose not more than 24 inches long installed between the ESVs and the bulkhead.

(1) ESVs shall be installed according to the manufacturer's instructions.

(2) ESVs shall incorporate all of the following means of closing:

(A) automatic shutoff through thermal (fire) actuation using fusible elements with a melting point not to exceed 250 degrees Fahrenheit;

(B) manual shutoff at the installed locations; and

(C) manual shutoff from a remote location. Remote controls shall be connected to each ESV. Emergency remote controls shall be conspicuously marked according to the requirements of Table 1 of §9.183 of this title (relating to Uniform Protection Standards) and shall be located and maintained to be readily accessible in emergencies.

(3) ESVs or back-flow check valves shall be installed in the piping system in such a manner that any break resulting from a pull-away will occur on the transfer hose side of the bulkhead and the valve and piping on the container side of the bulkhead will remain intact.

(d) Where the flow of liquid LP-gas is from a transport to a container in one direction only, a back-flow check valve may be used in lieu of an ESV in the fixed liquid piping, provided the back-flow check valve has a metal-to-metal seat or a primary resilient seat with a secondary metal seat not hinged with combustible material. Use of a back-flow check valve in liquid piping does not eliminate the need for an ESV in the vapor piping.

(e) The bulkhead(s) and ESVs shall be kept in proper working order at all times in accordance with the manufacturer's in-

structions and the LP-Gas Safety Rules. If the bulkhead(s) and ESVs are not in proper working order in accordance with the manufacturer's instructions and the LP-Gas Safety Rules, the installation shall be immediately removed from LP-gas service and shall not be operated until the necessary repairs have been made.

§9.188. Gauging Devices and Pressure Gauges.

(a) All American Society of Mechanical Engineers (ASME) LP-gas containers shall be equipped with a fixed or rotary tube liquid level gauging device. Refer to §9.184(c)(5) of this title (relating to Uniform Safety Requirements) regarding container openings in which liquid level gauging devices are installed. Such devices shall be readily accessible and shall be used at the time of the filling operation to ensure the container is not filled in excess of the maximum permitted filling density as required in §9.167 of this title (relating to Filling Density). Refer to §9.923 of this title (relating to Appendix C) for the method of calculating the length of fixed tube. If applicable, see Figure 1 of this section for quick reference to determine the maximum permitted filling density for aboveground and truck containers over 1,200 gallons. Gauging devices of the fixed or rotary tube type may be used without the installation of an excess flow valve, provided the bleed valve opening is not larger than a Number 54 drill size. This subsection does not apply to ASME direct-gas fired vaporizer containers as noted in §9.203(a) of this title (relating to Direct Gas-Fired Vaporizers).

(b) All stationary ASME constructed LP-gas containers having a water capacity of 2,000 gallons or more shall be equipped with a pressure gauge which is readable and in proper operating condition. A container opening to which a pressure gauge is attached need not be equipped with a shutoff valve or excess flow valve if the opening is no larger than a Number 54 drill size opening and is piped to the vapor space of the container.

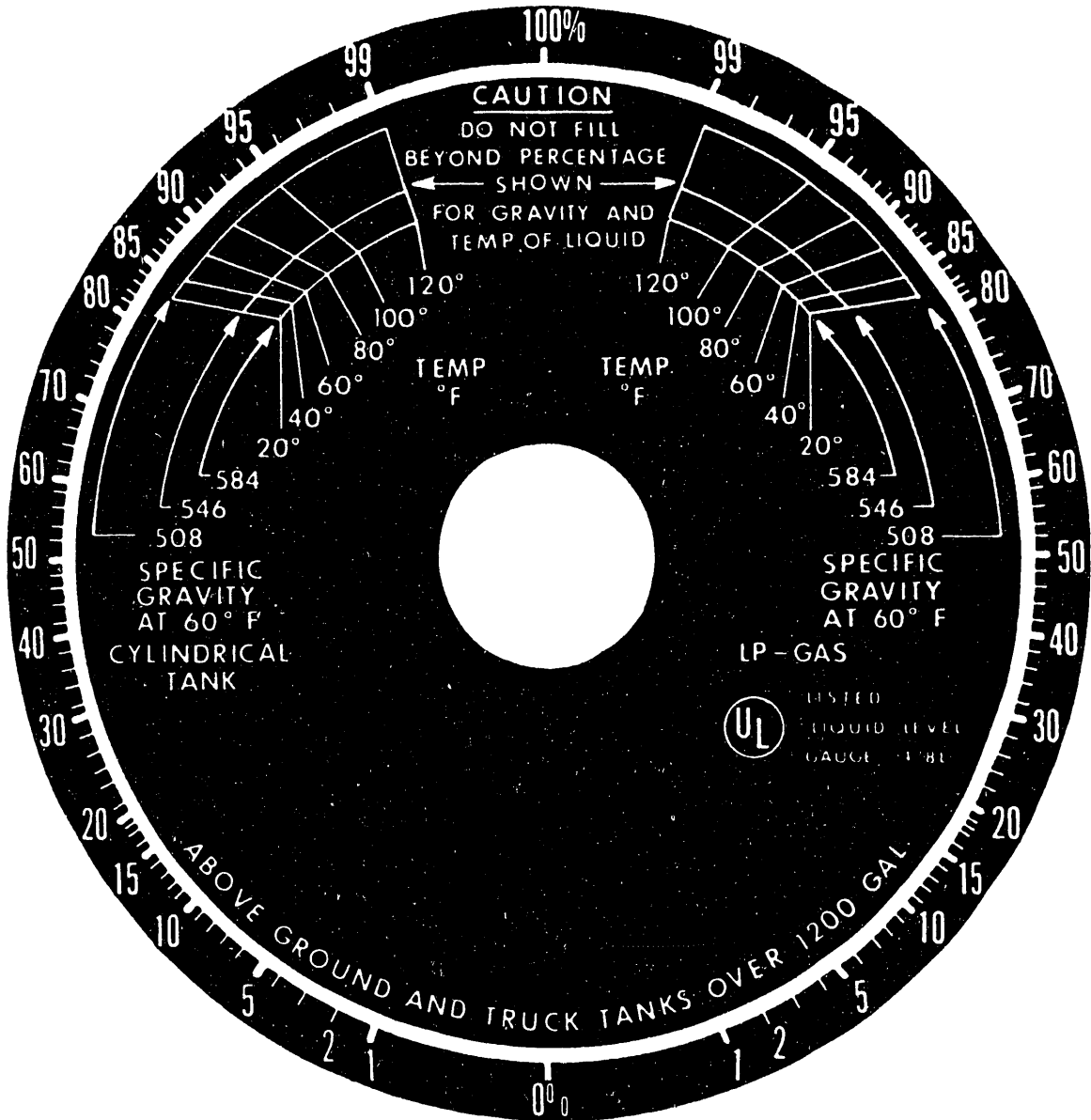


FIGURE 1

9.188

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 October 12, 1993.

TRD-9330332 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption: November 19, 1993

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

Subchapter G. Division V

• 16 TAC §9.190, §9.191

(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 §9.190 and §9.191, relating to filling of motor fuel and mobile fuel containers and identification labels.

The commission proposes the repeal of §9.190 because the language in this section has been included in proposed new §9.184, relating to uniform safety requirements.

The repeal of §9.191 is proposed because the language in this section has been included in proposed new §9.771, relating to identification labels.

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.

Mr. Petru also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated 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 affected by the proposed repeals.

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*. Comments should reference LP-Gas Docket Number 1277.

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. The repeals implement the Texas Natural Re-

sources Code, §113.051, which requires 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.

§9.190. Filling of Motor Fuel and Mobile Fuel Containers.

§9.191. Identification Labels.

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 October 12, 1993.

TRD-9330338 Mary Ruth Holder
Assistant Director, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Earliest possible date of adoption: November 19, 1993

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

• 16 TAC §§9.212, 9.215, 9.218, 9.220

(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 §§9.212, 9.215, 9.218, and 9.220 relating to specifications for approved piping materials, joining methods, exterior piping, and bending pipe.

The commission proposes the repeals because the language in the sections is being proposed as new §§9.953, 9.956, 9.959, and 9.961, relating to specifications for approved piping materials, joining methods, exterior piping, and bending pipe.

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.

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 the repeals 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 affected by the proposed repeals.

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*.

ter. Comments should reference LP-Gas Docket Number 1277.

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. The repeals implement the Texas Natural Resources Code, §113.051, which requires 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.

§9.212. Specifications for Approved Piping Materials.

§9.215. Joining Methods.

§9.218. Exterior Piping.

§9.220. Bending Pipe.

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 October 12, 1993.

TRD-9330340 Mary Ross McDonald
Legal Division, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Earliest possible date of adoption: November 19, 1993

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

• 16 TAC §§9.262, 9.265-9.272, 9.275

(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 §§9.262, 9.265-9.272, and 9.275, relating to fuel storage container valves and accessories; installation of LP-gas service station and cylinder filling storage containers; protection of storage containers and fittings; transport truck unloading location; piping, valves, and fittings; pumps and pump accessories; dispensing devices; extinguishers required; cylinder storage; and safety during fueling operations.

The commission proposes the repeal of §§9.262, 9.266, 9.267, 9.269, 9.271, and 9.275, because the language in these sections is included in proposed new §9.184, relating to uniform safety requirements.

The commission proposes the repeal of §9.265 because the language in this section

is included in proposed new §9.1255, relating to installation of LP-gas service station and cylinder filling storage containers.

The repeal of §9.268 is proposed because the language in this section is contained in proposed new §§9.953, 9.956, 9.959, and 9.961, relating to specifications for approved piping systems, joining methods, exterior piping, and bending pipe.

The commission proposes the repeal of §9.270 because the language in this section is included in proposed new §§9.1551, 9.1557, 9.1565, 9.1570, and 9.1571, relating to limited use only, cylinder filling prohibited, consumer lists, safety requirements, automatic dispenser installation, and protection of dispensers.

The repeal of §9.272 is proposed because the language in this section is contained in proposed §9.185 relating to LP-gas storage or installation distance requirements.

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.

Mr. Petru also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated 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 affected by the proposed repeals.

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*. Comments should reference LP-Gas Docket Number 1277.

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. The repeals implement the Texas Natural Resources Code, §113.051, which requires 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.

§9.262. *Fuel Storage and Container Valves.*

§9.265. *Installation of LP-Gas Service Station and Cylinder Filling Storage Containers.*

§9.266. *Protection of Storage Containers and Fittings.*

§9.267. *Transport Truck Unloading Loading.*

§9.268. *Piping, Valves, and Fittings.*

§9.269. *Pumps and Pump Accessories.*

§9.270. *Dispensing Devices.*

§9.271. *Extinguishers Required.*

§9.272. *Cylinder Storage.*

§9.275. *Safety During Fueling Operations.*

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 October 12, 1993.

TRD-9330342

Mary Ross McDonald
Legal Division, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Earliest possible date of adoption: November 19, 1993

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

◆ ◆ ◆
Subchapter L. Division X.
• 16 TAC §9.294

(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 §9.294, relating to painting.

The commission proposes the repeal because the language in this section has been included in proposed new §9.184, relating to uniform safety requirements.

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.

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 the repeal 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 affected by the proposed repeal.

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*.

ter. Comments should reference LP-Gas Docket Number 1277.

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. The repeal implements the Texas Natural Resources Code, §113.051, which requires 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.

§9.294. *Painting.*

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 **, 1993.

TRD-9330344

Mary Ross McDonald
Legal Division, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Earliest possible date of adoption: November 19, 1993

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

◆ ◆ ◆
Part II. Public Utility
Commission of Texas
Chapter 23. Substantive Rules
Rates
• 16 TAC §23.22

The Public Utility Commission of Texas proposes an amendment to §23.22, concerning Energy Efficiency Plans. Under existing rules, the Commission requires certain utilities to file an energy efficiency plan. The Commission proposes to consolidate the energy efficiency plan with the load and resource forecast report that is required under §23.13(c) of the Commission's rules. In a separate notice of proposed rulemaking, the commission proposes to defer the filing of calculations of Standard Avoided Costs for one year.

The purpose of the change in the filing requirements for the energy efficiency plan is to integrate the load and resources forecast report and energy efficiency plan, which are related to each other, into a single filing, in order to reduce the effort required by utilities in complying with these filing requirements. The Commission is developing a rule that would require utilities to file integrated resource plans, which the Commission believes will improve the resource planning and licensing processes. The changes described above, if adopted, would permit the staff to concentrate its efforts on the development of such a rule. In addition, any new rule on integrated resource planning will probably incorporate into a single filing many of the requirements in the current rules relating to

energy efficiency plans, load and capacity resource forecast filings, and standard avoided-cost calculations. It is expected that the consolidation of the load and resources forecast report and energy efficiency plan will facilitate the transition to a more integrated regulatory approach.

Jess Totten, assistant general counsel, has determined that for the first five-year period that the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Totten also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section includes making information on utility resource plans and energy efficiency plans more accessible to the public and facilitating the adoption of a broad reform of the rules on utility resource planning. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Totten also has determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposal (13 copies) may be submitted to John Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 12208.

The section is proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

The following statute is affected by this proposed rule: Texas Civil Statutes, Article 1446c, §16 and §54.

§23.22. Energy Efficiency Plan.

(a) (No change.)

(b) Each utility referred to in subsection (a) of this section shall file with the commission filing clerk four copies of an energy efficiency plan. If the utility is required to file a report under §23.13(c) of this title, relating to statistical reports for electric utilities, it shall file the energy efficiency plan with the report required under §23.13(c). If the utility is not required to file a report under §23.13(c), it shall file an energy efficiency plan not later than February 28 of each even-numbered year. Except as otherwise provided in this section, an energy efficiency plan shall include: [Each utility shall file with the commission filing clerk three copies of the following:]

(1) [An initial one-year energy efficiency plan for calendar year 1985, due

December 31, 1984. Subsequent energy efficiency plans will be due on odd-numbered years, starting December 31, 1985. A utility may amend or modify its energy efficiency plan as needed. For] for each program, [and] activity, utility-controlled option, and end-user conservation program (not including information and demonstration programs), a quantified and verifiable energy efficiency goal for each of the succeeding two years (except in the initial, one-year plan), with an indication of the objectives and expected contribution of each program and option, detailed documentation of all assumptions and criteria employed in the selection, evaluation, and prioritization of the complete set of programs, including the rationale for selecting the chosen set; and, except in the initial plan, an analysis of the extent to which previous goals have been achieved in toto and the relative contribution of each program and option;

(2) a cost-benefit analysis for each existing utility-controlled option, [due by December 31, 1984, and on December 31 in odd-numbered years thereafter, and] containing:

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

(3) for each proposed utility-controlled option, a cost-benefit analysis, [due by December 31, 1984, and on December 31 in odd-numbered years thereafter, and] containing:

(A)-(C) (No change.)

(4) for each existing end-user conservation program, (including audit programs but not including information and demonstration programs, such as energy hotlines, weatherization clinics, energy efficient demonstration houses, etc.) the following information, [due by December 31, 1984, and on December 31 in odd-numbered years thereafter]:

(A)-(G) (No change.)

(5) for each proposed end-user conservation program (including audit programs but not including information and demonstration programs, such as energy hotlines, weatherization clinics, energy efficient demonstration houses, etc.), the following information, [due by December 31, 1984, and on December 31 in odd-numbered years thereafter]:

(A)-(G) (No change.)

(6) (No change.)

(7) full descriptions of any information/demonstration programs, including rationale, target audience, qualitative assessments of success to date, and program improvement plans, if any, [due by Decem-

ber 31, 1984, and on December 31 in odd-numbered years thereafter]:

(8) (No change.)

(c)-(d) (No change.)

(e) A utility may amend or modify its energy efficiency plan as needed.

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 October 11, 1993.

TRD-9330219

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 458-0100

Quality of Service

• 16 TAC §23.66

The Public Utility Commission of Texas proposes an amendment to §23.66, concerning Arrangements Between Qualifying Facilities and Electric Utilities. Under existing rules, the Commission requires certain utilities to file a calculation of the cost of a generating unit that could be avoided or deferred, if power from a qualifying facility were purchased instead. The Commission proposes to defer the filing of calculations of Standard Avoided Costs for one year. In a separate notice of proposed rulemaking, the commission proposes to consolidate the energy efficiency plan with the load and resource forecast report that is required under §23.13(c) of the Commission's rules.

The purpose of the change in the filing requirements for the standard avoided-cost calculation is to reduce the effort required by the Staff of the Commission in reviewing these filings and participating in docketed avoided cost proceedings. The Commission is developing a rule that would require utilities to file integrated resource plans, which the Commission believes will improve the resource planning and licensing processes. The changes described if adopted, would permit the staff to concentrate its efforts on the development of such a rule. In addition, any new rule on integrated resource planning will probably incorporate into a single filing many of the requirements in the current rules relating to energy efficiency plans, load and capacity resource forecast filings, and standard avoided-cost calculations. It is expected that the consolidation of the load and resources forecast report and energy efficiency plan will facilitate the transition to a more integrated regulatory approach.

One of the issues that is likely to be addressed in a commission rule on integrated resource planning is whether there is a need for administrative proceedings to determine a utility's avoided-cost. The delay in the filing of avoided-cost calculations is not intended to

resolve this question one way or the other. If the Commission concludes that administratively determined avoided-costs are essential, it is likely that some utilities will be required to file a resource plan and avoided cost-calculation for commission approval in late 1994 or early 1995. The commission might also conclude that administratively determined avoided-costs are not essential and eliminate the filing of an avoided cost as a separate filing requirement.

Jess Totten, assistant general counsel, has determined that for the first five-year period that the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Totten also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section includes making information on utility resource plans and energy efficiency plans more accessible to the public and facilitating the adoption of a broad reform of the rules on utility resource planning. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Totten also has determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposal (13 copies) may be submitted to John Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 12208.

The section is proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

The following statute is affected by this proposed rule: Texas Civil Statutes, Article 1446c, §16 and §54.

§23.66. Arrangements Between Qualifying Facilities and Electric Utilities.

(a)-(g) (No change.)

(h) Rates for purchases of firm power from a qualifying facility.

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

(3) By December 31, 1994, [30, 1984, and by December 30, 1987,] and every two years thereafter, each electric utility shall file with the commission a standard avoided-cost calculation and terms and conditions for the purchase of firm energy and capacity from qualifying facilities, the terms of which are subject to commission review and approval after notice and opportunity for hearing. For good cause, a utility may revise its avoided-cost calculation and terms and conditions and file them with the

commission at any time before its next required filing otherwise is due. If the utility elects to file an interim standard avoided-cost calculation, then on the date that the standard avoided cost-calculation would otherwise be due the utility must file a new standard avoided cost calculation or indicate that the interim remains valid. Prior to a hearing, the presiding examiner shall discuss settlement of all issues in dispute. The parties shall be required to present to the presiding examiner a list of all issues which have been settled and a list of all issues which remain in dispute. The hearing on the merits shall be limited to those issues which remain in dispute. Failure to participate in the settlement conference by any party shall be grounds for dismissal as a party to the proceedings. The purpose of the standard avoided-cost calculation and terms and conditions for the purchase is to provide prices, terms and conditions that may be applicable to purchase arrangements between a utility and a qualifying facility. The standard avoided-cost calculation shall be stated in terms of dollars-per-kilowatt (or per KVA) per year (or per month) and cents per kilowatt-hour. Along with these calculations, each utility shall file with the commission the program logic (except to commercial programs subject to copyright protection) and associated data used to derive these calculations, along with any narrative instruction necessary to understand the calculations. The actual computer programs, or reasonable substitute, and data shall be made available by the utility on the appropriate computer media at not more than the actual reproduction cost. At least one standard avoided-cost calculation and terms and conditions for purchase shall contain the following:

(A)-(E) (No change.)

(4) If a utility does not generate electric power or have any avoidable units in its generation expansion plan, then that utility is exempted from the requirements of subparagraph (3)(A) and (B) of this subsection. Such [Instead of the filing dates provided in the first sentence of paragraph (3) of this subsection,] a utility shall file by December 31, 1994, [January 31, 1985, and by January 31, 1988,] and every two years thereafter, information based on one of two options. (Provided, however, that it may revise its filing at any time before the next filing date is due and shall revise its filing in the event its construction plans call for a generating plant):

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

(5) [Instead of the dates provided in the first sentence of paragraph (3) of this subsection, a] A cooperative-owned generation and transmission utility or a river authority is allowed to file, by December

31, 1994, [January 31, 1985, and by January 31, 1988,] and every two years thereafter, an avoided-cost calculation and terms and conditions for purchase from qualifying facilities that determines avoided capacity costs according to the committed unit basis methodology, but which employs criteria which differ from those [these] listed in paragraph (3)(A)(i)-(3)(A)(xiii) of this subsection, as long as the criteria chosen replicate assumptions applicable to their financial structures. A cooperative-owned generation and transmission utility or a river authority remains subject to all the other requirements of paragraph (3) of this subsection.

(i)-(m) (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 October 11, 1993.

TRD-9330220

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 458-0100

TITLE 22. EXAMINING BOARDS Part IV. Texas Cosmetology Commission

Chapter 83. Sanitary Rulings

- 22 TAC §§83.2-83.6, 83.9-83.11, 83.13-83.18, 83.21-83.24, 83.26, 83.29, 83.30

The Texas Cosmetology Commission proposes amendments §§83.2, Posting Sanitary Rules; 83.3, Proper Quarters; 83.4, Toilet-Bathrooms; 83.5, Waste and Refuse; 83.6, Animals in Schools or Establishments; 83.9, Furniture and Equipment; 83.10, Towels; 83.11, Haircutting Capes and Shampoo Capes; 83.13, Implements, Combs, Brushes, and Rollers; 83.14, Definition of Wet and Dry Sanitizers; 83.16, Disinfecting Manicure Instruments While in Use on Client; 83.17, Instruments and Supplies; 83.21, Bottles and Containers; 83.22, Infectious Disease; 83.23, Personal Hygiene; 83.24, Maids, or Other Unlicensed Persons; 83.26, Hairgoods and Related Equipment; 83.29, Shirts and Shoes Required; and 83.30, Proper Labeling, and new 83.15, Disinfecting Facial Instruments; and 83.18, Sanitation Requirements for Independent Contractors.

Larry W. Perkins, interim executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local govern-

ment as a result of enforcing or administering the sections.

Mr. Perkins also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be language updated in keeping with the times and the need for more comprehensive sanitation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Aliria C. Ayers, Administrative Technician II, Texas Cosmetology Commission, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755-0700.

The amendments and new rules are proposed under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

The proposed amendments and new sections implement Texas Civil Statutes, Article 8451a.

§83.2. Posting Sanitary Rules. Current sanitary rules and regulations, the last inspection report of the inspector, and the establishment license must be posted in all licensed salons and schools in the reception desk area in public view. [Each establishment shall post a copy of these sanitary rules in a place visible to the public. The principals office, hallway, or remote areas not frequented by patrons is prohibited.]

§83.3. Proper Quarters.

(a) (No change.)

(b) Linoleum or tile fixtures must be tight with no broken areas or badly worn spots. Walls and fixtures shall be of a sanitary nature. There must be evidence of routine cleaning and proper maintenance. Ceilings must be properly maintained. Floors shall be constructed of smooth, hard-finished materials, such as quarry tile, terrazzo, ceramic tile, etc., or covered with washable composition materials such as rubber-base greaseless asphalt tile may be used. Hair cuttings must be immediately swept up and deposited in a disposal receptacle when the haircut is finished. Carpeting is not allowed in shampoo and working areas, but is allowed in reception, dryer, manicuring, and facial areas provided it is cleaned on a regular basis and kept in a sanitary condition. Those establishments that currently have carpeting in the shampoo and work areas are not required to remove said carpeting until such time as it can no longer be maintained in a sanitary condition. No carpet shall be permitted closer

than six feet from the outermost edge of the working station. No carpet shall be permitted in the dispensary area as it is part of the clinic floor, and no carpet shall be permitted from the shampoo bowl to the extended end of the shampoo chair. [Hair cuttings must be immediately swept up and deposited in a disposal receptacle when the haircut is finished. Carpeting is not allowed in shampoo and working areas, but is allowed in reception, dryer, manicuring, and facial areas provided it is cleaned on a regular basis and kept in a sanitary condition. Those establishments that currently have carpeting in the shampoo and work areas are not required to remove said carpeting until such time as it can no longer be maintained in a sanitary condition. Floors shall be constructed of smooth, hard-finished materials, such as quarry tile, terrazzo, ceramic tile, etc., or covered with washable composition materials such as rubber-base greaseless asphalt tile, or commercial grade linoleum or tile may be used. All of the floors in the establishment shall be graded. No carpet shall be permitted closer than six feet from the outermost edge of the working station. No carpet shall be permitted in the dispensary area as it is a part of the clinic floor, and no carpet shall be permitted from the shampoo bowl to the extended end of the shampoo chair.]

[(c) No cosmetology establishment shall, in any manner, represent or permit a representation to be made in its behalf that it is a barber shop, whether made by use of a display or device similar to a barber pole or otherwise. It may, however, advertise that services for males are available, with the exception of shaving.]

(c)[(d)] The use of a cosmetology establishment as living, dining, or sleeping quarters shall be prohibited. Residential salons shall maintain a separate entrance which shall not open off from living, dining, or sleeping quarters. If a door leads into the residence, it shall be a solid door that remains locked during business hours.

(d)[(e)] Doors and windows shall be effectively screened. Necessary ventilation shall be provided at all times and adequate light shall be provided for the operator.

(e)[(f)] Styling stations, [styling bars, dresserettes, or] working stations, and manicure tables must be disinfected and [kept] cleaned prior to client services [clean at all times to the sight and touch]. All drawers and shelves of the above being used for the storage of rollers, brushes, combs, pins, nets, and equipment must have proper disinfecting [sanitation], and shall not be used for storage of non-related cosmetology equipment or supplies. One drawer or cabinet may be designated for storage of personal items.

[(g) Each booth shall be provided with adequate light fixtures which shall be kept in a sanitary, safe manner.]

(f)[(h)] The premises shall be kept free of rodents, vermin, flies, or other similar insects.

(g)[(i)] Equipment such as dryer heads and [.] filters [, manicuring table and trays] must be kept clean at all times.

§83.4. Toilet; Bathrooms.

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

(c) Provision must be made for toilet facilities within the salon or a public restroom available within 100 feet. All existing salons will be grandfathered. Any new construction, re-modeling, or re-locating after January 1, 1994, will necessitate compliance with this rule.

(d) (No change.)

§83.5. Waste and Refuse.

(a) (No change.)

(b) At no time shall the selling of food or drink be permitted in schools or salons unless by vending machines. Students, salon personnel, or clients [patrons] using foodstuffs in any establishment must remove leftovers [within one hour of usage]. Establishments are directly responsible for the general compliance of this section. Dirty dishes from foods being served must not accumulate.

(c) (No change.)

(d) All trash containers not closed (no hair clippings) must be emptied and kept clean by [washing or] using plastic liners.

(e) Cotton, pads, disposable towels, or protectors which cannot be disinfected will be disposed of in a waste receptacle immediately after use.

§83.6. Animals in Schools or Establishments. No person shall be allowed to bring an animal, fowl, reptile, insect, etc. in, or [to] allow these [an animal] to remain in an establishment. Aquariums containing fish will be allowed. This section does not apply to a sightless or hearing-impaired person accompanied by a trained [seeing eye] dog [, or security dog]. A security dog, however, may be allowed in the establishment only during the times the salon or school is closed to the public.

§83.9. Furniture and Equipment.

(a) Furniture, equipment, and other fixtures shall be of a washable material and kept clean and in excellent condition. Electrical equipment and outlets shall be kept sanitary and safe at all times.

(b) Broken equipment must be removed.

(c) Shampoo bowls will be cleaned and disinfected with a hospital (grade) EPA registered disinfectant solution after each use, prior to being used for another client.

§83.10. Towels.

(a) Clean towels should be used on each client [patron]. A closed, dust-proof cabinet or container must be provided for clean towels and linens.

(b) Soiled towels are to be discarded. After a towel has been used once, it shall be deposited in a partially closed receptacle, container, or basket, and shall not be used again until properly laundered and disinfected [sanitized].

(c) (No change.)

§83.11. *Haircutting Capes and Shampoo Capes.* Haircutting capes and shampoo capes shall be kept clean, and will not come in direct contact with the client's [patron's] neck. A sanitary neck strip or towel shall be used to keep the capes from coming into direct contact with the client's [patron's] neck.

§83.13. *Implements, Combs, Brushes, and Rollers.*

(a) Each cosmetologist is required to have implements and tools that have been disinfected with a hospital (grade) EPA-registered disinfectant solution for each client. [The use of a brush, comb, or other articles on more than one person without being sanitized is prohibited.]

[(b) Each cosmetology establishment is required to have sufficient combs, brushes, and implements to allow for adequate sanitizing practices.]

(b)[(c)] [All equipment must be clean to sight and touch.] Rollers, pins, clips, combs, brushes, and cold-wave rods shall not be stained from rinses or hair spray, lacquer, or setting lotions.

[(d) Worn-out brushes or broken combs, defective cold wave rods, defective rollers, hair dryers, and hair clippers needing repair should be removed.]

(c)[(e)] At no time shall a cosmetology student, or a licensed cosmetologist, keep combs or brushes in their pocket.

(d)[(f)] When cold-wave rods are not in use, they must be covered with a cover or towel, until ready for use. Cold-wave rods must be free from any solution, hair end papers, clippies, hairpins, and any additives.

(e)[(g)] Scissors, razors, clipper blades, or other related equipment and supplies must be disinfected with a hospital (grade) EPA-registered infection solution, must be clean to sight and touch, and stored in an airtight container. Curling irons must be clean to sight and touch. [All drawers and/or cabinets housing brushes, combs, rollers, implements, or other related supplies must have adequate sterilization and must be clean to sight and touch.]

(f)[(h)] All types of brushes, all types of rollers, clips, and other hair accessories which have become soiled in any manner shall [not be used by any of the operators and shall] be placed in a properly labeled receptacle provided for that purpose[, and shall not be used on another patron until they have been properly cleaned and disinfected.]

(g) No other items are allowed in drawers or covered containers with clean combs and brushes. Drawers and containers must be kept closed at all times.

§83.14. *Definition of Wet and Dry Sanitizers [Sterilizers].*

(a) A wet sanitizer is a container [anything that is] large enough to hold a disinfectant solution in which the objects to be disinfected [sanitized] are completely immersed. A wet [This type of] sanitizer must have a cover to prevent contamination of the solution. The solution must be a hospital (grade) EPA-registered disinfectant solution. Before immersing objects in a wet sanitizer [sterilizer] containing a disinfectant solution, be sure to:

(1) remove hair from the object;
(2) wash thoroughly with hot water and soap;

(3) rinse thoroughly with clean water; [and]

(4) keep the wet sanitizer clean at all times; and

(5) [(4)] after immersion, wipe dry with a clean towel and store in a dry cabinet sanitizer [sterilizer] or receptacle.

(b) A dry sanitizer is an airtight container [cabinet containing an active fumigant]. The disinfected [sanitized] implements are kept clean by placing them in the cabinet until ready for use.

(c) (No change.)

§83.15. *Disinfecting Facial Implements.*

(a) Each facial specialist/esthetician must have a wet sanitizer. Tweezers must be sanitized with a hospital grade EPA-registered disinfectant solution during service. Brushes, sponges, chamois, spatulas,

and galvanic electrodes must be washed in soap and water and disinfected in a hospital (grade) EPA-registered disinfectant solution and stored in a dry sanitizer. Metal implements must be disinfected in said solution and stored in a dry sanitizer.

(b) Each facial specialist/esthetician must have a wet and a dry sanitizer.

(c) Disposable wooden spatulas must be disposed of after each use.

(d) Disposable rubber or latex gloves must be worn at all times when removing wax.

(e) Disposable rubber or latex gloves must be worn at all times in doing extractions during facials.

(f) All depilatories and all paraffin wax which has been adhered to a client's hands, feet, body, or removed from the pot must be disposed of after each use and not be re-used under any circumstances.

(g) All wax pots will be cleaned and disinfected with a hospital (grade) EPA-registered disinfectant solution with no sticks left standing in the wax at any time. The wax remaining in the pot may remain, all wax removed from the pot must be disposed of.

(h) Headrests of chairs shall be covered with a clean towel or paper sheet for each client.

(i) All areas of the body being treated in a wax service must be cleaned with a broad-spectrum antimicrobial agent.

§83.16. *Disinfecting Manicure Instruments While in Use on Client [Patron].*

(a) Each manicurist must have wet and dry sanitizers at their station. [A solution of 70% alcohol, or a solution containing not less than one thousand parts per million of quaternary ammonium compound, shall be readily available during the process of giving a manicure. The instruments used on an individual patron shall be placed in said solution when not actually employed during the process of giving a manicure, and the entire set of instruments shall be disinfected after use.]

(b) Nail brushes, nippers, finger bowls, washable files, washable buffers, and other instruments must be washed in soap and water; completely immersed in a hospital (grade) EPA-registered disinfectant solution and placed in a closed airtight container P after each use. [All instruments, materials, and supplies of whatsoever character used for direct contact upon a patron require the following treatment:

(1) Thorough cleaning of the instruments, materials, and supplies with soap and water, or other detergent, so as to re-

move all foreign materials which might harbor on objects; and

[(2) all instruments used by the manicurist shall be sanitized after each use.]

(c) After disinfecting in a hospital (grade) EPA-registered disinfectant solution, implements must be kept in airtight closed containers while not in use. Implements must be enclosed when not in use.

(d) Emery boards and lotion warming cups must be disposed of after each use.

(e) Clean towels must be used with each client.

(f) Manicurists will also be able to pedicure the feet, and must follow the same sanitary procedures as established for manicuring.

(g) All contaminants in the breathing atmosphere shall be exhausted to the outdoor air.

(h)[(c)] Under no condition will a manicurist or manicuring salon use the product methol mytricolate molmer in doing sculptured nails.

§83.17. Instruments and Supplies.

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

(d) Razors, scissors, tweezers, combs, brushes, all kinds of rubber discs and all other parts of vibrators, permanent wave apparatus and all other utensils, appliances, or anything that comes into contact with the head, face, neck, or hair, must be disinfected [sterilized] in an acceptable disinfectant, and kept in a sanitized container.

(e) (No change.)

(f) Shampoo bowls, cups, finger bowls or similar objects, will be disinfected->et> [sanitized] with a hospital (grade) EPA-registered disinfectant solution [an approved disinfectant] after each use and prior to being used for another client.

(g) Electrical appliances will be disinfected [sanitized] by wiping [rubbing] the surface with a cotton pad dampened a hospital (grade) EPA-registered disinfectant solution [with 70% alcohol].

(h) (No change.)

§83.18. Sanitation Requirements for Independent Contractors.

(a) All salon sanitation requirements apply to independent contractors.

(b) Wet sanitizers dry sanitizers, and covered trash containers must be at each working station.

§83.21. Bottles and Containers. All bottles and containers in use in a school of cosmetology[, or school of wiggery,] or an

establishment shall be distinctly and correctly labeled to disclose their contents. All bottles containing poisonous substances shall be additionally and distinctly marked or labeled.

§83.22. Infectious Disease.

(a) All cosmetologists should use the utmost caution in waiting on or in rendering services to any person having or suspected of having an infectious disease, and shall have the privilege of refusing service to such a person. Cosmetologists, after having waited on such a person, or suspected person, shall use thorough disinfecting [sterilization] of towels, clothes, implements, and utensils used by them in rendering work.

(b) (No change.)

§83.23. Personal Hygiene.

(a) Any cosmetologist whose work causes him or her to touch the skin of any person shall wash his or her hands thoroughly with hot water and a broad-spectrum antimicrobial agent [soap] before attending a client [patron], servicing hairgoods, and immediately after using the toilet.

(b) (No change.)

§83.24. Maids, or Other Unlicensed Persons. Under no condition will maids be allowed to hand pins or rollers to operators, nor will they be allowed to remove rollers or clips from the client's [patron's] head, or drape any client [patron] for shampooing.

§83.26. Hairgoods and Related Equipment.

(a) Soiled wigs and hairpieces [hairgoods] shall be kept separate by placing in a closed bag to prevent the spread of disease until ready to be disinfected [sanitized].

(b) (No change.)

(c) Finished wigs and hairpieces [hairgoods] shall be placed away from soiled wigs and hairpieces [hairgoods] until ready to be returned to the client [patron].

(d) Bowls or containers used to clean or color wigs and hairpieces [hairgoods] must be disinfected [cleaned] with a hospital grade EPA-approved germicidal solution [soap and water or other detergent] after completion of each step in the service.

§83.29. Shirts and Shoes Required. Licensed cosmetology establishments may not perform services unless shoes and shirts are worn by clients [patrons].

§83.30. Proper Labeling. Each cosmetology establishment shall properly label all products used in the conduct of their business in compliance with OSHA. Each cosmetology establishment must maintain a Material Safety Data Sheet on file for public review on all chemicals used in the establishment as required by OSHA.

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 October 12, 1993.

TRD-9330290

Larry Perkins
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 454-4674

• 22 TAC §83.7, §83.15

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

The Texas Cosmetology Commission proposes the repeal of §83.7 and §83.15, concerning Headrest and Implements.

Larry W. Perkins, interim executive director, 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. Perkins 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 a new, more comprehensive rule. 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 Alicia C. Ayers, Texas Cosmetology Commission, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755-0700.

The repeals are proposed under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

The repeals implement Texas Civil Statutes, Article 8451a.

§83.7. Headrests.

§83.15. Implements.

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 October 12, 1993.

TRD-9330291

Larry Perkins
Interim Executive Director
agency

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 454-4674

Chapter 89. General Rules and Regulations

- 22 TAC §§89.7-89.10, 89.15, 89.16, 89.18, 89.21, 89.23, 89.25, 89.28-89.30, 89.34, 89.35, 89.39, 89.42, 89.43, 89.46, 89.50, 89.53, 89.54, 89.55, 89.72, 89.76

The Texas Cosmetology Commission proposes amendments, to §§89.7-89.9, 89.10, 89.15, 89.16, 89.18, 89.21, 89.23, 89.25, 89.28-89.30, 89.34, 89.35, 89.39, 89.42, 89.43, 89.46, 89.50, 89.53, 89.54, 89.55, 89.72, and 89.76, concerning student work; student registration; student permit; monthly hour report; definitions of license authorizations; license cancellation; student instructor-instructor ratio; student loan defaults; transfer of hours between courses; health certificate; withdrawal from school; practical application of the curriculum; examination applications; applicants for licensure through reciprocity; uniforms; new salon; restrooms; posted in salon or school; itinerant beauty salons; resale of hairpieces; minimum requirements for both private and public cosmetology schools; refresher course; curriculum; and minimum requirements for cosmetology school separate facility.

Larry W. Perkins, interim executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Perkins also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that language of the rules and has been updated in keeping with the times, and to be consistent with the Statute, and to place what were formerly procedures into rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Alicia C. Ayers, Administration Technician II, Texas Cosmetology Commission, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755-0700

The amendments are proposed under Texas Civil Statutes, Article 8451a, which provides the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

The proposed amendment implement Texas Civil Statutes, Article 8451a.

§89.7. Student Work.

(a) No school may receive compensation for work done by any student who has not completed 10% of the required number of hours for a license as provided by this Act. Public school students must complete 150 hours of cosmetology training prior to working on clients [patrons].

(b) -(c) (No change.)

§89.8. Student Registration.

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

[(c) Effective September 1, 1989, a student may be enrolled in only one cosmetology course at any one time.]

§89.9. *Student Permit.* The \$25 non-refundable permit fee shall include one exam fee and a transcript of hours fee. Each student must have a permit with a picture affixed in one [an] album or folder in the school in which they are enrolled. The permits must be in alphabetical order.

§89.10. *Monthly Hour Report.* On a form prescribed by the Commission, the school will display the monthly hour report showing a record of hours acquired by each student during the preceding month in a album or binder no later than the tenth day of each month. Each student must be given the opportunity to review, under, supervision, his/her hours, and to sign or initial the report. The report will be kept available for inspection by the student or a representative of the Texas Cosmetology Commission. One copy of the monthly hour report will be given to the commission inspector at each inspection visit. The copy must be signed by the school official. Students enrolled in a cosmetology or specialty course are prohibited from preparing hour reports or supporting documents. Student instructors may prepare hours reports. All information must be completed.

§89.15. Definitions Of License Authorizations.

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

(c) Wig Specialist. A wig specialist certificate authorizes the holder to practice wiggery[, hairweaving,] or perform eye-tabling in a beauty or specialty salon. A photograph of the licensee approximately 1-1/2 inches by 1-1/2 inches shall be attached to the front of the license.

(d) (No change.)

(e) Shampoo-Conditioning Specialist. A shampoo specialist certificate authorizes the holder to practice the art of shampooing, application of conditioners and rinses, scalp manipulation, and shampooing hair goods in a licensed beauty salon. A photograph of the licensee approximately

1-1/2 inches by 1-1/2 inches shall be attached to the front of the certificate [license].

(f) (No change.)

(g) Hairweaving Specialist. A hairweaving specialist certificate authorizes the holder to practice the art of hairweaving in a licensed beauty or specialty salon. A photograph of the licensee approximately 1-1/2 inches by 1-1/2 inches shall be attached to the front of the certificate [license]. No other service may be performed. To do so will lead to revocation of a specialty certificate [license].

(h) (No change.)

(i) Student Permit. A student permit authorizes the holder to practice cosmetology only in an approved school, and only after 10% of the required hours for graduation (150 hours for public school students) are accrued. A photograph of the licensee approximately 1-1/2 inches by 1-1/2 inches shall be attached to the front of the permit [license].

(j)-(l) (No change.)

§89.16. *License Cancellation.* A licensee or certificate holder holding one of the licenses or certificates shall only perform the cosmetology services permitted by his/her individual license or certificate listed in §89.15 of this title (relating to Definition of License Authorizations). A licensee or certificate holder who is found to be performing [for a fee or consideration of] a service for which a person is not licensed or certified is in violation of the statutes, and may have the license they hold canceled. Nothing in these rules and regulations shall be construed to apply to the educational activities conducted with any monthly, annual, or other special educational programs of any association utilizing licensed cosmetologists in Texas or elsewhere, from which the general public is excluded. This will apply only to specific day or days of any monthly or other special program of any association of licensed cosmetologists. A licensed cosmetologist from Texas, or any other state may not, however, hold classes when it is not in conjunction with a bona fide association unless they seek clearance, in writing, from the Executive Director of the Cosmetology Commission, ten days prior to said classes.

§89.18. *Student Instructor-Instructor Ratio.* Schools may enroll three student instructors for each licensed instructor teaching in the school on a full-time basis. The student instructor shall at all times work under the direct supervision of the full-time licensed instructor and may not service clients [patrons], but will concentrate on teaching skills.

§89.21. Student Loan Defaults. Licensees that are in default on a loan guaranteed by the Texas Guaranteed Student Loan Corporation[, or any other loan] made solely for the purpose of paying tuition and fees, may not renew that license unless : [timely payments are being made on that loan prior to license renewal.]

(1) the renewal is the first renewal following the Commission's receipt of the list including the licensee's name among those in default; or

(2) the licensee presents to the Commission a certificate issued by the corporation certifying that:

(A) the licensee has entered a repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation.

§89.24. Transfer of Hours Between Course. A student enrolled for a specialty course may withdraw and transfer hours acquired to the operator course not to exceed the amount of hours of that subject in the operator curriculum. Students enrolled in the operator course may take the examination for one of the specialties provided that the school certifies that the student has completed the required hours in the particular course in which the student seeks licensure.

§89.25. Health Certificate.

(a) When a student applies to take a licensing or certification examination a health certificate not over one year old which includes a tuberculosis test must accompany the application. This will normally be at the completion of the operator, instructor, or specialty course. The applica-

tion must be signed ,dated, or stamped with a licensed physician's signature.

(b) (No change.)

§89.28. Withdrawal From School.

(a) A student may withdraw from school at any time by notifying the school in writing. Cosmetology schools or programs shall drop the student if a student is not in attendance for 30 consecutive working days, unless the student is on an approved leave of absence.

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

§89.29. Practical Applications of the Curriculum. Each student in a school of cosmetology [in the operator course] enrolling after January 1, 1994[1992], must complete practical applications of the curriculum according to the school's published rules on minimum practical applications, or the following schedule, whichever is greater.

Subject	Minimum Practical Applications
Sanitation	175
Facials	30 (a minimum of 5 services in each category)
<ol style="list-style-type: none"> 1. Skin Analysis and care 2. Manipulation, massage 3. Skin Care 4. Removal of hair by the use of wax, tweezers, or depilatories 5. Make-up and brow arch 	
Hairdressing	300 (minimum of 20 services in each category)
<p>Arranging, cutting, dressing, shampooing, curling, pressing, fingerwaving</p>	
Scalp and Hair Treatments	30

Haircoloring	80 (a minimum of 8 services in each category)
Temporary, Semi-permanent, Permanent, Bleaching and dimensional, coloring, color mixing	
Chemical Hair Services	80 (a minimum of 15 services in each category)
Restructuring, Permanent Waving, Straightening and relaxing	
<etb>Client<et> [Patron] Protection	10
Manicuring	30

§89.30. Examination Applications. Application for examination must be filed and processed and the examinee will be notified 10 days prior to his/her examination date. The examination application consists of the verification of the applicant's completion of the total hours and practical applications required, a statement that the agreed tuition and fees have been tendered, or arrangements made to tender the agreed tuition and fees, a current health certificate which includes a tuberculosis test, and a current photograph. A copy of the student permit and photograph must be posted in the school should the student continue to attend to accrue hours between the time of application and date scheduled for exam. The applicant will be required to furnish a valid [Texas] driver's license, a Texas Department of Public Safety identification card, a

military identification card, a school identification card with a picture, or a resident alien card as proof of identification prior to admittance for examination. No other proof will be accepted. Students holding dates scheduled for exam who do not appear without a seven-day notice to the commission of cancellation may be denied scheduling for at least 60 days.

§89.34. Applicants for Licensure Through Reciprocity.

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

(c) All out-of-country reciprocity applicants who cannot provide documentation of standards equivalent to those in Texas, or six years of verifiable licensed work experience, must pass a written and practical examination.

§89.35. Uniforms.

(a) Cosmetology school students shall wear a uniform of washable material with armpits and chest covered as prescribed by the school. Tank tops, lingerie, see-through fabrics, topless uniforms, and bare feet are not allowed.

(b) Salon employees shall wear an attire of washable material with armpits and chest covered. Tank tops, lingerie, see-through fabrics, topless uniforms, and bare feet are not allowed.

(c) Applicants for a Commission examination must appear in a lab coat, and black or white dress slacks or skirt, or an all white professional uniform. [black, brown, navy or white dress slacks or black, brown, navy, or white, knee length skirt (no jeans), dark colored or white shoes, a clean white shirt or blouse, and a clean white

professional type lab coat with either short or long sleeves, or an all white professional type uniform of washable material with the armpits covered. The attire shall not bear any writing or other identifying marks. Applicants not in the prescribed uniform will not be admitted to the exam floor. Tank tops and bare feet are not allowed.]

(1) Dress slacks or dress skirt: black or white, no knits. Must be plain and clean.

(2) Dress blouse or shirt: with collar, white only, no knits. Must be plain and clean.

(3) Three-quarter length laboratory coat: white only, no knits. Must be a plain, clean, professional three-quarter length or longer lab coat.

(4) An all white professional type uniform of washable material with the armpits covered. No knits.

(5) Shoes: (black or white), no heels over one inch tall. Must be clean and plain: no sandals, no boots, no demi-boots, no open-heeled or open-toed shoes, no high-topped tennis shoes. Any shoe which has loops or holes for laces must be laced. Slip-on style shoes are acceptable.

§89.39. *New Salon.*

(a) (No change.)

(b) Beauty salon requirements:

(1) (No change.)

(2) Required equipment is as follows:

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

(E) one wet sanitizer [sterilizer]; and

(F) one dry sanitizer [sterilizer].

(c) Additional requirements for all salons.

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

(3) A restroom must be directly connected to the salon with a sink or a public restroom available for the use of clients [patrons].

(4)-(10) (No change.)

(d) (No change.)

(e) Facial salon requirements:

(1) (No change.)

(2) Required equipment is as follows:

(A) (No change.)

(B) one wet sanitizer [sterilizer];

(C) one dry sanitizer [sterilizer];

(D)-(E) (No change.)

(3) In salons opening after January 1, 1994, each facial specialty/esthetician salon must have hot and cold running water within or accessible to each facial area. Existing salons must meet this requirement when remodeled, refitted, or at the beginning of a new license period, whichever is first.

(f) Manicurist salon requirements.

(1) (No change.)

(2) Required equipment is as follows:

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

(C) two professional-type chairs for clients [patrons];

(D) one wet and one dry sanitizer [sterilizer] at each table; and

(E) (No change.)

(3) Each manicure salon must have hot and cold running water within the facility.

(g) Manicure/Facial specialty salon requirements.

(1) (No change.)

(2) Required facial equipment is as follows:

(A) (No change.)

(B) one wet sanitizer [sterilizer];

(C) one dry sanitizer [sterilizer]; and

(D) (No change.)

(3) In salons opening after January 1, 1994, each facial specialty/esthetician salon must have hot and cold running water within or accessible to each facial area. Existing salons must meet this requirement when remodeled, refitted, or at the beginning of a new license period which ever is first.

(4) Required manicure equipment is as follows:

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

(C) two professional-type chairs for clients [patrons];

(D) one wet and one dry sanitizer [sterilizer] at each table; and

(E) (No change.)

(5) Each manicure/facial salon must have hot and cold running water within the facility.

(h)-(i) (No change.)

(j) No cosmetology establishment shall, in any manner, represent or permit a representation to be made in its behalf that it is a barber shop, whether made by use of a display or device similar to a barber pole or otherwise. It may, however, advertise that services for males are available, with the exception of shaving, trimming or shaving beards or mustaches.

§89.42. *Restrooms.* All licensed salons issued licenses prior to September 1, 1971, will not be required to have restrooms in direct connection with said salon. If a restroom is provided for clients [patrons] or operators, then the Texas Cosmetology Commission reserves the right to inspect said facility. All salons licensed after September 1, 1971, will be required to have a restroom with sink and commode, or have a public restroom available. Restrooms must meet all sanitary rules and regulations in regard to sanitation.

§89.43. *Posted in Salon or School.*

(a) The current salon or school license, consumer complaint information, current commission laws, rules and regulations, current sanitary rules and regulations, and the last inspection report of the inspector must be posted in all licensed salons or schools in the reception desk area in public view. Individual licenses, booth rental/independent contractor licenses, and the last inspection report of the inspector must be posted at the licensee's work station in the public view.

(b)-(c) (No change.)

§89.46. *Itinerant Beauty Salons.* A beauty salon shall have a permanent and definite location in which the art of cosmetology is practiced and which meets all of the requirements of the Cosmetology Commission. Mobile homes, motor homes, or trailers may not be licensed as beauty salons unless they meet all other requirements and

are anchored to the ground with wheels detached.

§89.50. *Resale of Hairpieces.* After the initial sale of a hairpiece, and prior to that hairpiece being resold, it must be properly disinfected [sanitized] and bear a tag showing that the proper sanitary procedures have been accomplished.

§89.53. *Minimum Requirements for Both Private and Public Cosmetology Schools.*

(a) The following are the requirements for a private cosmetology school as authorized by the Texas Cosmetology Commission as approved on June 1, 1985.

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

(4) The junior department must contain the following:

(A)-(E) (No change.)

(F) at least one large wet sanitizer [sterilizer]

(5) The senior department must contain the following:

(A)-(F) (No change.)

(G) wet sanitizer

(6) One semiprivate facial area with two facial chairs and adequate sanitation [sterilization] (client [patron] must be protected from public view).

(7) (No change.)

(8) The school shall have at least one dry sanitizer [sterilizer] (large enough to accommodate junior and senior departments).

(9)-(15) (No change.)

(b) The following are the requirements for a public school cosmetology program.

(1)-(4) (No change.)

(5) The school equipment list shall contain:

(A)-(E) (No change.)

(F) 16 styling stations covered with formica or similar material, with mirror, and 16 styling chairs (swivel or hydraulic)

(G)-(N) (No change.)

(O) One large wet sanitizer; and

(P) One dry container for disinfected implements.

(6)-(7) (No change.)

§89.55. *Refresher Course.* Schools of cosmetology may enroll applicants for the refresher course. A [However, a] person who holds a valid Texas license may [not] service clients [patrons] [for compensation] in the school for a 60-day period of time once every 3 years. [and] The [no] school may receive compensation for services performed by a student holding a valid Texas license; however, the student may not receive compensation. The student may perform services on mannequins, other students, or a non-paying model. The refresher student may not perform services on a paying client.

§89.72. *Curriculum.* The curriculum listed has been established by the Texas Cosmetology Commission and must be followed by all cosmetology schools. The curriculum shall be posted in a conspicuous place in the school. A current syllabus and lesson plans for each course shall be maintained by the school and be available for inspection.

(1) Operator curriculum.

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

(C) Facial Specialist Curriculum.

(i) orientation-25 hours;

(ii) sanitation, safety, and first aid-25 hours;

(iii) anatomy and physiology-90 hours;

(iv) chemistry-20 hours;

(v) electricity, machines, and related equipment-60 hours;

(vi) care of client-15 hours;

(vii) facial treatment (Cleansing, masking, therapy) -200 hours;

(viii) superfluous hair removal-20 hours;

(ix) aroma therapy-15 hours;

(x) nutrition-10 hours;

(xi) color psychology-10 hours;

(xii) make up-75 hours; (xiii) management-35 hours.-Total 600 hours.

(D) Manicure Curriculum.

(i) purpose and effect;

(ii) preparation;

(iii) equipment and implements-15 hours;

(iv) supplies; and

(v) procedures-175 hours;

(I) basic manicure and pedicure;

(II) oil manicure;

(III) removal of stains;

(IV) repair work;

(V) hand and arm massage;

(VI) buffing;

(VII) application of polish;

(VIII) application of artificial nails;

(IX) application of cosmetic fingernails preparation to build new nail; and

(X) application of nail extensions;

(-a-) sculptured nails;

(-b-) tips;

(-c-) wraps; and

(-d-

) fibreglas/gels.

(vi) Arms and hands.

(I) Bones.

(-a-) major bones;

(-b-) functions;

(II) Muscles-5 hours;

(-a-) major muscles;

(-b-) functions.

(III) Nerves.
 (-a-) major nerves; and
 (-b-) functions.

(IV) Skin-5 hours;
 (-a-) structure;
 (-b-) functions;
 (-c-) appendages;
 (-d-) conditions;
 (-e-) lesions.

(V) Nails-10 hours;
 (-a-) structure and composition;
 (-b-) growth and regeneration;
 (-c-) nail irregularities; and
 (-d-) nail diseases.

(vii) Chemistry in Manicuring-15 hours;
 (I) Elements, compounds, and mixtures.
 (-a-) properties of;
 (-b-) acid and alkali; and
 (-c-) chemistry of water.

(II) Composition and uses of nail preparation.

(III) Composition of manicuring products.

(viii) Sanitation and safety measures-15 hours;
 (I) Sanitation.
 (-a-) definitions;
 (-b-) importance;
 (-c-) rules and regulations (TCC); and
 (-d-) methods.

(II) safety measures;
 (III) hazardous chemicals; and

(IV) ventilation odor in salons.

(ix) Professional practices-10 hours;
 (I) Manicuring as a profession.
 and
 (-a-) vocabulary;
 (-b-) ethics.

(I) Salon procedures.
 (-a-) hygiene and good grooming;
 (-b-) professional attitudes and salesmanship; and
 (-c-) public relations. Total-250 hours.

(E) Instructor Curriculum.
 (i) orientation (theory)-50 hours;
 (ii) instruction & theory and lab/clinic operation-350 hours; and
 (iii) teaching and lab/clinic management-350 hours. Total-750 Hours.

(F) Instructor with Two Years Experience Curriculum.
 (i) orientation-10 hours;
 (ii) learning theory-20 hours;
 (iii) lesson plans-60 hours;
 (iv) methods of teaching-60 hours;
 (v) visual aids preparation and Use-20 hours;
 (vi) classroom Management-30 hours;
 (vii) evaluation techniques-30 hours; and
 (viii) state laws and forms 20 hours; Total-250 hours.

(G) Hairweaving Specialists Curriculum.
 (i) sanitation and safety measures-10 hours;
 (I) Sanitation.
 (-a-) definitions;
 (-b-) importance;

(-c-) sanitary rules and regulations, and also general rules and regulations set up by TCC; and
 (-d-) disinfecting methods of unused hair and fiber.

(II) Safety measures.
 (ii) Professional Practices-10 hours;
 (i) Hairweaving as a profession.
 (-a-) vocabulary;
 (-b-) ethics.

(II) Salon procedures-10 hours;
 (-a-) hygiene and grooming;
 (-b-) professional attitudes and salesmanship;
 (-c-) public relations.

(III) Hairweaving skills-20 hours;
 (-a-) purpose and effect;
 (-b-) preparation;
 (-c-) equipment and implements;
 (-d-) supplies; and
 (-e-) procedures-200 hours;

(-1-) basic hairweaving;
 (-2-) repair on hairweaving;
 (-3-) shampoo and conditioning of woven hair;
 (-4-) advanced hairweaving;
 (-5-) special problems; and
 (-6-) the hairweaver will only be allowed to practice those skills as enumerated in the hairweaving curriculum.

(iii) Anatomy and Physiology; Scalp-20 hours;

and
cl; and
nerves; and
vessels; and
and
used-10 hours;
and composition;
ities; and
scalp diseases.
hairweaving.

(I) Bones.
(-a-) major bones;
(-b-) functions.

(II) Muscles.
(-a-) major mus-
(-b-) functions

(III) Nerves.
(-a-) major
(-b-) function.

(IV) Blood.
(-a-) major blood
(-b-) functions.

(V) Skin.
(-a-) structure;
(-b-) functions;
(-c-) appendages;
(-d-) conditions;
(-e-) lesions.

(VI) Hair or Fiber
(-a-) structure
(-b-) hair regular-
(-c-) hair and

(iv) Chemistry in

(I) elements, com-
pounds, and mixtures-10 hours;
(-a-) properties
(-b-) chemistry of
water

(II) composition and
uses of cosmetics in hairweaving-10
hours; Total-300 hours.

(H) Shampoo and Condi-
tioning Specialist Curriculum.

(i) Professional prac-
tices-5 hours;

profession;

hours;

grooming;

(II) professional atti-
tudes and salesmanship; and

(III) public relations.
(iii) Shampooing and
conditioning skills-10 hours;

(I) purposes and ef-
fects;

(II) preparation;
(III) equipment and
implements; and

(IV) supplies.
(iv) Procedures-100
hours;

(I) Basic shampoo
techniques on all types of shampoo;

(II) application and
removal of all types of conditioners;

(III) removal of hair
color stains;

(IV) application of
weekly rinses or semi-permanent rinses
not requiring hydrogen peroxide;

(V) removal of
bleaches requiring shampoo;

(VI) scalp and neck
massage;

(VII) removing hair
tints requiring shampoo;

(VIII) cleansing and
conditioning of all hair goods;

(IX) hair and scalp
analysis; and

(I) shampooing as a

(II) vocabulary; and

(III) ethnics.

(ii) Salon procedures-5

(I) hygiene and

(II) professional atti-
tudes and salesmanship; and

(III) public relations.

(iii) Shampooing and
conditioning skills-10 hours;

(I) purposes and ef-
fects;

(II) preparation;

(III) equipment and
implements; and

(IV) supplies.

(iv) Procedures-100

(I) Basic shampoo
techniques on all types of shampoo;

(II) application and
removal of all types of conditioners;

(III) removal of hair
color stains;

(IV) application of
weekly rinses or semi-permanent rinses
not requiring hydrogen peroxide;

(V) removal of
bleaches requiring shampoo;

(VI) scalp and neck
massage;

(VII) removing hair
tints requiring shampoo;

(VIII) cleansing and
conditioning of all hair goods;

(IX) hair and scalp
analysis; and

(X) scalp and hair
manipulations.

(v) Scalp and Neck;
Anatomy and Physiology-10 hours;

(I) Bones.
(-a-) major bones;

(-b-) functions.

(II) Muscles.
(-a-) major bones;
(-b-) functions.

(III) Nerves.
(-a-) major
(-b-) functions.

(IV) Blood.
(-a-) major blood
(-b-) functions.

(V) Skin.
(-a-) structure;
(-b-) functions;
(-c-) appendages;
(-d-) condition;
(-e-) lesions.

(vi) Chemistry of sham-
poo and conditioner-10 hours;

(I) Elements, com-
pounds, and mixtures.

(-a-) properties

(-b-) acid and al-
kali (ph); and

(-c-) chemistry of
water.

(II) Composition and
uses of shampoo and conditioner;

(vii) Sanitation and
Safety-10 hours;

(I) Sanitation. (Note:
Under no conditions will the certificate
holder do any other skills but those pre-
scribed by the Commission.)

(-a-) definitions;
(-b-) importance;

(-c-) TCC rules and regulations and sanitary rulings; and
(-d-) methods.
Total-150 hours.

(I) Wig Specialist Curriculum

- (i) Cutting and shaping, scissors and razor-20 hours;
 - (ii) Styling-50 hours;
 - (iii) Cleaning-10 hours;
 - (iv) Sizing-5 hours;
 - (v) Alterations; installation of elastic-10 hours;
 - (vi) Rolling-30 hours;
 - (vii) Drying-5 hours;
 - (viii) Conditioning-10 hours;
 - (ix) Brushing Technique Prior to Styling-10 hours;
 - (x) Combing out-50 hours;
 - (xi) Measuring head for proper size-5 hours;
 - (xii) Preparation of wig on block-5 hours;
 - (xiii) Hot Iron-19 hours;
 - (xiv) Knowledge of color ring; J & L-1 hours;
 - (xv) Coloring, tinting, bleaching-37 hours;
 - (xvi) Eye tabbing-10 hours;
 - (xvii) Identification and recognition definition of wigs, wiggery, wigology, pertaining to any human, synthetic, or animal hairpiece-10 hours;
 - (xviii) Sanitation and disinfecting-10 hours;
 - (xix) History, background, and salesmanship-3 hours;
- Total-300 hours.

§89.76. *minimum Requirements for Cosmetology School Separate Facility.*

- (a)-(c) (No change.)
- (d) The practical work area shall contain the following:
 - (1)-(19) (No change.)
 - (20) at the least one large wet sanitizer [sterilizer];
 - (21) at least one large wet sanitizer [sterilizer];
 - (22)-(22) (No change.)

(e)-(r) (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 October 13, 1993.

TRD-9330288

Larry Perkins
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 454-4674

◆ ◆ ◆
• 22 TAC §89.73, §89.74

The Texas Cosmetology Commission proposes new §89.73 and §89.74, concerning Fashion Photography Salon Requirements; and Program for Voluntary Continuing Education.

Larry W. Perkins, interim executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Perkins also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that as a result of the Office of the Attorney General determining that fashion photography comes under the jurisdiction of the Texas Cosmetology Commission, and the voluntary continuing education gives instructors the opportunity to learn and receive recognition. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Alicia C. Ayers, Administrative Technician II, Texas Cosmetology Commission, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755-0700.

The new sections are proposed under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

The new rules implement Texas Civil Statutes, Article 8451a.

§89.73. *Fashion Photography Salon Requirements.*

- (a) No person may engage in the fashion photography business in this state unless a license for the business is obtained as required by the Texas Cosmetology Commission. Any fashion photography business operating prior to the effective date of these rules shall be given 90 days to submit its application and fees to the Commission.

(b) High fashion photography business salon requirements:

(1) Required floor space shall be a minimum of 180 square feet for the first operator and not less than an additional 110 square feet of working, dispensary, studio, sales, wardrobe, and reception areas for each additional operator, exclusive of restrooms, utility, heating, and/or cooling.

(2) Required equipment for the business is:

(A) one working station for each operator;

(B) one styling chair for each operator;

(C) one hand held dryer for each operator;

(D) one wet sanitizer;

(E) one dry sanitizer; and

(F) one shampoo bowl if performing wet service.

(3) Carpeting shall not be allowed in areas where cosmetics are directly applied, but may be used in reception, studio, wardrobe, dryer, and facial areas, provided it is cleaned regularly and kept sanitary. Those establishments that currently have carpeting in shampoo and work areas shall remove the carpeting when it can no longer be maintained in a sanitary condition.

(4) The business shall provide hot and cold running water within the salon.

(5) A public restroom must be available for the use of clients.

(6) An identifiable sign with the name of the high fashion photography business must be displayed.

(7) The business shall maintain cabinets for clean linen and closed containers for soiled linen.

(8) The business shall maintain a sufficient number of combs and brushes.

(9) Floors, walls, and equipment must be clean and sanitary.

(10) The business must be properly ventilated and adequately screened unless air-conditioned.

(11) The business shall post an identifiable sign stating the name, mailing address, and telephone number of the regulatory board (see §89.43 of this title (relating to Posted in Salon or School)).

(12) The business shall not be operated in conjunction with any establishment selling food or drink, and shall be separated by a solid wall and have a separate entry if located in the same building.

(13) Employees performing cosmetology services must be licensed by the Texas Cosmetology Commission.

(c) The requirements of §89.75 of this title (relating to Field Trips) supersede and control over the requirements of §89.39 of this title (relating to New Salon).

(d) A high fashion photography business shall be subject to the sanitary rules of §83.1 of this title (relating to Enforcement).

(e) Any employee of a fashion photography business providing photography, clerical, or other services not involving cosmetology need not be licensed as a cosmetologist by the Texas Cosmetology Commission.

§89.74. Program for Voluntary Continuing Education.

(a) General Information. The Texas Cosmetology Commission encourages all cosmetology related instructors to maintain and improve their teaching skills through in-service continuing education programs. In order to encourage instructors to participate in continuing education programs the Texas Cosmetology Commission will recognize all instructors that complete approved programs.

(b) The recognition of instructors will be as follows:

(1) All instructors that complete 16 hours of approved continuing education each year will receive a gold stamp for their license.

(2) All instructors with a minimum of seven years of teaching experience and that attend 16 hours of approved continuing education will receive a "Masters Teaching Certificate."

(3) In order to maintain the "Masters Teaching Certificate" the teacher must attend a minimum of 16 hours of in-service each year. If they do not attend the 16 hours during one year the certificate will be reissued after two years of continuous in-service (32 hours).

(c) Continuing education programs that have not been pre-approved by the Texas Cosmetology Commission will not be accepted for credit. Credit can be earned by attending approved out-of-state programs.

(d) Out-Of-State Programs. Hours earned at an out-of-state continuing education program will be accepted provided the program is certified by the Cosmetology Board (Commission) in that state and is

designated as an "Instructor Training Seminar." The instructor must submit a signed letter or certificate from the out-of-state board to receive credit for the earned hours.

(e) Procedure for approval of programs. The program sponsor must submit an application to the Commission for approval of the proposed program. The application should be submitted not less than 60 days before the proposed program date(s). Application forms can be obtained from the Commission office. Programs will not be approved until the application form is correct and all requested information is received. The Commission will notify the program sponsor within ten days of the received application if the program is approved.

(f) Program requirements. All teacher continuing education must be generic in nature; promotion of teaching systems, methods, or products will not be approved. The program must be related to teaching methods or techniques. Examples include: curriculum development, lesson plan preparation, human relations, student motivation, laboratory management, occupational analysis, etc.

(g) The credit will accrue at one hour of credit for each 50 minutes of classroom instruction. No more than one break of 30 minutes per four hours of instruction will be allowed. No more than two breaks can be given in each four-hour period of instruction.

(h) College courses. College courses offered for Vocational teacher Certification will be accepted and will accrue at eight hours for each three semester-hour course.

(i) Verification requirements.

(1) Monitors shall be on duty at all times while the program is in session.

(2) Monitors shall verify, by initialing or hole-punching, each participants sign-in/sign-out card/sheet for each session.

(3) Monitors shall hand out a Verification of Attendance form to program participants at the end of the program. Each participant must complete the attendance form and return it to the monitor before leaving the program site. Forms shall not be passed out or completed until the program is complete.

(4) The program sponsor shall provide the Commission with a master alphabetical listing of the names, addresses, and license identification number of each participant. The report will also include the actual number of clock-hours earned by the participants. In the event this material cannot be supplied by the sponsor, the participant is responsible for submitting the required verification.

(5) The program provider shall retain a copy of the attendance records, sign-in-sheets, etc., for a period of two years.

(6) After completion of the program and within 30 days, the provider shall provide each participant with a document that is evidence of attendance.

(j) Observation of the program. The Commission or its designated agent may observe any Commission-approved Continuing Education Program for the teacher in-service at no cost to the observer. Any meal or activity cost to the observer will be the responsibility of the Commission.

(k) Continuing education hours cannot be carried over from one year to the next.

(l) A year is from the first day of the month following the licensee's birth month through the last day of the licensee's birth month.

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 October 12, 1993.

TRD-9330289

Larry Perkins
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: November 19, 1993.

For further information, please call: (512) 454-4674

Part IX. Texas State Board of Medical Examiners

Chapter 163. Licensure

• 22 TAC §§163.1-163.9

(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 State Board of Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Medical Examiners proposes the repeal of §§163.1-163.9, concerning licensure requirements for physicians. Changes mandated by the legislature through Senate Bill 1062 required extensive revision of the licensure rules.

Ivan Hurwitz, director of licensure, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

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

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

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The repeal is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

The repeal implements Texas Civil Statutes, Article 4495b, §§3.01, 3.03, 3.0305, 3.031, 3.04, 3.05, 3.08, 5.035, and 5.04.

§163.1. Licensure Qualifications for All Applicants.

§163.2. Medical Schools Approved by the Board for Licensure.

§163.3. Examinations Required by the Board for Licensure.

§163.4. Training Programs Approved by the Board.

§163.5. Documentation Rules for All Applicants.

§163.6. Temporary Licensure.

§163.7. Distinguished Professor Permit.

§163.8. State Health Agency Permit.

§163.9. Procedural Rules for All Licensure Applicants.

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 October 13, 1993.

TRD-9330356
Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 834-7728

◆ ◆ ◆
• 22 TAC §§163.1-163.15

The Texas State Board of Medical Examiners proposes new §§163.1-163.15, concerning licensure requirements for physicians. Changes mandated by the legislature through

Senate Bill 1062 required extensive revision of the licensure rules.

Ivan Hurwitz, director of licensure, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hurwitz also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the licensing of qualified physicians in an effective and efficient manner. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The new sections are proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

The proposed new sections implement Texas Civil Statutes, Article 4495b, §§3.01, 3.03, 3.0305, 3.031, 3.04, 3.05, 3.08, 5.035, and 5.04.

§163.1. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

Ability to communicate in the English language—An applicant who has passed the Educational Council for Foreign Medical Graduates (ECFMG) English test within three attempts. The Executive Director will review on a case-by-case basis the application of any applicant who did not pass the ECFMG English test within three attempts and it will be at his discretion to evaluate the applicant's eligibility for licensure.

Acceptable approved medical school—A medical school or college located in the United States or Canada that was approved by the Board at the time the degree was conferred.

Acceptable unapproved medical school—A school or college located outside the United State or Canada that was not approved by the board at the time the degree was conferred but whose curriculum meets the requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board.

Applicant—One who files an application as defined in §163.1 of this title (relating to Definitions).

Application—An application is all documents and information necessary to

complete an applicant's request for licensure including the following:

(1) forms furnished by the board, completed by the applicant;

(A) all forms and addendums requiring a written response must be printed in ink; and

(B) photographs must meet U. S. Government passport standards;

(2) a fingerprint card, furnished by the board, completed by the applicant, that must be readable by the Texas Department of Public Safety;

(3) all documents required under §163.7 of this title (relating to Licensure Documentation); and

(4) the required fee, payable by check through a United States bank. Eligible for licensure in country of graduation—An applicant who has completed all requirements for licensure in the country in which the medical school is located except for any citizenship requirements.

Equivalent registration—An applicant for licensure by endorsement must apply for licensure based upon another state or provincial license that requires as part of its registration:

(1) a form signed by the physician;

(2) a fee; and

(3) periodic registration of a physician's license.

Examinations accepted by the board for licensure by endorsement—

(1) United States Medical Licensing Examination (USMLE), passed within three attempts, with a score of 75 or better on each step, all steps must be passed within seven years;

(2) Federation Licensing Examination (FLEX), after July 1985, passed within three attempts, passage of both components within seven years with a score of 75 or better on each component;

(3) Federation Licensing Examination (FLEX), prior to June 1985, passed within three attempts, with a FLEX weighted average of 75 or better in

(4) National Board of Medical Examiners Examination (NBME);

(5) National Board of Osteopathic Medical Examiners Examination (NBOME);

(6) Medical Council of Canada Examination (LMCC); and

(7) state board examination (with the exception of Florida, Virgin Islands, Guam, Tennessee Osteopathic Board,

or Puerto Rico after June 30, 1963) and Special Purpose Examination (SPEX).

Examinations administered by the board for licensure by examination—To be eligible for licensure by examination an applicant must sit for the required examination administered by the board. The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE), after December 31, 1993; the Federation Licensing Examination (FLEX), before January 1, 1994; and the Texas medical jurisprudence examination in writing at times and places as designated by the board.

Full force—Applicants for licensure by endorsement must possess a license in another jurisdiction which is in full force and not restricted, canceled, suspended or revoked. A physician with a license in full force may include a physician who does not have a current, active, valid annual permit in another jurisdiction because:

(1) that jurisdiction requires the physician to practice in the jurisdiction before the annual permit is current; or

(2) that jurisdiction requires the physician, prior to practicing in that jurisdiction, to hold a current professional liability insurance policy before the annual permit is current.

Good professional character—An applicant for licensure must not be in violation of or committed any act described in §3.08 of the Medical Practice Act.

Hardship—The practice of medicine in a Texas county with less than three active full-time physicians in the entire county.

One year training program—Applicants who are graduates of acceptable approved medical schools must successfully complete one year of post graduate training approved by the Board that is:

(1) accepted for certification by an American Specialty board that is a member of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists; or

(2) accredited by one of the following:

(A) the Accreditation Council for Graduate Medical Education, or its predecessor;

(B) the American Osteopathic Association;

(C) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(D) the Royal College of Physicians and Surgeons of Canada; or

(E) the College of Family Physicians of Canada; or

(3) a postresidency program, usually called fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners.

Requisite qualifications—An endorsement applicant who is a graduate of an unapproved acceptable medical school who:

(1) has for the preceding five years been a licensee of another state or a Canadian province;

(2) is not the subject of a sanction imposed by or disciplinary matter pending in any state or Canadian province in which the applicant is licensed to practice medicine; or

(3) is either specialty board certified by a board that is a member of the American Board of Medical Specialties or a specialty board approved by the American Osteopathic Association or successfully passes the Special Purpose Examination (SPEX).

Sponsor—A licensed Texas physician who:

(1) holds a current annual registration in this state that is current and in full force;

(2) has no past, present, or pending disciplinary matters in any jurisdiction; or

(3) will be on site to supervise a physician who has been issued a temporary license for out-of-state practitioners under §3.0305 of the Medical Practice Act.

Substantially equivalent to a Texas medical school—A medical school or college located outside the United States or Canada must be an institution of higher learning designed to select and educate medical students; provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences; to provide advancement of knowledge through research; to develop programs of graduate medical education to produce practitioners, teachers, and researchers; and to afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The medical school shall contribute to the advancement of knowledge and to the intellectual growth of its students and faculty through scholarly activity, including research. The medical school shall include, but not be limited to, the following characteristics:

(1) the facilities for basic sciences and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education;

(2) the admissions standards shall be substantially equivalent to a Texas medical school;

(3) the basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled anatomy, biochemistry, physiology, microbiology and immunology, pathology, pharmacology and therapeutics, and preventive medicine;

(4) the fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, and surgery,

(5) the curriculum shall be of at least 130 weeks in duration;

(6) all allopathic or osteopathic medical education instruction taught in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education and the Council on Postsecondary Accreditation as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States.

Three-year training program—Applicants who are graduates of unapproved medical schools must successfully complete three years of postgraduate training in the United States or Canada:

(1) accredited by one of the following:

(A) the Accreditation Council for Graduate Medical Education;

(B) the American Osteopathic Association;

(C) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada,

(D) the Royal College of Physicians and Surgeons of Canada;

(E) the College of Family Physicians of Canada, and

(F) all programs approved by the board after August 25, 1984; or

(2) a board-approved program for which a Faculty Temporary License was issued; or

(3) a postresidency program, usually called fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners. Unapproved medical school—A school or college located outside the United States or Canada that was not approved by the board at the time the degree was conferred.

§163.2. Licensure by Examination for United States/Canadian Medical School Graduates.

(a) An applicant, to be eligible for the examination, must present satisfactory proof to the board that the applicant:

- (1) is at least 21 years of age;
- (2) is of good professional character;
- (3) has completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree; and

(4) is a graduate of an acceptable medical school that was approved by the board at the time the degree was conferred.

(b) An applicant, who is a graduate of a medical school located in the United States or Canada, to be eligible for licensure by examination must have:

- (1) met all the requirements as outlined in subsection (a) of this section;
- (2) passed, within three attempts, an examination administered by the Board for licensure by examination as outlined in §163.8 of this title (relating to Administration of Examinations), and
- (3) successfully completed a one-year training program of graduate medical training approved by the board

§163.3 Licensure by Examination for Graduates of Unapproved Foreign Medical Schools

(a) An applicant, to be eligible for the examination, must present satisfactory proof to the board that the applicant:

- (1) is at least 21 years of age;
- (2) is of good professional character,
- (3) has completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts or a bachelor of science degree; and

(4) is a graduate of a school whose curriculum meets the requirements for an acceptable unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board;

(5) has graduated from an acceptable unapproved medical school that is substantially equivalent to a Texas medical school;

(6) has successfully completed a three-year training program of graduate medical training in the United States or Canada that was approved by the board on the date the training was completed;

(7) is eligible for licensure in the country of graduation;

(8) possesses a valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG);

(9) has the ability to communicate in the English language; and

(10) has supplied all additional information, that the board may require, concerning the applicant's medical school, before approving the applicant.

(b) An applicant, to be eligible for licensure by examination, must have:

- (1) met all the requirements as outlined in subsection (a) of this section; and
- (2) passed, within three attempts, an examination administered by the Board, for licensure by examination, as outlined in §163.8 of this title (relating to Administration of Examinations).

§163.4. Licensure by Endorsement for United States/Canadian Medical School Graduates. An applicant, to be eligible for licensure by endorsement, must:

- (1) be 21 years of age;
- (2) be of good professional character;
- (3) have completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree,
- (4) be a graduate of an acceptable approved medical school;
- (5) have successfully completed a one-year training program of graduate medical training approved by the Board;
- (6) submit evidence of passing, within three attempts, an examination, acceptable by the Board for licensure by endorsement;

(7) pass the Texas Medical Jurisprudence Examination with a score of 75 or better;

(8) hold a license in another state/province that is substantially equivalent to licensure in Texas and in whose registration requirements are equivalent; and

(9) be endorsed by another state or province, on a form provided by this state. The endorsement must state that the medical license is current and in full force and has not been restricted, canceled, revoked, or suspended.

§163.5. Licensure by Endorsement for Graduates of Unapproved Foreign Medical Schools. An applicant, to be eligible for licensure by endorsement, must:

- (1) be 21 years of age;
- (2) be of good professional character;
- (3) have completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree;

(4) be a graduate of a school whose curriculum meets the requirements for an acceptable unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board;

(5) be a graduate of an acceptable unapproved medical school that is substantially equivalent to a Texas medical school;

(6) have successfully completed a three year training program of graduate medical training in the United States or Canada that was approved by the board on the date the training was completed;

(7) submit evidence of passing, within three attempts, an examination, acceptable by the Board for licensure by endorsement;

(8) pass the Texas Medical Jurisprudence Examination with a score of 75 or better;

(9) hold a license in another state/province, that is substantially equivalent to licensure in Texas and in whose registration requirements are equivalent;

(10) be endorsed by another state or province, on a form provided by this state. The endorsement must state that the medical license is current and in full force and has not been restricted, canceled, revoked, or suspended;

(11) be eligible for licensure in country of graduation;

(12) possesses a valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG);

(13) have the ability to communicate in the English language; and

(14) have supplied all additional information that the board may require concerning the applicant's medical school.

§163.6. Procedural Rules for Licensure Applicants.

(a) Applicants for licensure:

(1) whose documentation indicates any name other than the name under which the applicant has applied must furnish proof of the name change; and

(2) whose application for licensure which has been filed with the board office and which is in excess of two years old from the date of receipt, shall be considered inactive. Any fee previously submitted with that application shall be forfeited. Any further application procedure for licensure will require submission of a new application and inclusion of the current licensure fee. All examination fees will be forfeited if the applicant fails to complete the application 60 days prior to the applicant's scheduled examination date or if the applicant fails to appear for the scheduled examination;

(3) will be allowed to sit for the Texas medical jurisprudence examination only three times. After the third failure of the Texas medical jurisprudence examination, and after each subsequent failure, an applicant for licensure shall be required to appear before a committee of the board to address the applicant's inability to pass the Texas medical jurisprudence examination and to re-evaluate the applicant's eligibility for licensure;

(4) who in any way falsify the application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be allowed to sit for the examination or be issued a Texas license;

(5) on whom adverse information is received by the board may be required to appear before the board. It will be

at the discretion of the board whether or not the applicant will be allowed to sit for the examination or be issued a Texas license;

(6) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application and fee are filed with the board;

(7) may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(8) must have the application for licensure complete in every detail 60 days prior to the board meeting in which they are considered for licensure. Applicants may qualify for a Temporary License prior to being considered by the board for licensure, as required by §163.9 of this title (relating to Temporary Licensure-Regular); and

(9) who previously held a Texas medical license may be required to complete additional forms as required.

(b) Applicants for licensure by examination:

(1) who are graduates of acceptable approved medical schools, may sit for the examination prior to complying with the one year graduate training requirement;

(2) who are graduates of unapproved medical schools, may sit for the examination after the completion of their 36th month of approved graduate training;

(3) must apply for and sit the required examination in this state. The examination may be taken for a total of three attempts;

(4) whose application is received by the board between August 1 and January 31 will be scheduled to sit for the following June examination. Applications for licensure by examination received by the board between February 1 and July 31 will be scheduled to sit for the following December examination. Applications must be complete in every detail 60 days prior to the examination before an applicant will be admitted to the examination; and

(5) who wish to request reasonable accommodations, due to a disability, must submit the request upon filing the application.

(c) Applicants for licensure by endorsement:

(1) are required to complete an oath swearing that:

(A) the license certificate under which the applicant has most recently practiced medicine in the state or Canadian province from which the applicant is transferring to this state or in the uniformed service in which the applicant served is in full force and not restricted, canceled, suspended, or revoked;

(B) the applicant is the identical person to the certificate or diploma was issued;

(C) no proceedings have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of the certificate, license, or authority to practice medicine in the state, Canadian province, or uniformed service of the United States in which it was issued; and

(D) no prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony.

(2) who have not been examined for licensure in a ten-year period prior to the filing date of the application must have passed Day III or Component II of the FLEX prior to June 1988, or SPEX, unless the applicant has obtained:

(A) specialty certification, recertification or an examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Advisory Board for Osteopathic Specialists within the preceding ten years; or

(B) through extraordinary circumstances, unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board.

(3) who are required to sit for a SPEX exam, will be scheduled for the examination, unless otherwise notified, based on the date the board receives their application.

Application filed between:

Feb 1 and Apr 30

May 1 and Jul 31

Aug 1 and Oct 31

Nov 1 and Jan 31

will be scheduled for the:

Sep SPEX

Dec SPEX

Mar SPEX

Jun SPEX

Applications must be complete in every detail 60 days prior to the examination before an applicant will be admitted to the examination.

§163.7. *Licensure Documentation.*

(a) An applicant must appear for a personal interview at the board offices and present original documents to a representative of the board for inspection. Original documents may include, but are not limited to, those listed in subsections (b)-(d) of this section.

(b) Documentation required of all applicants for licensure:

(1) Birth Certificate/Proof of Age—each applicant for licensure must provide a copy of either a birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(2) Name Change—any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination Scores—each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to this board for all examinations used in Texas or another state for licensure.

(4) Dean's Certification—each applicant for licensure must have a certificate of graduation submitted directly from the medical school on a form provided by the board. The applicant shall attach a recent photograph, meeting U. S. Government passport standards, to the form before submitting to the medical school. The school shall have the Dean of the medical school or designated appointee sign the form attesting to the information on the form and placing the school seal over the photograph.

(5) Medical Diploma—all applicants for licensure must submit a copy of their medical diploma.

(6) Evaluations—all applicants must provide evaluations, on a form provided by the board, of their professional affiliations for the past ten years or since graduation from medical school, whichever is the shorter period.

(7) Premedical School Transcript—each applicant must submit a copy of

the record of their undergraduate education. Transcripts must show courses taken and grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree, the applicant may be requested to contact the Office of Admissions at The University of Texas at Austin for course work verification.

(8) Medical School Transcript—each applicant must have their medical school submit a transcript of courses taken and grades obtained.

(9) National Practitioner Data Bank (NPDB)—each applicant must contact the NPDB and have a report of action submitted directly to the board on the applicant's behalf.

(10) Federation of State Medical Boards History Report—each applicant must contact the Federation of State Medical Boards and have a history report submitted directly to the board on the applicant's behalf.

(11) Physician's Profile—each applicant must have a "Physician's Profile" report submitted directly to the board on the applicant's behalf from:

(A) American Medical Association; or

(B) American Osteopathic Association.

(12) National Credentials Verification Service (NCVS)—each applicant that has contracted with NCVS to provide verification of documents may request that a copy of the NCVS file be submitted directly to the board.

(13) Fingerprint Card—each applicant must complete a fingerprint card and return to the board as part of the application.

(14) Graduate Training Verification—each applicant must submit a certificate showing successful completion of required training. The certificate must show the beginning and ending dates of the program and state that the program was successfully completed. An applicant may have the Program Director of the program in which the applicant trained submit a letter, addressed to this board, submitted directly to this board stating the beginning and ending dates of the program and attesting to successful completion.

(15) Temporary License Affidavit—each applicant must submit a completed form, furnished by the board, titled "Tem-

porary License Affidavit," prior to the issuance of a temporary license.

(16) Additional Photograph—applicants required to sit for the FLEX, USMLE, or SPEX examinations must submit an recent photograph that meets U. S. Government passport standards.

(c) Applicants for licensure by endorsement must satisfy the appropriate requirements listed in subsections (a) and (b) of this section and:

(1) Endorsement—each applicant for licensure by endorsement must have a state or province endorse them to this board. The endorsement must indicate that the license is current and in full force and that it has not been restricted, canceled, suspended or revoked. Each endorsement must indicate the basis of licensure (by endorsement or examination) or the applicant must request that the endorsing state submit a letter to this board stating the basis of licensure. The endorsing board should include a description of any sanctions imposed by or disciplinary matters pending in the state or Canadian province.

(2) State License Registration—each applicant must submit a copy of a certificate issued by the state which is endorsing them to this board. The certificate must show the license number and date of expiration of the current registration.

(3) Specialty Board Certification—each applicant that has obtained certification by a board that is a member of the American Board of Medical Specialties or the American Osteopathic Association must submit a copy of the certificate issued by the member showing board certification.

(4) Continuing Medical Education (CME)—each applicant must provide copies of certificates showing completion of at least equal to the number of CME hours required by the endorsing state.

(5) Medical License Verifications—each applicant will have every state, excluding the state that is endorsing them to this board, in which they have ever been licensed, regardless of the current status of the license, submit on their behalf, directly to this board a letter verifying the status of the license and any a description of any sanctions or pending disciplinary matters.

(d) Applicants, for licensure by examination who are graduates of unapproved foreign medical schools must furnish all appropriate documentation listed in this subsection as well as that listed in subsections (a) and (b) of this section. Applicants for licensure by endorsement who are graduates of unapproved foreign medical schools, must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a)-(c) of this section. The required documents are as follows:

(1) Educational Commission for Foreign Medical Graduates (ECFMG) certificate—must submit a copy of a valid ECFMG certificate unless they have completed a Fifth Pathway program;

(2) Educational Commission for Foreign Medical Graduates (ECFMG) interim certificate—each applicant that has completed a Fifth Pathway program must submit a copy of their ECFMG interim certificate;

(3) Educational Commission for Foreign Medical Graduates (ECFMG) Examination History Report—each applicant must request that ECFMG furnish directly to this board a report of the number of examinations taken by the applicant leading to ECFMG certification, the result of each examination and the type of examination taken;

(4) Unique Documentation—the board may request documentation unique to an individual unapproved medical school and additional documentation as needed to verify completion of medical education;

(5) Higher Education Coordinating Board Certificate—each applicant must request that the Texas Higher Education Coordinating Board submit a certificate that the applicant's medical school curriculum meets the requirements for an unapproved medical school;

(6) Certificate of Registration—each applicant must provide a copy of their certificate to practice in the country in which their medical school is located. If a certificate is unavailable, a letter, submitted directly to this board from the body governing licensure of physicians in the country in which the school is located, will be accepted. The letter must state that the applicant has met all the requirements for licensure in the country in which the school is located. If an applicant is not licensed in the country of graduation due to a citizenship requirement a letter attesting to this, submitted directly to this board, will be required.

(7) Clinical Clerkship Affidavit—a form, supplied by the board, to be completed by the applicant, is required, listing each clinical clerkship that was completed as part of an applicant's medical education. The form will require the name of the clerkship, where the clerkship was located (name of hospital and location of hospital) and dates of the clerkship.

(e) Applicants may be required to submit other documentation, which may include the following:

(1) Translations—any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation

will have to be submitted along with the translated document.

(2) Arrest Records—if an applicant has ever been arrested a copy of the arrest and arrest disposition need to be requested from the arresting authority and said authority must submit copies directly to this board.

(3) Malpractice—if an applicant has ever been named in a malpractice claim filed with any medical liability carrier or if an applicant has ever been named in a malpractice suit the applicant must have the following submitted:

(A) have each medical liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to this board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed the attorney must state the disposition of the suit and, if any money was paid, the amount of the settlement. If such letter is not available the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided;

(C) a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(4) Inpatient Treatment for Alcohol/Substance Abuse or Mental Illness—each applicant that has been admitted to an inpatient facility within the last ten years for the treatment of alcohol/substance abuse or mental illness must submit the following:

(A) an applicant's statement explaining the circumstances of the hospitalization;

(B) an admitting summary and discharge summary, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended;

(D) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(5) Outpatient Treatment for Alcohol/Substance Abuse or Mental Illness—each applicant that has been treated on an outpatient basis within the last ten years for alcohol/substance abuse or mental illness must submit the following:

(A) an applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(6) additional documentation as is deemed necessary to facilitate the investigation of any application for medical licensure; and

(7) a copy of the DD214 indicating separation from any branch of the United States military.

(f) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis.

§163.8. Administration of Examinations.

(a) The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE) after December 31, 1993; the Federation Licensing Examination (FLEX) before January 1, 1994; the Special Purpose Examination (SPEX) and the Texas medical jurisprudence examination in writing, at times and places as designated by the board.

(b) An examinee shall not be permitted to bring medical books, compends, notes, medical journals, calculators, or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(c) Irregularities during an examination, such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination or to invalidate the

applicant's examination results or to take other appropriate action.

(d) All USMLE Step 3, FLEX, and SPEX questions and answers, with grades attached, shall be preserved for at least one year at the National Board of Medical Examiners offices.

(e) An applicant shall not be eligible to sit for the FLEX, SPEX, or Texas medical jurisprudence examinations until the application is complete and until the applicant has made a personal appearance to have his or her required original documents inspected by a representative of the board.

(f) an applicant shall not be eligible to sit for the USMLE Step 3 examination until:

(1) the application is complete;

(2) the applicant has passed the USMLE Step 1 and USMLE Step 2 examinations with a grade of 75 on each step within the last seven years; and

(3) the applicant has made a personal appearance to have his or her required original documents inspected by a representative of the board.

§163.9. Temporary Licensure-Regular.

(a) The executive director of the board may issue a temporary license to an endorsement applicant:

(1) who holds a valid license in another state or Canadian province on the basis of an examination required for licensure in Texas;

(2) who has passed the Texas medical jurisprudence examination;

(3) whose completed application has been filed, processed, and found to be in order; and

(4) who has met all other requirements for licensure, except passage of SPEX if required for licensure.

(b) The executive director of the board may issue a temporary license to an examination applicant:

(1) who has passed the examination administered by the board;

(2) who has passed the Texas medical jurisprudence examination;

(3) whose completed application has been filed, processed, and found to be in order; and

(4) who has met all other requirements for licensure.

(c) Each applicant shall receive only one temporary license prior to the issuance of a permanent license. The Board, in unusual circumstances, may allow the issuance of one additional temporary license if

it finds it is in the best interest of the public and that the health and welfare of the public would not be endangered, but would be served. These exceptions are reviewed by the executive director on a case-by-case basis.

§163.10. Distinguished Professors Temporary License.

(a) The executive director of the board may issue a distinguished professors temporary license to an endorsement applicant:

(1) who holds a substantially equivalent state license in another state or Canadian province on the basis of an examination accepted by the board for licensure by endorsement;

(2) who has passed the Texas medical jurisprudence examination;

(3) whose application has been filed, processed and found to be in order. The application shall be complete in every detail except that the applicant will not be required to have taken and passed the SPEX examination as set forth in §163.1 of this title (relating to Licensure Definitions);

(4) who holds an appointment as a salaried, full professor on the faculty working full-time in one of the following institutions:

(A) University of Texas Medical Branch at Galveston;

(B) University of Texas Health Science Center at Dallas;

(C) University of Texas Health Science Center at Houston;

(D) University of Texas Health Science Center at San Antonio;

(E) University of Texas Health Center at Tyler;

(F) University of Texas M.D. Anderson Cancer Center;

(G) Texas A&M School of Medicine;

(H) Texas Tech University School of Medicine;

(I) Baylor College of Medicine; or

(J) University of North Texas Health Science Center at Fort Worth.

(b) The distinguished professors temporary license shall be requested by the institution as defined in subsection (a)(4) of this section and shall be valid only in the institution or its affiliated hospitals.

(c) The distinguished professors temporary license shall be valid for a continuous one-year period; however, the permit is revocable at any time the board deems necessary. The distinguished professors temporary license shall automatically expire one year after the date of issuance. The distinguished professors temporary license is renewable one time, at the discretion of the executive director.

(d) At the conclusion of this one-year period, the distinguished professor shall present recommendations in his or her behalf from the chief administrative officer and the president of the institution, and shall petition the board for a permanent, unrestricted license to practice medicine in Texas. If this petition is denied, the institution may request a one-year extension of the distinguished professors temporary license. If an extension is granted, and following termination of such extension, the distinguished professor shall again present recommendations from the chief administrative officer and the president of the institution and re-petition the board for a permanent, unrestricted license to practice medicine in Texas. If the petition is again denied, no further distinguished professors temporary license shall be issued.

(e) If the board grants the petition for licensure, the distinguished professor may be issued a permanent, unrestricted license.

§163.11. State Health Agency Permit.

(a) An endorsement applicant may elect to apply for a state health agency permit in lieu of licensure granted by endorsement.

(1) The executive director of the board may issue such a permit to an applicant:

(A) who holds a valid license in another state or Canadian province on the basis of an examination, that was passed within three attempts, that is accepted by the board for licensure by endorsement;

(B) who has passed the Texas medical jurisprudence examination;

(C) whose application has been filed, processed, and found to be in order. The application shall be complete in every detail with the exception of compliance with §163.6(j) of this title (relating to Procedural Rules for all Licensure Applicants); and

(D) who holds a salaried, administrative, or clinical position with an agency of the State of Texas.

(2) The state health agency permit shall be requested by the chief administrative officer of the employing state agency and shall be issued exclusively to that agency. The chief administrative officer shall state whether the permit is for a:

(A) clinical position. This permit will be valid for a one-year period from the date of issuance and will not be renewable. The permit is revocable at any time the board deems necessary. To practice beyond one year, the holder of the permit must fully comply with §163.6(j) of this title (relating to Procedural Rules for all Licensure Applicants). During the period that the state health agency clinical permit is in effect, the physician will be supervised by a licensed staff physician who will regularly review the permit holder's skill and performance. This permit will be marked "clinical"; or

(B) administrative non-clinical position. This permit will be valid for a one-year period from the date of issuance; however, it is revocable at any time the board deems necessary. The permit shall automatically expire one year after the date of issuance but may be re-issued annually at the request of the chief administrative officer of the employing state agency and at the discretion of the Texas State Board of Medical Examiners. The holder of a state health agency permit, not designated as clinical, shall not practice medicine as that term is defined in Texas Civil Statutes, Article 4495b, §1.03(8)(A) and (B). This permit will be marked "administrative."

§163.12. Relicensure.

(a) If a physician's license has been expired for one year, it is considered to have been canceled, and the physician may not renew the license. The physician may obtain a new license by submitting to re-examination and complying with the requirements and procedures for obtaining an original license;

(1) the examination required by this section is SPEX for relicensure applicants whose license has been expired for less than 731 days;

(2) the examination required by this section is USMLE or specialty certification, recertification or an examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Advisory Board for Osteopathic Specialists for relicensure applicants whose license has been expired for more than 730 days;

(3) the additional requirements for this new license shall be as required within the following sections:

(A) Section 163.2 of this title (relating to Licensure by Examination for United States and Canadian Medical School Graduates);

(B) Section 163.3 of this title (relating to Licensure by Examination for Graduates of Unapproved Foreign Medical Schools);

(C) Section 163.4 of this title (relating to Licensure by Endorsement for United States/Canadian Medical School Graduate);

(D) Section 163.5 of this title (relating to Licensure by Endorsement for Graduates of Unapproved Foreign Medical Schools);

(E) Section 163.6 of this title (relating to Procedural Rules for all Licensure Applicants); and

(F) Section 163.7 of this title (relating to Licensure Documentation);

(b) A person may qualify for renewal of their original license without re-examination if that person:

(1) held a license previously in this state;

(2) moved to another state;

(3) practiced in that other state for not more than two years since the expiration of their Texas license; and

(4) files an application for relicensure under subsection (a)(3) of this section.

§163.13. Medical Practice Act, §3.0305, Temporary Licensure for Out-of-State Practitioners.

(a) Applicants for a §3.0305 Temporary License for Out-of-State Practitioners:

(1) must have on file with the board the application;

(2) must have a current, active, and unrestricted license, without any pending disciplinary matters, as a physician in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;

(3) must have passed an examination accepted by the board for licensure by endorsement;

(4) must be sponsored by a person licensed by the board under this Act with whom the temporary license holder may practice under this section.

(b) An applicant for a temporary license may be excused from the requirement of subsection (a)(4) of this section if the board determines that compliance with subsection (a)(4) of this section constitutes a hardship to the applicant.

(c) A §3.0305 Temporary License for Out-of-State Practitioners is valid until the date the board approves or denies the temporary license for an out-of-state practitioner's application for a license. The board shall issue a license under this section to the holder of the temporary license under this section if:

(1) the temporary license-holder passes the examination required by the Medical Practice Act, §3.05;

(2) the board verifies that the temporary license-holder has satisfied the academic and experience requirements for a license;

(3) the temporary license-holder has satisfied all other requirements for licensure as prescribed by §163.4 of this title (relating to Licensure by Endorsement for United States/Canadian Medical School Graduates), §163.5 of this title (relating to Licensure by Endorsement for Graduates of Unapproved Foreign Medical Schools), §163.6 of this title (relating to Procedural Rules for all Licensure Applicants), and §163.7 of this title (relating to Licensure Documentation).

(d) The board must assemble the documents and information necessary to process an out-of-state practitioner, who holds a temporary license under this section, application for a license not later than the 90th day after the date the temporary license for an out-of-state practitioner is issued and complete the processing of the application not later than the 90th day after the date the documents and information are assembled. If, by the 180th day after the date the temporary license for the out-of-state practitioner under this section is issued, the board has not completed the processing of the application, the Reciprocity Committee shall review the application to determine the cause of the delay.

§163.14. Licensure by Endorsement for the Fifth Pathway. An applicant who has completed a Fifth Pathway Program to be eligible for licensure by endorsement must:

(1) be at least 21 years of age;

(2) be of good professional character;

(3) have completed 60 semester hours of college courses other than in medi-

cal school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts or a bachelor of science degree;

(4) have completed all of the didactic work of the foreign medical school, whose curriculum meets the requirements for an acceptable unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board, but has not graduated from an unapproved acceptable medical school;

(5) have completed all of the didactic work of the foreign medical school, that is substantially equivalent to a Texas medical school, but has not graduated from an acceptable unapproved medical school;

(6) have successfully completed a three-year training program of graduate medical education in the United States or Canada that was approved by the board on the date the training was completed;

(7) submit evidence of passing an examination, within three attempts, that is acceptable to the Board for licensure by endorsement;

(8) pass the Texas Medical Jurisprudence Examination with a score of 75 or better;

(9) hold a license in another state/province, in which the applicant most recently practiced that is substantially equivalent to licensure in Texas and in whose registration requirements are equivalent;

(10) be endorsed, on a form provided by this state, by the state in which the applicant has most recently practiced. The endorsement must state that the medical license is current and in full force and has not been restricted, canceled, revoked, or suspended;

(11) submit a sworn affidavit that no proceedings, past or current, have been instituted against the applicant before any state medical board, provincial medical board, in any military jurisdiction or federal facility;

(12) have attained a passing score on the ECFMG examination;

(13) have the ability to communicate in the English language;

(14) have completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program); and

(15) have supplied all additional information, that the board may require,

concerning the applicants' medical school, before approving the applicant.

§163.15. Licensure by Examination for the Fifth Pathway.

(a) An applicant who has completed a Fifth Pathway Program to be eligible for the examination must present satisfactory proof to the board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character;

(3) has completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts or a bachelor of science degree;

(4) has completed all of the didactic work of the foreign medical school, whose curriculum meets the requirements for an acceptable unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board, but has not graduated from an unapproved acceptable medical school;

(5) has completed all of the didactic work of the foreign medical school, that is substantially equivalent to a Texas medical school, but has not graduated from an acceptable unapproved medical school;

(6) has successfully completed three years of graduate medical training in the United States or Canada that was approved by the board on the date the training was completed;

(7) has attained a passing score on the ECFMG examination;

(8) has the ability to communicate in the English language;

(9) has completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program); and

(10) has supplied all additional information that the board may require concerning the applicants' medical school before approving the applicant.

(b) An applicant who has completed a Fifth Pathway Program to be eligible for licensure by examination must have:

(1) met all the requirements as outlined in subsection (a) of this section; and

(2) passed an examination administered by the Board within three attempts as outlined in §163.8 of this title

(relating to Administration of Examinations).

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 October 12, 1993.

TRD-9330355

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 834-7728

Chapter 166. Annual Registration

• 22 TAC §§166.1-166.3

(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 State Board of Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Medical Examiners proposes the repeal of §§166.1-166.3, concerning annual registration. Senate Bill 1062 mandated extensive changes to physician registration; therefore the repeals are simultaneously proposed with new sections.

Pat Wood, director of permits, 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.

Ms. Wood also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be clarification of the rules by omission. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The repeals are proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

The repeals implement Texas Civil Statutes, Article 4495b, §3.01.

§166.1. Physician Registration.

§166.2. Retired Physician Exception.

§166.3. Staggered Registration.

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 October 13, 1993.

TRD-9330357 Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 834-7728

Chapter 166. Physician Registration

• 22 TAC §§166.1-166.5

The Texas State Board of Medical Examiners proposes new §§166.1-166.5, concerning physician registration and continuing medical education. Senate Bill 1062, 73rd Legislature, mandates implementation of a program requiring continuing medical education for physicians. The bill also eliminates the grace period for annual registration previously afforded to physicians and increases penalty fees. Since the changes are extensive, the new sections are proposed simultaneously with the repeal of existing rules concerning annual registration.

Pat Wood, director of permits, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an increased revenue from penalty fees of \$160,000 in FY94, \$160,000 in FY95, \$160,000 in FY96, \$160,000 in FY97, and \$160,000 in FY98. It is difficult to estimate at this time the number of out-of-state physicians who will choose to cancel their licenses rather than pay the increased penalty fees for delinquent registration, thus causing a loss of revenue to the state. The estimated additional cost to implement the continuing medical education program will be \$139,264 for FY94 and \$131,164 in each of FY95-FY98. There will be no effect on local government for the first five-year period the sections are in effect.

Ms. Wood also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to implement a program mandated by the legislature to further ensure that the State of Texas registers competent physicians. The anticipated increased economic cost to the individuals who are required to comply with the sections as proposed will be penalty fees of \$400 (1-90 days delinquent) or \$650 (more than 90 days delinquent) for FY94-FY98. Regarding continuing medical education, 85% of the licensed physicians already complete the proposed number of hours; therefore there will be no additional cost involved to comply. Data is unavailable at this time to estimate the cost to those physicians who currently

complete less than 24 hours of continuing medical education per year.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The new sections are proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

The proposed new sections implement Texas Civil Statutes, Article 4495b, §3.01 and §3.025.

§166.1. Physician Registration.

(a) Each physician licensed to practice medicine in Texas shall register annually and pay a fee. A physician may renew an unexpired license by submitting the required form and by paying the required renewal fee to the board on or before the expiration date of the license. The fee shall accompany a written application which sets forth the licensee's name, mailing address, the place or places where the licensee is engaged in the practice of medicine, and other necessary information prescribed by the board.

(b) The board shall stagger annual registration of physicians proportionally on a periodic basis.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the annual registration of a physician's license, 24 hours of continuing medical education (CME) are required to be completed in the following categories:

(1) At least one-half of the hours are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or the Texas Medical Association;

(B) approved for prescribed credit for family physicians by the American Academy of Family Physicians;

(C) approved for osteopathic credit by the American Osteopathic Association;

(D) approved by the Texas Medical Association based on standards established by the AMA for its Physician's Recognition Award; or

(E) approved by the Council on Medical Specialty Societies.

(2) The remaining hours may be composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(b) A physician must report on the annual registration form the number of hours and type of continuing medical education completed during the previous year.

(c) A licensee shall be presumed to have complied with this section if in the preceding 36 months the licensee becomes board-certified or recertified in a medical specialty and the medical specialty program meets the standards of the American Board of Medical Specialties, the American Medical Association, the Advisory Board for Osteopathic Specialists and Boards of Certification, or the American Osteopathic Association.

(d) A physician may request in writing an exemption for the following reasons:

- (1) catastrophic illness;
- (2) military service of longer than one year's duration outside the state;
- (3) medical practice and residence of longer than one year's duration outside the United States; or

(4) good cause shown on written application of the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing medical education.

(e) Exemptions are subject to the approval of the executive director/medical director.

(f) A temporary exemption under subsection (d) of this section may not exceed one year but may be renewed annually, subject to the approval of the board.

(g) Subsection (a) of this section does not apply to a licensee who is retired and has been exempted from paying the annual registration fee under §166.3 of this title (relating to Retired Physician Exception).

(h) This section does not prevent the board from taking disciplinary action with respect to a licensee or an applicant for a license by requiring additional hours of continuing medical education or of specific course subjects.

(i) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification

may result in disciplinary action by the board.

(j) Physicians in residency/fellowship training will satisfy the requirements of subsection (a)(1) and (2) of this section by their residency or fellowship program.

(k) Compliance with subsection (a) of this section will be required by January 1, 1995; all other provisions are effective upon final adoption of these rules.

§166.3. Retired Physician Exception. The annual registration fee shall apply to all physicians licensed by the board, whether or not they are practicing within the borders of this state, except retired physicians.

(1) To become exempt from the annual registration fee due to retirement:

(A) the physician's current license must be active and in good standing;

(B) the physician must request in writing on a form prescribed by the board for his or her license to be placed on official retired status.

(2) The following restrictions shall apply to physicians whose licenses are on official retired status.

(A) The physician must not engage in clinical activities or practice medicine in any state.

(B) The physician must not prescribe or administer drugs to anyone, nor may the physician possess a DEA or Texas controlled substances registration.

(C) The physician's license may not be endorsed to any other state.

(3) A physician whose license has been placed on official retired status must obtain the approval of the board before returning to active status. The physician shall then pay all previous exempt annual registration fees. Also, if the physician has been on a retired status five years or longer, he or she must:

(A) pass SPEX; or

(B) be specialty-certified or recertified within the last ten years by a specialty board approved by this board that is a member of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists.

§166.4. Renewal of Expired License.

(a) If a physician's license has been expired for 90 days or less, the physician

may renew the license by submitting a completed annual registration form and paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(b) If a physician's license has been expired for longer than 90 days but less than one year, the physician may renew the license by submitting a completed annual registration form and paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(c) If a physician's license has been expired for one year, it is considered to have been canceled, and the physician may not renew the license.

§166.5. Obtaining a New Medical License Following Cancellation for Nonpayment of Annual Registration Fee. To obtain a new license, a physician must submit to reexamination and qualify under §163.12 of this title (relating to Relicensure).

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 October 13, 1993.

TRD-9330358
Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 834-7728

◆ ◆ ◆
Chapter 171. Institutional Permits

◆ ◆ ◆
• 22 TAC §171.1

The Texas State Board of Medical Examiners proposes an amendment to §171.1, concerning institutional permits. The board proposes to increase the period of time an initial institutional permit will be issued to 14 months, instead of 12. The board also proposes an increase in the initial permit, as well as renewal permits, to cover the cost of implementing the program.

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

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

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The amendment is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act

The proposed amendment implements Texas Civil Statutes, Article 4495b, §3. 01.

§171.1. Institutional Permits.

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

(f) **Initial** institutional permits are issued for **14 months**. [a one-year period and] **The permit** may be renewed for a **one-year period** up to seven times, depending upon the requirements of the physician's specialty training program.

(g)-(j) (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.

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◆ ◆ ◆
• 22 TAC §171.9

The Texas State Board of Medical Examiners proposes an amendment to §171.9, concerning teaching fellow permits. The board proposes to change the name of this permit to faculty temporary license.

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

Ms. Wood 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 to more clearly define the type of license or permit issued to a physician holding a faculty position of assistant professor level or higher. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time

The amendment is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

The proposed amendment implements Texas Civil Statutes, Article 4495b, §3. 01.

§171.9. Faculty Temporary License [Teaching Fellow Permit].

(a) The board may issue a **faculty temporary license [permit]** to practice medicine to a **physician [person]** appointed [as a teaching fellow] by a Texas medical school in accordance with this subchapter:

(1) who holds a valid license in another state or Canadian province or has completed three years of post-graduate training; and

(2) who holds [position as] a **salaried faculty position** of assistant professor-level or higher [or associate professor on the faculty] working full-time in one of the following institutions:

(A) University of Texas Medical Branch at Galveston;

(B) University of Texas Health Science Center at Dallas;

(C) University of Texas Health Science Center at Houston;

(D) University of Texas Health Science Center at San Antonio;

(E) University of Texas Health Center at Tyler;

(F) University of Texas M. D Anderson Cancer Center;

(G) Texas A&M School of Medicine;

(H) Texas Tech University School of Medicine;

(I) Baylor College of Medicine; or

(J) University of North Texas Health Science Center at Fort Worth [Texas College of Osteopathic Medicine].

(b) The **faculty temporary license [permit]** shall be issued for one year, and may be renewed three times.

(c) The **faculty temporary license [permit]** shall be issued to the institution authorizing the **physician [named teaching fellow]** to practice medicine within the teaching confines of the applying medical school as a part of duties and responsibilities assigned by the school to the **physician [teaching fellow]**.

(d) The **physician [teaching fellow]** may participate in the full activities of the department in whichever hospitals the appointee's department has full responsibility for clinical, patient care, and teaching activities.

(e) The **physician [teaching fellow]** and the school shall file affidavits affirming acceptance of the terms, limitations, and conditions imposed by the board on the medical activities of the **physician [teaching fellow]**.

(f) The application and fee for the **faculty temporary license [teaching fellow permit]** or the renewal thereof shall be presented to the executive director of the board at least 30 days prior to the effective date of the appointment of the **physician [teaching fellow]**.

(g) The application shall be made by the chairman of the department in which the **physician [teaching fellow]** will teach and provide such information and documentation to the board as may be requested.

(h) The application shall be endorsed by the dean of the medical school or by the president of the Health Science Center.

(i) Three years in a **teaching faculty position [Teaching Fellowship]** at one medical school may be equivalent to three years of approved post-graduate training if, at the conclusion of this three-year period, the **physician [teaching fellow]** presents recommendations in his or her behalf from the chief administrative officer and the president of the institution.

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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For further information, please call: (512) 834-7728



Chapter 175. Schedule of Fees and Penalties

• 22 TAC §175.1, §175.2

The Texas State Board of Medical Examiners proposes amendments to §175. 1 and §175.2, concerning fees and penalties. The board proposes to raise the annual registration fee and increase the fees for institutional permits in order to recover costs for implementing the programs. Senate Bill 1062 mandated that penalty fees be increased for delinquent annual registration.

Pat Wood, director of permits, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

The effect on state government for the first five-year period the sections are in effect will be an increased revenue from new Institutional Permits of \$30,000 in FY94, \$30,000 in FY95, \$30,000 in FY96, \$30,000 in FY97, and \$30,000 in FY98; increased revenue from renewed permits of \$24,000 in FY94, \$24,000 in FY95, \$24,000 in FY96, \$24,000 in FY97, and \$24,000 in FY98; an increase in revenue from Annual Registrations of \$252,000 in FY94, \$336,000 in FY95, \$336,000 in FY96, \$336,000 in FY97, and \$336,000 in FY98; and an increase in revenue from Penalty Fees of \$160,000 in FY94, \$160,000 in FY95, \$160,000 in FY96, \$160,000 in FY97, and \$160,000 in FY98. There will be no effect on local government for the first five-year period the sections will be in effect.

Ms. Wood also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more efficient use of state funds through collection of fees to cover cost of implementing program, and increased contribution to the General Revenue Fund. The anticipated increased economic cost to the individuals who are required to comply with the section as proposed will be an annual registration fee of \$8 per year for FY94-98, an institutional permit fee of \$25 (new) or \$10 (renewal) for FY94-98, and penalty fees of \$400 (1-90 days delinquent) or \$650 (more than 90 days delinquent) for FY94-98.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The amendments are proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

The proposed amendments implement Texas Civil Statutes, Article 4495b, §3. 01 and §3.10.

§175.1. Fees. The board shall charge the following fees:

(1) annual registration—\$300 [\$292];

(2) institutional permits [per year] (interns, residents, and fellows) [—\$25];

(A) initial institutional permit (14 months)—\$50;

(B) renewal of institutional permit (12 months)—\$35;

(3)-(16) (No change.)

(17) faculty temporary license [teaching fellow permit]—\$92 per annum.

§175.2. Penalties. The board shall charge the following penalties:

(1) renewal of physician's license expired for 90 days or less—\$400; [issuance of physician permit following delinquent annual registration fee (delinquent no longer than one year)—\$150;]

(2) renewal of physician's license expired for longer than 90 days but less than one year—\$800; [issuance of physician permit following delinquent annual registration fee (delinquent more than one year)—\$250.]

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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Homer R. Goehrs, M.D.
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Texas State Board of
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For further information, please call: (512) 834-7728

Chapter 179. Investigation Files

• 22 TAC §179.5

The Texas State Board of Medical Examiners proposes an amendment to §179.5, concerning criminal convictions. The proposed amendment would delete §179.5(a), which is inconsistent with Texas Civil Statutes, Article 6252-13c, and board rule 168 (relating to Persons with Criminal Backgrounds). Board rule 168 properly addresses this concern regarding criminal background.

Tim Weitz, senior attorney, 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.

Mr. Weitz 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 to avoid unnecessary confusion and to be consistent with Article 6252-13c and board rule 168. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The amendment is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

The proposed amendment implements Texas Civil Statutes, Article 6252-13c.

§179.5. [Criminal Conviction.]

[(a) Upon initial conviction of a felony or of a misdemeanor involving moral turpitude, or the initial findings of the trier of fact of a physician's guilt in such a criminal proceeding, the board shall suspend the physician's license. Upon final conviction, the board shall revoke the physician's license. In either case, the board shall secure a certified true and correct abstract of record of the court that considered the case.]

[(b) **Moral Turpitude.** A misdemeanor involving moral turpitude shall be defined as an offense involving baseness, vileness, or depravity in the private and social duties one owes to others or to society in general, or an offense committed with knowing disregard for justice, honesty, principle, or good morals.

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 187. Procedure

Subchapter B. Prehearing

• 22 TAC §§187.17, 187.19, 187.24

The Texas State Board of Medical Examiners proposes amendments to §§187.17, 187.19, and 187.24, concerning discovery in con-

tested cases, as mandated by Senate Bill 1062, 73rd Legislature, in §4.03(d) of the Medical Practice Act. The proposed changes will also further define Informal Settlement Conference and Show Compliance Conference procedures.

Tim Weitz, senior attorney, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

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

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The amendments are proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

The proposed amendments implement Texas Civil Statutes, Article 4495b, §4.03(d) and §4.025.

§187.17. Discovery. Pursuant to the Medical Practice Act ("the Act"), Texas Civil Statutes, Article 4495b, §4.03(d), after the initiation and filing of a formal complaint under the Act, §4.03, or upon the filing of the board's initial pleading in any other contested matter, the following discovery rules shall apply:

(1) **Preliminary Discovery.** Not later than 30 days after receiving a written request from an opposing party, the responding party shall provide to the requesting party the following:

(A) a preliminary list of the names and last known addresses of potential witnesses which the responding party reasonably anticipates may testify in its case-in-chief;

(B) a list or copy of all documents, records, photographs, moving pictures, films, videotapes, audio recordings, and other such material in the possession of the responding party which the responding party intends to offer in its case-in-chief, and a reasonable opportunity to inspect and copy such items;

(C) a list identifying all tangible items in the possession of the responding party which the responding

party intends to offer in its case-in-chief, and a reasonable opportunity to inspect such items; and

(D) a list of the names and last known addresses of any experts the responding party anticipates calling to testify in its case-in-chief.

(2) **Experts.** Upon written request, a list identifying all of the following documents and tangible items pertaining to the responding party's experts, or copies of such documents and tangible items, shall be provided to the requesting party before the initial deposition of such an expert, or no later than five days prior to the hearing on the case if no deposition of the expert has been taken:

(A) documents and tangible items which have been provided to any expert who is expected to testify in the case;

(B) documents and tangible items which have been made or prepared by any expert used for consultation if such documents and tangible items form the basis, either in whole or in part, of the opinion of an expert who is expected to testify in the case; and

(C) a report from each expert who is anticipated to testify in the case which generally synthesizes the expected testimony of the expert.

(3) **Inspection and Copying.** Documents and tangible items which are identified in a discovery response, but not provided, shall be made available for inspection and copying at a reasonable time and place upon the written request of an opposing party.

(4) **Depositions.** The taking and use of depositions shall be governed by APA or by an agreement between the parties either on the record or in a writing signed by the parties or their representatives. Except by an agreement between the parties either on the record or in a writing signed by the parties or their representatives, depositions shall be conducted and completed no later than five days prior to the scheduled hearing date. Failure of a properly noticed witness who is a party to the case to attend a deposition for the purpose of taking the testimony of that party witness, or the failure of such a witness to attend such a deposition as agreed to by the parties on the record or in a writing signed by the parties or their representatives, may result in the imposition of the sanctions and remedies set forth in subsection (e) of this section.

(5) **Remedies and Sanctions.** A failure to comply with a discovery request to the extent required by board rule, the Act, or as agreed to between the parties in a discovery agreement, may be remedied and sanctioned by ordering any or all of the following:

(A) granting of a continuance;

(B) limitations or restrictions on the admissibility and use of evidence, to include exclusion of evidence;

(C) payment by a party of the actual travel, lodging, and court reporter costs, but not attorney fees, incurred by an opposing party as a result of the failure to comply with the discovery requirements under board rule;

(D) imposition of a scheduling order providing for discovery deadlines necessary to remedy the failure to comply with discovery requirements under board rules; and

(E) remedies and sanctions agreed to by the parties in writing or on the record.

(6) **Good Cause.** Good cause for failure to comply with a discovery request to the extent required by law, board rule, or as agreed to between the parties in a discovery agreement, may justify the imposition of less severe remedies or sanctions which might otherwise be imposed. Good cause shall include but is not limited to the following:

(A) lack of knowledge of the existence of the information or material;

(B) lack of access to or control of the information or material; and

(C) act of God or providence.

(7) **Calculation of Deadlines and Time Limits.**

(A) For purposes of discovery under board rules, deadlines and time limits shall be based on calendar days; however, when a deadline falls on a Saturday, Sunday, or official State holiday, the deadline shall be extended to the next calendar day which is not a Saturday, Sunday, or official State holiday.

(B) Discovery requests promulgated less than seven days prior to the scheduled hearing date shall not require a response unless agreed to by the parties on the record or in a writing signed by the parties or their representatives; however, other discovery requests promulgated at a time prior to the scheduled hearing date which by their timing allow less than the applicable deadline period for a response, shall not require a response until submitted for approval by motion of the requesting party to the administrative law judge and approved in whole or in part by order of the administrative law judge. Any such approval shall provide for one or more of the following:

(i) modified response deadlines;

(ii) a continuance of the hearing date charged to the party requesting discovery; or

(iii) such reasonable requirements which are necessary to minimize any anticipated burden or inconvenience to the responding party as a result of the lateness of the discovery request.

(8) **Discovery Agreements.** Discovery requirements governing board proceedings may be modified by agreement of the parties either on the record or in a writing signed by the parties or their representatives.

(9) **Ordered Modification of Discovery.** Modification of discovery requirements under board rules may be ordered by an administrative law judge pursuant to an agreement of the parties or the discovery provisions under board rules pertaining to remedies and sanctions.

(10) **Official Notice.** No later than three days prior to the date of the hearing, the parties shall exchange lists specifying all matters which each party will seek to have officially noticed at the hearing.

(11) **Final Witness List.** No later than five days prior to the date of the hearing, the parties shall exchange final lists identifying the names and last known addresses of the witnesses each party intends to call to testify in its case-in-chief.

(12) **Waiver of Privilege/Confidentiality.** The provision of any information or material in response to a discovery request which may be the subject of a privilege or confidentiality requirement under the Act or other applicable law shall not constitute a waiver of any such privilege or confidentiality requirement with respect to other

such information or material not provided.

(13) **Supplementation.** Upon receiving new information or material, or upon otherwise determining that an inaccuracy exists in a previous discovery response, each party shall supplement such responses as soon as practicable. [Depositions. The taking and use of depositions in any proceeding shall be governed by APTRA, §14.]

§187.19. *Show Compliance Conference.* Prior to the institution of the board's proceedings to revoke, suspend, annul, or withdraw any license, the board shall:

(1) (No change.)

(2) **Opportunity.** Provide the licensee an opportunity to show compliance with the Act or the rules of the board which shall consist of the following:

(A)-(C) (No change.)

[(D) the licensee's testimony and evidence shall be under oath;]

(D)[(E)] the evidence may include the licensee's office records, x-rays, and other film recordings, diagrams, drawings, and other illustrative or explanatory matters relevant to the facts and the conduct of the licensee.

§187.24. *Informal Disposition.* Pursuant to the Act, §4. 04(b), and APA, §13(e), informal disposition of any complaint or matter relating to this Act or of any contested case may be made by stipulation, agreed settlement, consent, order, or default. Such informal dispositions will facilitate the expeditious change or correction of medical practice patterns.

(1) (No change.)

(2) The following procedure shall be followed in informal settlement conferences.

(A) One or more members of the board or a district review committee shall conduct the settlement conference as the board's representative. When a board member and a district review committee member conduct such a settlement conference, the board member shall serve as chairman of the proceeding.

(B)-(G) (No change.)

(H) The board's representative shall exclude from the settlement conference all persons except witnesses dur-

ing their testimony, the licensee, the licensee's attorneys [attorney] or representatives [representative], the complainant when providing oral statements, the complainant's representatives when the complainant is providing oral statements, board members, district review committee members, and board staff.

(I)-(K) (No change.)

(3) (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.

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Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
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For further information, please call: (512) 834-7728

Chapter 188. Complaint Procedure Notification

• 22 TAC §188.1

The Texas State Board of Medical Examiners proposes new §188.1, concerning complaint procedure notification. The new section, mandated by Senate Bill 1062, 73rd Legislature, will require physicians to post the board's address and phone number in their office, on letterhead, or on billing statements. This will enable consumers to know to whom they should direct complaints regarding physicians, physician assistants, and acupuncturists, as well as other licensees and registrants of the Texas State Board of Medical Examiners.

Tim Weitz, senior attorney, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect will be an estimated additional cost for investigating an average of seventy-five complaints per year of \$41,000 per year in FY 1994-FY 1998

Mr. Weitz 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 to increase public access to the complaint process. The anticipated economic cost to the individuals who are required to comply with the section as proposed will be: less than \$25 per licensee, for FY 1994, and no cost after FY 1994.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The new section is proposed under Texas Civil Statutes, Article 4495b, which provide

the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

The proposed new section implements Texas Civil Statutes, Article 4495b, §2.09(s)(2).

§188.1. Complaint Procedure Notification.

(a) **Methods of Notification.** Pursuant to the Medical Practice act (the Act), Article 4495b, §2.09(s)(2), for the purpose of directing complaints to the board, the board and its licensees shall provide notification to the public of the name, mailing address, and telephone number of the board by one or more of the following methods:

(1) displaying in a prominent location at their place of business, signs in English and Spanish of no less than 8-1/2 inches by 11-inches in size with the board-approved notification statement printed in black on a white background in type no smaller than standard 24-point Times Roman print; or

(2) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each bill for services; or,

(3) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each registration form, application, or written contract for services.

(b) **Approved English Notification Statement.** The following notification statement in English is approved by the board for purposes of these rules and the Act, §2.09(s)(2):

NOTICE CONCERNING COMPLAINTS
Complaints about physicians, as well as other licensees and registrants of the Texas State Board of Medical Examiners, including physician assistants and acupuncturists, may be reported for investigation at the following address:

Texas State Board of Medical Examiners
Attention: Investigations, 1812 Centre Creek Drive, Suite 300, P.O. Box 149134, Austin, Texas 78714-9134. Assistance in filing a complaint is available by calling the following telephone number: (512) 834-7728

(c) **Approved Spanish Notification Statement.** The following notification statement in Spanish is approved by the board for purposes of these rules and the Act, §2.09(s)(2):

AVISO SOBRE QUEJAS

Se pueden presentar quejas acerca de médicos, así también como de otras personas autorizadas y registradas por el Texas State Board of Medical Examiners (Junta de Examinadores Médicos del Estado de Texas), incluyendo a ayudantes médicos y acupunturistas, para su investigación, en la siguiente dirección:

Texas State Board of Medical Examiners
Attention: Investigations
1812 Centre Creek Drive, Suite 300
P.O. Box 149134
Austin, Texas 78714-9134

Se puede obtener ayuda para presentar una queja llamando al siguiente número telefónico:

(512) 834-7728

AVISO SOBRE QUEJAS

Se pueden presentar quejas acerca de medicos, asi tambien como de otras personas autorizadas y registradas por el Texas State Board of Medical Examiners (Junta

de Examinadores Medicos del Estado de Texas), incluyendo a ayudantes medicos y acupunturistas, para su investigacion, en la siguiente direccion: Texas State Board of Medical Examiners Attention: Investigations 1812 Centre Creek Drive, Suite 300, P.O. Box 149134, Austin, Texas 78714-9134

Se puede obtener ayuda para presentar una queja llamando al siguiente numero telefonico: (512) 834-7728.

(d) Following are samples of the type print references in subsection (a) of this section.

NOTICE CONCERNING COMPLAINTS

Complaints about physicians, as well as other licensees and registrants of the Texas State Board of Medical Examiners, including physician assistants and acupuncturists, may be reported for investigation at the following address:

Texas State Board of Medical Examiners

Attention: Investigations

1812 Centre Creek Drive, Suite 300

P.O. Box 149134

Austin, Texas 78714-9134

Assistance in filing a complaint is available by calling the following telephone number:

(512) 834-7728

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 October 13, 1993.

TRD-9339365

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption. November 19, 1993

For further information, please call: (512) 834-7728

Chapter 193. Standing Delegation Orders

• 22 TAC §193.7

The Texas State Board of Medical Examiners proposes an amendment to §193.7, concerning radiologic technologists. The original rule related to radiologic technologists was effective January 1, 1989, which is stated in §193.7(g). This is no longer applicable and the amendment is proposed to eliminate the confusion.

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

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

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The amendment is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

The proposed amendment implements Texas Civil Statutes, Article 4512m.

§193.7. Radiologic Technologists.

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

[(g) These rules shall become effective January 1, 1989.]

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 October 13, 1993.

TRD-9330366

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 834-7728

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Mandatory Continuing Educa- tion

• 22 TAC §535.71, §535.72

The Texas Real Estate Commission proposes amendments to §535.71 and §535.72, concerning mandatory continuing education (MCE) for real estate licensees.

The proposed amendment to §535.71 would eliminate a requirement that MCE providers pay filing fees by cashier's checks. The amendment also adds a new core real estate course on the law of agency to the list of courses which may be accepted for MCE credit.

The proposed amendment to §535.72 should simplify the reporting process for MCE providers by eliminating a requirement that providers insert the course completion card number for each student on the course completion roster or alphabetized list of students filed with the commission. Providers who wish to insert student course completion numbers for additional verification may do so at their own discretion.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Moseley also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a simplified process for the payment of fees and reporting of attendance by MCE providers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses, and In- structors.

(a)-(g) (No change.)

(h) Fees shall be established by the commission in accordance with the provisions of the Act, §7A, at such times as the commission deems appropriate. Fees are not refundable and must be submitted in the form of a [cashier's] check or money order, or, in the case of state agencies, colleges or universities, in a form of payment acceptable to the commission. If a provider seeks approval to offer a course previously approved for another provider, and less than one year remains for the course to be offered, the filing fee shall be one-half the current fee for approval of a course. Provided, however, the full current fee is required for an application for approval of a single course offering.

(i)-(k) (No change.)

(l) A course must be devoted to one or more of the subjects specified under the course titles in the Act, §7(a)(2)-(4) and §7(a)(7)-(10) [§7(a)(7)-(9)], to real estate professionalism and ethics or to other subjects approved by the commission for MCE credit. MCE courses must be presentations of relevant issues and changes within the subject areas as they apply to the practice of real estate in the current market. The commission shall periodically publish lists of subjects other than legal topics which are approved for MCE credit. Courses approved by the commission for prelicensing education or salesman annual education requirements provided in the Act, §7(d)-(e), may be accepted for satisfying MCE requirements provided the student attended the entire course, and MCE courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §7(d)-(e) of the Act. The commission may not approve a course which promotes the sale of goods or services by the provider or by a vendor affiliated or associated with the provider. Providers may sell educational materials, such as textbooks or recordings, related to the subjects of the course.

(m)-(q) (No change.)

§535.72. Mandatory Continuing Education: Presentation of Courses, Advertising, and Records.

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

(c) The provider offering each MCE course shall file an MCE Course Completion Roster, MCE Form 8-2, and, for each student completing the course, an MCE Course Completion Card, MCE Form 7-0, with the commission within ten days following completion of the course. The provider is not required to enter the

course completion card number for each student on MCE Form 8-2 but may do so at the discretion of the provider. Prior to the commencement of each course, each student seeking MCE credit for that course shall print his or her name and license number on MCE Form 8-2. The names of students not seeking MCE credit must not appear on MCE Form 8-2. If the provider was in attendance, the provider shall sign MCE Form 8-2. If the provider was not in attendance, an authorized representative of the provider who was in attendance and for whom an authorized signature exemplar is on file with the commission shall sign MCE Form 8-2. The commission may not accept signature stamps, unsigned forms or forms signed by persons for whom an authorized signature exemplar has not been previously filed with the commission. Providers must make every reasonable effort to ensure that no student is certified for MCE credit who has not attended all class sessions. Providers may not use students for administration or monitoring duties during the course if the use prevents the student's participation in a significant portion of the course.

(d) For classroom courses, a provider shall furnish each student with an MCE Course Completion Card, MCE Form 7-0, only after the student has completed the course. Providers shall obtain supplies of the cards from the commission and are responsible for the security of the cards. The provider must either arrange the cards in alphabetical order prior to filing the cards with the commission or file an alphabetized list of the names, license numbers and, at the discretion of the provider, course completion card numbers of students completing the course.

(e)-(r) (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 September 30, 1993

TRD-9330300

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 463-3900



TITLE 25. Health Services Part II. Texas Department of Mental Health and Mental Retardation

Chapter 407. Internal Facilities Management

Financial Services

• 25 TAC §407.21

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §407.21, concerning financial services.

The proposed repeal would delete unnecessary language. This rule action would affect the provisions of the Texas Civil Statutes, Article 342-603.

Leilani Rose, director, Financial Services, has determined that there will be no additional fiscal cost to state or local government as a result of administering the amendments as proposed. There will be no significant local economic impact.

Ms. Rose, director, Financial Services, has determined that the public benefit is the deletion of unnecessary language. There will be no effect on small businesses. There is no anticipated cost to persons required to comply with the amendments as proposed.

Comments on the proposed repeal may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The repeal is proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§407.21. Purpose.

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 October 12, 1993.

TRD-9330259

Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 465-4670



TITLE 28. INSURANCE Part 1. Texas Department of Insurance

Chapter 1. General Administration

Subchapter A. Rules of Prac- tice and Procedure

• 28 TAC §1.90

The Texas Department of Insurance proposes new §1.90, concerning the joint memorandum of understanding (MOU) to be entered into by the Texas Department of Insurance (TDI) and the State Office of Administrative Hearings (SOAH) pursuant to the Insurance Code, Article 1.33B, added by Chapter 685, §2.01, 73rd Legislature, 1993. Article 1.33B(d) mandates the commissioner of TDI and the chief administrative law judge of SOAH to adopt by rule an MOU governing hearings held by SOAH under the Insurance Code and other insurance laws of this state. The statute provides that the MOU shall require the chief administrative law judge and the commissioner of insurance to cooperate in conducting hearings under Article 1.33B and that the MOU may authorize SOAH to perform any procedural act, including giving of notice, that is required to be performed by the commissioner under the Insurance Code or another insurance law of this state.

The MOU is necessary to accomplish the efficient and expeditious administration of TDI hearings by establishing the procedures to be used by each agency and by clearly delineating each agency's responsibilities. Additionally, the MOU serves the purpose of informing the public of each agency's responsibilities and the procedures for the institution, conduct and determination of proceedings before SOAH on behalf of TDI.

Pursuant to Article 1.33B, a SOAH administrative law judge (ALJ) shall conduct contested case hearings required or permitted to be held, before a decision may be rendered or action taken by the commissioner or TDI, including but not limited to hearings relating to the approval or review of rates or rating manuals filed by individual companies, rate proceedings which include the benchmark rate hearings, and other annual rate hearings. However, pursuant to the Insurance Code, Article 1.10(7)(d) and the Government Code, §2001.056, TDI is authorized to informally dispose of these cases by stipulation, agreed settlement, consent order, agreed order, or default and to file a motion to withdraw the case from SOAH's docket.

Article 1.33B does not apply to hearings or proceedings:

1. relating to the approval or review of rates or rating manuals filed by individual companies, unless they are contested (i.e. opposed);
2. relating to the promulgation of rules;
3. relating to the promulgation or approval of a policy form or policy form endorsement;

4. relating to the adoption or approval of a plan of operation for an organization subject to the jurisdiction of the department; or

5. conducted in accordance with the Insurance Code, Article 1.04D, which concerns the duties of the department and commissioner relative to certain tax collection and audit functions which were transferred to the Office of the Comptroller of Public Accounts effective September 1, 1993.

Any revisions to the MOU shall be promulgated as an amendment to this section.

Section 2.05(a) of House Bill 1461 provides that not later than December 31, 1993, the commissioner of insurance and the chief administrative law judge of SOAH shall adopt the MOU required by Article 1.33B, §2.05(b), and provides that the MOU applies only to hearings that are not held before or pending on January 1, 1994. Unless the commissioner of insurance and the chief administrative law judge of SOAH agree to apply Article 1.33B, a hearing that is held before or pending on January 1, 1994, is governed by the law in effect immediately before the effective date of Article 1.33B, and that law is continued in effect for this purpose. No later than September 1, 1994, or as long as the State Board of Insurance (board) retains jurisdiction of proceedings, involving (1) promulgation and approval of rates (2) promulgation and approval of policy forms and policy form endorsements, and (3) hearings, proceedings and rules related to the activities listed in (1) and (2), the proceedings that are held before or pending on January 1, 1994, shall be heard by the board or the board's designee.

Linda K. von Quintus-Dorn, chief clerk of TDI, has determined that for each year of the first five-year period the section will be in effect there will be no fiscal implication for state government as a result of enforcing or administering this section. Any fiscal impact to state government associated with the transfer of the hearings function from TDI to SOAH, including transfer of financial resources from one agency to another as well as possible new or additional financial resource requirements of SOAH, is the result of legislative enactment, not the result of proposal and adoption of this section.

Ms. von Quintus-Dorn also has determined that for each year of the first five-year period the proposed section will be in effect, there will be no fiscal implications for local government or small businesses as a result of enforcing or administering the section. Any fiscal impact which might accrue to small businesses as a result of the transfer of the hearings function to SOAH is also legislative in nature.

Ms. von Quintus-Dorn also has determined that there will be no other implications for local economy and no impact on local employment as a result of administering the proposed section.

Ms. von Quintus-Dorn also has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of enforcing the section are as follows:

(1) independent, efficient, and expeditious hearing of TDI matters by SOAH;

(2) clear delineation of relative duties and responsibilities of each agency; and

(3) public information about procedural requirements relating to the hearing process for matters under the jurisdiction of TDI.

Anticipated costs to any individual who is required to comply with the procedures included in the proposed section will be substantially similar to those incurred in connection with current administrative hearings before SOAH. There are no other anticipated economic costs because current costs associated with procedural requirements of the administrative hearings process are substantially similar to those which would result from adoption of the MOU.

Comments on the proposal must be submitted in writing within 30 days after the publication of the proposed rule 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 comments should be submitted to Shelia Bailey, Deputy Chief Administrative Law Judge, State Office of Administrative Hearings, 300 West 15th, Suite 408, Austin, Texas 78711-3025. The Government Code, §2001.029(b), does not apply to this proposed procedural rule.

The new sections are proposed under the Insurance Code, Articles 1.03A and 1.33B. Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department. Article 1.33B mandates that the commissioner of TDI and the chief administrative law judge of SOAH shall adopt by rule the MOU.

The following articles of the Insurance Code are affected by this rule: Insurance Code, Articles 1.04-25.10.

§1.90. Joint Memorandum of Understanding (MOU) between Texas Department of Insurance (TDI) and State Office of Administrative Hearings (SOAH) concerning procedures for contested cases before SOAH and responsibilities of each agency.

(a) Introduction. The Insurance Code, Article 1.33B, added by Chapter 685, §2.01, 73rd Legislature, 1993, mandates the commissioner of TDI and the chief administrative law judge of SOAH to adopt by rule a joint MOU governing hearings held by SOAH under the Insurance Code and other insurance laws of this state. The statute provides that the MOU shall require the chief administrative law judge and the commissioner of insurance to cooperate in conducting hearings subject to its provisions. Article 1.33B requires that a SOAH administrative law judge (ALJ) conduct any contested case hearing required or permitted to be held before a decision may be rendered or action taken by the commissioner or TDI, including but not limited to hearings relating to the approval or review of rates or rating manuals filed by individual companies, rate proceedings which include the

benchmark rate hearings, and other annual rate hearings. However, no later than September 1, 1994, or as long as the board retains jurisdiction of proceedings involving promulgation and approval of rates; promulgation and approval of policy forms and policy form endorsements; and hearings, proceedings, and rules related to the activities listed in paragraphs (1) and (2) of this subsection, the proceedings that are held before or pending on January 1, 1994, shall be heard by the board or the board's designee.

(1) Purposes of the MOU. The MOU is necessary to accomplish the efficient and expeditious hearing of matters under the jurisdiction of TDI by establishing the procedures to be used by each agency and clearly delineating each agency's responsibilities. Additionally, the MOU is necessary to inform the public of each agency's responsibilities and the procedures for the institution, conduct and determination of proceedings before SOAH on behalf of TDI.

(2) Contents of the MOU. The MOU provides procedures for initiating the contested case; prehearing and hearing procedures; procedures for the preparation and service of proposals of decision and orders; and procedures for the official custodian of records.

(b) The initiation of the contested case Case initiation, including the docketing and setting of the contested case, is addressed in paragraphs (1) through (4) of this subsection.

(1) Referral of contested case by TDI to SOAH. Referral of a matter under the jurisdiction of TDI to SOAH as a contested case may be made only by TDI. TDI shall initiate the contested case by filing either a request for setting of hearing form or a request for assignment of ALJ form as provided in subparagraphs (A) and (B) of this paragraph. At the time the case is transferred to SOAH for hearing, TDI shall provide a copy of all pleadings in the case, including but not limited to the complaint, petition, application, or other documents describing agency action giving rise to the contested case. TDI shall also provide an accurate service list. Additionally, TDI shall inform SOAH when a statute requires a hearing to be held within a certain time period.

(A) The request-for-setting-of-hearing form shall be filed when TDI seeks to have the case set for hearing and no prehearing matters requiring resolution by an ALJ are anticipated. If prehearing matters arise after the request-for-setting-of-hearing form is filed, SOAH shall assign an ALJ to resolve the matter.

(B) The request for assignment of ALJ form shall be filed when TDI anticipates the need for one or more prehearing conferences and/or the need for an ALJ's ruling on various matters prior to commencement of the hearing. If no request for setting of a hearing is included in the request for assignment of an ALJ, the date for the hearing shall be determined by the assigned ALJ.

(C) Any insurance company or other party at interest, if dissatisfied with any ruling, action, decision, regulation, order, rate, rule, form, act, or administrative ruling by TDI staff adopted by the commissioner, may file a motion for reconsideration (see subsection (e) and subsection (c)(1)(C) of this section for motions for rehearing) with the TDI docket clerk. The TDI docket clerk shall forward the motion for reconsideration to the commissioner for a determination. If the motion is granted, the motion becomes the initial pleading and TDI shall initiate the contested case by filing either a request-for-setting-of-hearing form or a request-for-assignment-of-ALJ form. However, if the ruling concerns rulemaking proposals or other matters not subject to a contested case, including rulings relating to a regulation, rule, or form, the motion for reconsideration will not be forwarded to SOAH, but shall be handled by the Commissioner in an appropriate manner consistent with the type of case.

(2) Setting of hearing. Following receipt of the request-for-setting-of-hearing, SOAH shall assign the case a docket number, set the hearing date and location, and send TDI confirmation of the setting within three days. In special circumstances, as defined in subparagraph (A) of this paragraph, the procedures outlined in subparagraph (B) of this paragraph shall apply.

(A) Special circumstances for purposes of setting a hearing include, but are not limited to, supervision and conservatorship hearings; hearings involving emergency cease and desist orders; hearings required to be held before the statute of limitations runs on a matter; hearings required to be held in order to retain jurisdiction over a matter; and hearings involving a request for stay pending the determination of the case.

(B) In special circumstances, TDI shall file a request-for-setting of hearing within 24 hours of receipt of a request for expedited hearing. In cases requiring an expedited hearing, SOAH shall confirm a hearing date and docket number within 24 hours of such request. Following receipt of confirmation of the setting, TDI shall issue its notice of hearing.

(3) Assignment of ALJ. Following receipt of the request-for-assignment-of-ALJ form, SOAH shall assign the case a docket number, assign an ALJ, and notify all parties in writing of the ALJ assigned to the case. If TDI also requests a hearing date, then SOAH shall provide a date and a confirmation of the setting to TDI. Following receipt of the confirmation of the setting of the hearing, TDI shall issue its notice of hearing.

(4) Notice of hearing-general notice and service requirements. The notice of hearing shall be issued according to the provisions of subparagraph (A) through (D) of this paragraph.

(A) Upon receipt of the docket number, location, and setting date from SOAH, TDI shall issue the notice of hearing by certified mail, return receipt requested, to all parties to the docketed matter

(B) Notice is governed by the Government Code, §2001.051 and §2001.052, unless alternative procedures are permitted by law.

(C) The notice shall include the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and any corresponding regulations to which the hearing relates; a short, plain statement of the matters asserted; the docket number; and a certificate of service.

(D) An ALJ may issue notice of the date, time, and place for hearings.

(c) Prehearing and hearing procedures. Prehearing and hearing procedures are addressed in paragraphs (1) through (4) of this subsection.

(1) Filing requirements. The filing of notices, motions, pleadings, and other documents in connection with any hearing conducted under Article 1.33B shall be made in accordance with subparagraphs (A) through (D) of this paragraph.

(A) Any party filing notices of hearing, pleadings, or motions except motions for reconsideration filed pursuant to subparagraph (D) of this paragraph, staff memoranda, or other documents shall file the original with SOAH and a conforming copy with the TDI docket clerk. Such documents shall be delivered to TDI and SOAH by the same method and on the same date.

(B) All motions, except motions for rehearing and motions for reconsideration, shall be addressed to SOAH.

(C) All motions for rehearing shall seek action to be taken by the commissioner of insurance, shall be addressed to the commissioner and shall be filed with the TDI docket clerk. A conforming copy of the motion for rehearing shall be filed with SOAH.

(D) All motions for reconsideration shall seek action to be taken by the commissioner of insurance, shall be addressed to the commissioner, and shall be filed with the TDI docket clerk.

(2) Court reporting. TDI shall provide court reporting services for all hearings held by SOAH.

(3) Applicable law and procedure for hearings other than rate-related hearings. Applicable law and procedure concerning hearings other than rate-related hearings conducted pursuant to Article 1.33B are addressed in subparagraphs (A) through (F) of this paragraph.

(A) Contested cases other than rate cases shall be conducted in accordance with the Government Code, Chapter 2001, the SOAH rules of procedure; the Insurance Code, any other applicable law and accompanying regulations; and the TDI rules of procedure.

(B) In the event of any conflict between the SOAH rules of procedure and the TDI rules of procedure, the rules of TDI control unless otherwise specifically stated in the SOAH's rules of procedure (see 1 TAC §155.5).

(C) The respondent in any non-rate matter shall file an answer with the ALJ in accordance with the TDI rules of procedure, the SOAH rules of procedure, and the Texas Rules of Civil Procedure and shall be consistent with TDI's policies.

(D) If TDI informally disposes of a contested case by stipulation, agreed settlement, consent order, agreed order, or default as provided in the Insurance Code, Article 1.10(7)(d), and the Government Code, §2001.056, it shall file a motion to withdraw the case from the SOAH docket.

(E) In non-rate cases where there are no issues in dispute, the ALJ shall convene the hearing, allow the parties to present evidence and stipulate to the facts, recess the hearing, and allow the parties to present an agreed order to the commissioner.

(F) Any ruling or prehearing order concerning a delay, continuance, or future filing shall be forwarded to the TDI docket clerk on the same date and by the same method as forwarded to other parties.

(4) Applicable law and procedure for rate related hearings. Applicable law and procedure concerning rate related hearings conducted pursuant to Article 1.33B are addressed in subparagraphs (A) through (D) of this paragraph.

(A) Rate promulgation proceedings shall be governed by Article 1.33B(c) and shall be treated as a contested case under the Government Code, Chapter 2001. Accordingly, the procedures before the commissioner shall be guided by the principles and procedures for contested cases as provided in the Government Code, Chapter 2001, and the Texas Rules of Civil Procedure to the extent not inconsistent with the provisions of Article 1.33B(c).

(B) The ALJ shall provide an opportunity for all interested parties to respond to and present evidence and argument concerning all issues involved in the rate proceeding. The testimony of a witness, other than an expert witness, may be presented either orally by the witness at the hearing or by affidavit. The direct testimony of each expert witness to be called shall be prefiled in accordance with a schedule established by the ALJ.

(C) Each party to the rate proceeding shall be accorded the right to cross-examine each witness called to testify by any other party to the proceeding. The attendance of any person providing testimony by affidavit shall be required if any party files a written request that the witness appear for cross-examination. If the person providing testimony by affidavit fails to appear for cross-examination after the filing of a written request that such person appear, the ALJ shall exclude the affidavit from evidence and shall not consider the affidavit of that person for any purpose.

(D) The ALJ shall establish reasonable deadlines and procedures for the filing of affidavits, the designation of witnesses, and such other matters as are necessary or appropriate.

(d) Procedures for preparation and service of proposals for decision and orders. Procedures and relative responsibilities for preparation and service of proposals for decision and orders are addressed in paragraphs (1) and (2) of this subsection.

(1) Contested cases other than rate cases. For contested cases other than rate cases, relative responsibilities of SOAH

and TDI are set out in subparagraphs (A) through (H) of this paragraph.

(A) The ALJ shall prepare and issue the proposal for decision and a proposed order. The proposal for decision shall include proposed findings of fact and conclusions of law. The ALJ shall serve the proposal for decision upon the parties and shall give each party an opportunity to file exceptions to the proposal and briefs related to the issues addressed in the proposal for decision. The ALJ shall set forth the deadlines for exceptions and replies in a transmittal letter accompanying the proposal for decision and the proposed order. The deadlines shall be in accordance with TDI's rules of procedure and consistent with TDI's policies.

(B) Unless otherwise provided by statute, or ordered by the commissioner prior to the referral of the case, the ALJ shall issue a proposal for decision and proposed order in a contested case no later than the 60th day after the date on which the record is finally closed.

(C) The ALJ shall submit the proposal for decision and the proposed order to the commissioner with a copy to each party. Legal citations in the proposed order shall be made in accordance with the Texas Rules of Form.

(D) The ALJ may amend the proposal for decision pursuant to exceptions, briefs and replies to exceptions and briefs without the proposal for decision again being served on the parties. The ALJ shall send a copy of any amended proposals for decision to the commissioner.

(E) At the request of the commissioner, the ALJ shall be available to present the proposal for decision and the proposed order in a forum where all parties are given an opportunity to participate.

(F) The commissioner may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, only for reasons of policy. The commissioner shall state the reason and legal basis for any changes made under this subparagraph.

(G) If the commissioner seeks clarification or additional information relating to the proposed order, the commissioner may send written questions, including a request to reopen the hearing if necessary to the ALJ with copies to all parties of record. If the information necessary to respond to the commissioner's ques-

tions is not already in evidence, the ALJ shall treat the commissioner's request as a "remand" of the case for further hearing.

(H) Upon the commissioner's issuance of an order that may become final under the Government Code, §2001.144, TDI's docket clerk shall send a copy of the order by certified mail, return receipt requested, pursuant to the Insurance Code, Article 1.10B, and by first-class mail pursuant to the Government Code, §2001.142, to the parties or their representatives, and to SOAH. TDI's docket clerk shall keep an appropriate record of the mailing.

(2) Rate cases that are contested cases under Article 1.33B. For rate cases that are considered contested under Article 1.33B, relative responsibilities of SOAH and TDI are set out in subparagraphs (A) through (F) of this paragraph

(A) The proposal for decision shall be prepared by the ALJ and shall include the proposed findings of fact and conclusions of law. The commissioner may not attempt to influence the ALJ's findings of fact, conclusions of law, or the ALJ's application of the law to the facts in any proceedings.

(B) The ALJ shall serve the proposal for decision upon the parties, and shall give each party an opportunity to file exceptions to the proposal and briefs related to the issues addressed in the proposal for decision. The ALJ shall set forth the deadlines for exceptions and replies in a transmittal letter accompanying the proposal for decision and the proposed order. The deadlines shall be in accordance with TDI's rules of procedure and consistent with TDI's policies.

(C) In an open meeting, the commissioner shall consider the proposal for decision prepared by the ALJ, the exceptions, briefs and argument of the parties.

(D) The commissioner may amend the proposal for decision, including any finding of fact. Any such amendment by the commissioner shall be accompanied by an explanation of the basis of the amendment. The commissioner's order promulgating the rate, including any amendment thereto, shall be based solely upon the record made before the ALJ.

(E) The commissioner may refer the matter back to the ALJ to reconsider findings of fact and conclusions of law in the proposal for decision, to take additional evidence, or to make additional findings of fact or conclusions of law

(F) TDI shall serve a copy of the commissioner's order, including the commissioner's findings of fact and conclusions of law, upon each party.

(e) Motions for rehearing. The commissioner may state in a written order or on the record the decision as to the motion for rehearing. When the motion for rehearing is granted and the case is remanded for further proceedings, the ALJ shall convene the rehearing under the same docket as the original hearing.

(f) Procedures relating to official custody of the hearing record. Procedures relating to official custody of the hearing record for cases heard by SOAH are addressed in paragraphs (1) through (3) of this subsection.

(1) SOAH shall maintain the official record in a contested case from the time TDI refers the case to SOAH for hearing until the conclusion of the administrative hearing process. TDI shall also maintain a copy of the record at all times. The events described in subparagraphs (A) through (D) of this paragraph denote the conclusion of the administrative hearing process:

(A) the entry of an order by an ALJ to withdraw or dismiss a case from the SOAH docket either by the granting of a party's motion or on the ALJ's own motion;

(B) the expiration of the deadline for filing a motion for rehearing in a contested case, when no such motion is filed;

(C) the denial of a motion for rehearing by the commissioner; or

(D) the overruling of a motion for rehearing by operation of law.

(2) Prior to the conclusion of the administrative hearing process, any request for a copy or transcript of the record may be directed either to SOAH or to TDI. Requests for official copies shall be directed to SOAH, since it shall have the authority to certify as to the completeness of the record at any point prior to conclusion of the administrative hearing process.

(3) After the conclusion of the administrative hearing process, the duty of official custodian of the record shall be transferred to TDI. SOAH shall deliver the official record to TDI along with a certified statement that the documents delivered constitute the complete record in the case. Any request for a copy or transcript of the record shall then be directed to TDI. TDI shall have the authority to certify as to the completeness of the record.

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 October 13, 1993.

TRD-9330372

Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: November 19, 1993

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part II. Texas Rehabilitation Commission

Chapter 116. Advisory Committees/Councils

• 40 TAC §§116.1-116.8

(Editor's Note: The Texas Rehabilitation Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Rehabilitation Commission proposes new §§116.1-116.8, concerning Advisory Committees/Councils. The new sections are proposed in order to comply with the provisions of Senate Bill 383 (73rd Legislature).

Charles Harrison, deputy commissioner, Financial and Planning Services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Charles Schiesser, associate commissioner for Legal Services Division, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that these sections are proposed in order to comply with the provisions of Senate Bill 383 (73rd Legislature), which requires that the Commission outline in rule form the Committees/Councils which advise the Commission. The public will be notified of the existence, purpose, and tasks of these Committees/Councils. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Charles Schiesser, Associate Commissioner for Legal Services Division, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751-2399.

The new sections are under the Texas Human Resources Code, §111.018, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section; as necessary to carry out the purposes 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 October 12, 1993.

TRD-9330308

Charles W. Schiesser
Associate Commissioner
for Legal Services
Division
Texas Rehabilitation
Commission

Earliest possible date of adoption: November 19, 1993

For further information, please call: (512) 483-4051

Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

Subchapter O. Foster and Adoptive Home Development

• 40 TAC §700.1502

The Texas Department of Protective and Regulatory Services (TDPRS) proposes an amendment to §700.1502, concerning selection of adoptive families, in its Child Protective Services (CPS) chapter. The purpose of the amendment is to implement Human Resources Code (HRC), §47.041. As passed by the 73rd Texas Legislature, HRC, §47.041 prohibits TDPRS from denying or delaying placement of a child for adoption, or otherwise discriminating in the course of placing a child for adoption, on the basis of the race or ethnicity of the child or the prospective adoptive parents.

The proposed amendment implements the new law by authorizing staff to consider placing a child with adoptive parents of a different race or ethnicity than the child's if the parents appear able to help the child develop a sense of identity consistent with his racial and ethnic background; and learn to cope with difficulties that may arise from racial or ethnic differences, both within and outside the adoptive family.

Jerry Abel, chief fiscal officer, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Abel 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 to promote the selection of appropriate adoptive homes for abused and neglected children who need to be placed for adoption. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Janis Brown at (512) 450-3412 in TDPRS's Protective Services for Families and Children department. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-236, Texas Department of Protective and Regulatory Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 47, which authorizes the department to promote the adoption of hard-to-place children. The amendment is also proposed under the Texas Family Code, Title 2, Chapter 34, which authorizes the department to provide services to alleviate the effects of child abuse and neglect; and under Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Hu-

man Services to TDPRS. The amendment implements the Human Resources Code, §47. 041.

§700.1502. Adoptive Home Screening. The Texas Department of Protective and Regulatory Services' (TDPRS's) [(PRS')] policies for screening and approval of adoptive homes are as follows:

(1)-(8) (No change.)

(9) Race or ethnicity. Placing a child with adoptive parents whose race or ethnicity is the same as the child's ordinarily helps the child develop a sense of identity consistent with his racial or ethnic background. The department will, however, consider placing a child with adoptive parents of a different race or ethnicity if staff determine that the adoptive parents are able to:

(A) help the child:

(i) develop a sense of identity consistent with the child's racial and ethnic background; and

(ii) learn to cope with difficulties that may arise from racial or ethnic differences, both within and outside the adoptive family; and

(B) develop a plan for helping the child manage the issues described

above as the child reaches developmental milestones [Race/ethnicity. While adoptive parents whose race or ethnicity is the same as a child's are usually best able to help a child develop appropriate racial/ethnic ties, consideration may be given to other arrangements to meet the needs of a specific child].

(10) Finances. Although [Financial. While] there are no specific income requirements, the applicants must have enough income, and be able to manage it well enough, to meet the child's basic material needs [applicant's income must be sufficient to meet the applicant's needs and the child's minimum maintenance needs. Income is also evaluated in terms of past and present management].

(11)-(14) (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 October 13, 1993.

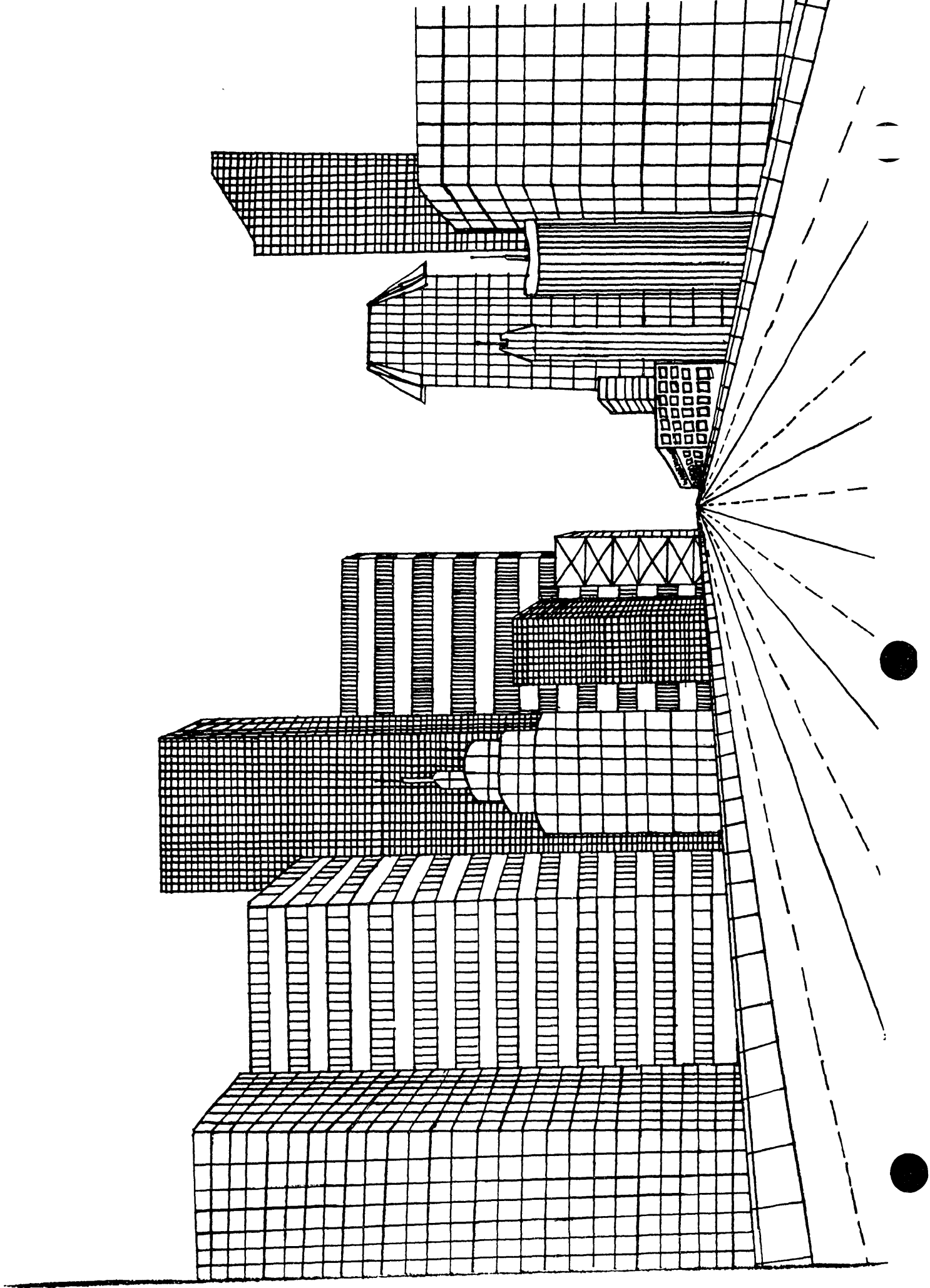
TRD-9330353

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

Proposed date of adoption: January 1, 1994

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

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Adopted Sections

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

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

TITLE 1. ADMINISTRATION

Part II. Texas Ethics Commission

Chapter 10. Practice and Procedure

Subchapter B. Forms

- 1 TAC §§10.211, 10.213, 10.215, 10.217, 10.219

The Texas Ethics Commission adopts the repeal of §§10.211, 10.213, 10.215, 10.217, and 10.219, concerning the forms used in the sworn complaint procedure before the commission, without changes to the proposed text as published in the July 2, 1993, issue of the *Texas Register* (18 TexReg 4269).

These sections are being replaced by §7.1 which allows the executive director to prescribe, revise, and certify new and revised forms which are filed under the authority of the commission.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate, adopt, and repeal rules concerning the filing of reports mandated by any statute administered or enforced by the commission.

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

Issued in Austin, Texas, on September 30, 1993.

TRD-9330287

Jim Mathieson
Assistant General Counsel
Texas Ethics Commission

Effective date: November 2, 1993

Proposal publication date: July 2, 1993

For further information, please call (512) 463-5800

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter Z. Base Rates, Deviations, and Suspensions

- 16 TAC §5.590

The Railroad Commission of Texas adopts an amendment to §5.590, concerning specific rates and charges, with a change to the proposed text as published in the August 31, 1993, issue of the *Texas Register* (18 TexReg 5829).

The proposed text is changed for clarification to eliminate the unnecessary language "identical or" in subsection (d).

The amendment will allow common carriers to establish rates that fit a particular shipper's needs. This change is consistent with current commission practice to allow carriers to file base rate deviations for named shippers. In addition, carriers have historically been able to file rate applications that have the practical effect of setting base rates for specific shippers. This has been accomplished in the past by describing the movements in the proposed tariff with such specific details that the proposed base rate would, in effect, apply only to a particular shipper. For example, the commission has historically allowed tariffs that describe point to point movements.

The policy underlying specific shipper rates is to allow the public to benefit from economies that result when carriers and shippers negotiate rates that take into account logistics, loading efficiencies, and frequency of shipments. The amendment will include a provision to ensure that the policy will prohibit potential discrimination by allowing any similarly situated consignor or consignee, with substantially similar circumstances, to participate in the rates.

Public comments regarding the proposed rule were all favorable. Comments by the Texas Association of Business and Fiberglass Specialties Incorporated supported the amendment citing increased rate flexibility for shipments weighing less than 500 pounds. Comments by the Common Carrier Motor Freight Association stated that the changes to proposed §5.590 would substantially simplify the current tariff structure and noted that the possibility of potential discrimination has been eliminated.

The amendment is adopted pursuant to Texas Civil Statutes, Article 911b, §4(a), which vest the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers,

and to supervise and regulate motor carriers in all matters affecting the relationship between such carriers and the shipping public.

The following statute is affected by this rule: §5.590-Texas Civil Statutes, Article 911b.

§5.590. Specific Rates and Charges.

(a) In addition to the base rates, fares, and charges established pursuant to §5.581 of this title (relating to Establishment and Annual Review of Base Rates and Charges), the commission may establish specific rates, fares, and charges applicable to:

(1) transportation of shipments of general commodities by motor carrier(s) (other than specialized motor carrier(s) and contract carrier(s) subject to commission prescribed tariffs governing transportation of specialized commodities); and

(2) transportation of passengers by motor bus companies.

(b) (No change.)

(c) Applications to establish or change specific rates shall be filed and determined pursuant to the provisions of §5.423 of this title (relating to Tariffs and Schedules).

(d) The commission may approve specific rates or charges which name specific consignors or consignees or which otherwise are confined to specific consignors' or consignees' traffic. Upon application, an additional specific consignor or consignee may participate in such specific rates or charges where the traffic controlled moves in substantially similar circumstances between the involved points and the non-inclusion of which would be unduly discriminatory and unreasonable.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330321

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

Effective date: November 2, 1993

Proposal publication date: August 31, 1993

For further information, please call: (512) 463-7094

Part II. Public Utility Commission of Texas

Chapter 21. Practice and Procedure

The Public Utility Commission of Texas adopts the repeal of §§21.1-21.7; §§21.21-21.28; §§21.41-21.45; §§21.61-21.69; §§21.81-21.86; §§21.101-21.109; §§21.121-21.128; §§21.141-21.144; §§21.151-21.154; §§21.161-21.164; §§21.171-21.172; and §21.181, without changes to the proposed text as published in the September 27, 1993, issue of the *Texas Register* (18 TexReg 5701).

These sections which establish the rules of practice and procedure at the Commission are being repealed in order to avoid any conflict with the Commission's new procedural rules contained in Subchapter 22 of Title 16.

No comments were received regarding adoption of the repeals.

Definitions and General Requirements

• 16 TAC §§21.1-21.7

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction, including rules governing practice and procedure before the Commission.

Cross Index to statutes: Article 1446c, Government Code Section 2001.004.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330224 John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512) 458-0100

Docketing and Notice

• 16 TAC §§21.21-21.28

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330225 John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512) 458-0100

Participants

• 16 TAC §§21.41-21.45

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330226 John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512) 458-0100

Pleadings

• 16 TAC §§21.61-21.69

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330227 John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512) 458-0100

Prehearing Proceedings

• 16 TAC §§21.81-21.86

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330228 John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512) 458-0100

Hearings

• 16 TAC §§21.101-21.109

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330229 John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512) 458-0100

Evidence

• 16 TAC §§21.121-21.128

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330230

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512)
458-0100

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Examiner's Report and Proposal for Decision

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• 16 TAC §§21.141-21.144

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330231

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512)
458-0100

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Orders

◆ ◆ ◆
• 16 TAC §§21.151-21.154

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330232

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512)
458-0100

Ancillary Proceedings and Proceedings Beyond the Order

◆ ◆ ◆
• 16 TAC §§21.161-21.164

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330233

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512)
458-0100

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Organization of the Commission

◆ ◆ ◆
• 16 TAC §§21.171-21.172

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330234

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512)
458-0100

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Miscellaneous

◆ ◆ ◆
• 16 TAC §21.181

The repeals are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330235

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512)
458-0100

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Chapter 23. Substantive Rules

Rate Design

◆ ◆ ◆
• 16 TAC §23.23

The Public Utility Commission of Texas adopts an amendment to §23.23, concerning rate design, without changes to the proposed text as published in the April 23, 1993, issue of the *Texas Register* (18 TexReg 2613).

The Commission adopts the amendment for the purpose of reinstating the statutory requirement that rates shall not be unreasonably preferential, prejudicial, or discriminatory. The amendment is identical to the prior rule §23.23(b)(1) which was repealed. Due to the numbering of the sections in the fuel rule, this section was repealed when the new fuel rule became effective, May 1, 1993.

Two entities, Office of Public Utility Counsel (OPC) and Central and Southwest Corporation (CSW), submitted comments in response to the proposed rule. OPC and CSW agree with the proposed amendment as published.

The amendment is adopted under the Public Utility Regulatory Act, Article 1446c, §§16(a), 17(e), 37, and 38 which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; exclusive original jurisdiction over rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction; and all the authority and power of the State of Texas to insure compliance of public utilities with the obligations under the Public Utility Regulatory Act.

Cross-Reference to Statute(s): Texas Civil Statutes Article 1446c, §§16, 17, 37, 38, Government Code, §2001.004.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330222

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: November 1, 1993

Proposal publication date: April 23, 1993

For further information, please call: (512) 458-0100

◆ ◆ ◆
Customer Service and Protection

• 16 TAC §23.54

The Public Utility Commission of Texas adopts an amendment to §23.54, concerning private pay telephone service, without changes to the proposed text as published in the August 3, 1993, issue of the *Texas Register* (18 TexReg 4994).

The amendment reflects changes in state law, enacted by Senate Bill 835 (73rd Texas Legislature, regular session.) That bill adds Article XIII, §93A, of the Public Utility Regulatory Act (Texas Civil Statutes, Article 1446c).

The amendment to the rule will benefit public convenience and public safety through proper notice of a private pay telephone's limitations.

The private pay telephone provider must place in a conspicuous location on the pay telephone a notice that the telephone cannot receive telephone calls. Further, the private pay telephone provider may not display on the set the number of any private pay telephone set that is not equipped to receive incoming calls.

One comment was received by the Texas Telephone Association which stated that it supported the rule as drafted without changes and concurs with the Commission Staff's intent to implement the elements of Senate Bill 835.

The amendment is adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amendment is also adopted under PURA, Article 1446c (Texas Civil Statutes) §93A(e), which empowers the commission to adopt rules to enforce this amendment.

The following is the (statutes, articles or code) that are affected by this rule:

Rule Number: §23.54

Statute, Article or Code: Texas Civil Statutes, Article 1446c, §16(a), §93A

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330221 John M. Rentrow
 Secretary of the
 Commission
 Public Utility Commission
 of Texas

Effective date: November 1, 1993

Proposal publication date: August 3, 1993

For further information, please call: (512) 458-0100

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter O. Statewide Fur-bearing Animal and Trapping Proclamation

• 31 TAC §§65.372-65.374, 65.376, 65.378, 65.380-65.383, 65.389

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing held August 26, 1993, adopted amendments to §§65.372, 65.373, 65.376, 65.378, 65.380-65.382, and 65.389, and new §65.374 and §65.383, concerning the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals or their parts under the authority of the Parks and Wildlife Code, Chapter 71, with no changes to the proposed text as published in the July 23, 1993, issue of the *Texas Register*. Information gathered has shown that the uncontrolled importation and release of fur-bearing animals taken from the wild poses a potential health threat through the introduction of new strains of rabies and or parasites to native fur-bearing animals, pets, and humans.

The rules are needed to provide the Texas Parks and Wildlife Commission with the authority to adopt regulations for the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human, health or property.

These rules redefine the term "resident" to conform with statutory language, authorize increased fees for trappers, retail furbuyers, wholesale fur dealers and fur-bearing animal propagators; provide that a person possessing a hunting license may take fur-bearing animals if the taking is not for sale, barter or exchange and the take does not exceed the daily bag limit or possession limit, prohibit import of live fur-bearing animals taken from the wild, authorize the import of offspring of fur-bearing animals derived from captive reared stock and prohibit the commingling of fur-bearing animals held under a propagation license with those held under a permit issued for scientific, zoological or rehabilitation purposes; require that fur-bearing animals are to be maintained in approved facilities at all times and that facilities for furbearers be separate from facilities maintained under any other permit and provides bag and possession limits for licensed hunters, provide that only licensed trappers, furbearer propagators, retail furbuyers and wholesale fur dealers may sell pelts of fur-bearing animals and that only licensed furbuyers and wholesale fur dealers may purchase pelts of fur-bearing animals, require fur-bearing animal propagators to report the number and kinds of fur-

bearers purchased, whom the purchase was made from, and to report to whom sales are made, require a completed application for import of live fur-bearing animals and require the applicant to furnish a certification from the State Veterinarian that the area in which the facility is located has been free of rabies for the previous 12 months and the imported furbearers are offsprings of captive reared stock, require a health certificate showing three negative fecal flotation tests on three separate days and shipments to be accompanied by official interstate health certificate, require that animals held by propagators could not be released into the wild, provide for suspension and revocation of licenses or permits for violation of these rules; and provide that penalties for violation of these rules are prescribed by Texas Parks and Wildlife codes, 71.015

Comments concerning the proposed rules were submitted by the Commissioner of Health and stated that to ensure that the propagation permit does not allow a holder to keep raccoons as pets, the Department should require the confinement of the animal in the approved facility, not the permit holder's house. These requirements are important from a human health and safety aspect, as they will help decrease exposure to bites, rabies, and/or parasites. Raccoons are defined as high risk animals for transmitting rabies in the Rules of the Board (Rabies Control and Eradication 169 22)

The Texas Department of Health opposed the rule allowing fur propagators to have raccoons as pets and opposed fur propagators using their home as a facility

The restrictions requested by the Commissioner of Health were not initially proposed by the Department. Since such significant changes were not initially proposed they could not be adopted without republication

The new rules and amendments are adopted under the Texas Parks and Wildlife Code, Chapter 71, which provides the Texas Parks and Wildlife Commission with the authority to adopt regulations for the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property

The adopted rules and amendment changes of the fur-bearing proclamation are summarized as follows

The amendment to §65.372 redefines resident to conform with statutory language

The amendment to §65.373 reflects increased fees for trappers, retail furbuyers, wholesale fur dealers and fur-bearing animal propagation license

The new rule, §65.374, provides that a person possessing a hunting license may take a fur-bearing animal if the taking is not for sale, barter or exchange and the take does not exceed the daily bag limit or possession limit established by the Commission

The amendment to §65.376 prohibits import of live fur-bearing animals taken from the

wild, authorizes the import of offsprings of fur-bearing animals derived from captive stock and prohibits the commingling of fur-bearing animals held under a propagation license with a permit issued for scientific, zoological or rehabilitation purposes.

The amendment to §65.378 requires that fur-bearing animals are to be maintained in approved facilities at all times and that facilities for furbearers be separate from facilities maintained under any other permit and provides bag and possession limits for licensed hunters.

The amendment to §65.380 provides that only licensed trappers, furbearer propagators, retail furbuyers and wholesale fur dealers may sell pelts of fur-bearing animals and that only licensed retail furbuyers and whole fur dealers may purchase pelts of fur-bearing animals.

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

Issued in Austin, Texas, on October 12, 1993.

TRD-9330294

Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Effective date: November 2, 1993

Proposal publication date: July 23, 1993

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

(Editor's Note House Bill 1461, 73rd Legislature, 1993, provided for the transfer of certain tax rules from the Texas Department of Insurance to the Comptroller of Public Accounts effective September 1, 1993

(The Texas Register is administratively transferring the following rules listed in the table below from Title 28, Part 1., Texas Department of Insurance to Title 34, Part 1. Comptroller of Public Accounts. The table lists the old rule numbers and the new rule numbers that correspond to them.)

Comptroller of Public Accounts

Rules

Previously rules from Texas Department of Insurance

Old Rules

New Rules

Chapter 1. General Administration
Subchapter C. Maintenance Taxes

Chapter 3. Tax Administration
Subchapter GG. Insurance Tax

§1.408

§3.801

§1.409

§3.802

§1.410

§3.803

§1.411

§3.804

§1.412

§3.805

§1.413

§3.806

Chapter 7. Corporate and Financial
Regulation

Subchapter A. Examination and Corporate
Custodian and Tax

§7.28

§3.807

§7.29

§3.808

§7.30

§3.809

§7.49

§3.810

§7.50

§3.811

§7.58

§3.812

§7.59

§3.813

§7.60

§3.814

§7.70

§3.815

§7.82

§3.816

§7.91

§3.817

Chapter 13. Miscellaneous Insurers
Subchapter D. Risk Retention Groups
and Purchasing Groups

§13.312

§3.818

§13.313

§3.819

§13.314

§3.820

Old Rules

New Rules

Chapter 15. Surplus Lines Insurance
Subchapter A. General Regulation of
Surplus Lines Insurance

Chapter 3. Tax Administration
Subchapter GG. Insurance Tax

§15.14

§3.821

§15.24

§3.822

§15.25

§3.823

§15.26

§3.824

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

**Part X. Texas Employment Commission
Chapter 301. Unemployment Insurance**

• 40 TAC §301.1

The Texas Employment Commission adopts an amendment to §301.1, without changes to the proposed text as published in the August 13, 1993, issue of the *Texas Register* (18 TexReg 5393).

The adopted section provides guidance on the Commission's interpretation of a newly enacted provision in the Texas Unemployment Compensation Act.

The adopted rule provides a definition of a "landman" for purposes §19(g) (5)(CC) of the Act, dealing with coverage under the Act for landmen.

There were no comments received on the amendments as published.

The amendment is adopted under Texas Labor Code, Title 4, Subtitle A (formerly Texas Civil Statutes, Article 5221b), which provide the Texas Employment Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330216 J. Ferris Duhon
Legal Counsel
Texas Employment
Commission

Effective date: November 1, 1993

Proposal publication date: August 13, 1993

For further information, please call: (512) 463-2291



• 40 TAC §301.30

The Texas Employment Commission adopts the repeal of §301.30, concerning eligibility of employees of educational service agencies, without changes to the proposed text as published in the August 13, 1993, issue of the *Texas Register* (18 TexReg 5393). The provisions of this rule are now contained in the Texas Unemployment Compensation Act.

Repealing this rule will eliminate unnecessary duplication of the Act.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Labor Code, Title 4, Subtitle A (formerly Texas Civil Statutes, Article 5221b) which provides the Texas Employment Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act.

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

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

TRD-9330215 J. Ferris Duhon
Legal Counsel
Texas Employment
Commission

Effective date: November 1, 1993

Proposal publication date: August 13, 1993

For further information, please call: (512) 463-2291



The Texas Employment Commission adopts new §301.30, without changes to the proposed text as published in the August 13, 1993, issue of the *Texas Register* (18 TexReg 5393). The adopted section provides guidance on the Commission's interpretation of a newly enacted provision in the Texas Unemployment Compensation Act.

The adopted rule provides the standard for judging when a contract meets the requirements of §19(g)(5)(CC) of the Act, dealing with coverage under the Act for landmen.

No comments were received regarding adoption of the rule.

The new section is adopted under the Texas Labor Code, Title 4, Subtitle A (formerly Texas Civil Statutes, Article 5221b), which provide the Texas Employment Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act.

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

Issued in Austin, Texas, on October 11, 1993.

TRD-9330217 J. Ferris Duhon
Legal Counsel
Texas Employment
Commission

Effective date: November 1, 1993

Proposal publication date: August 13, 1993

For further information, please call: (512) 463-2291



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 notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 333 Guadalupe, Austin.)

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 1996, at 9:00 a.m.,

August 25, 1993, and continued at 9:00 a.m., October 6, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, adopted the proposal filed by the staff of the Workers' Compensation Division of the Texas Department of Insurance concerning a revision to the workers' compensation experience rating plan to allow a reduction of the experience modifier by the insurance company for use in calculating the insured's premium.

The staff proposed that Section IV (1) of the Texas Experience Rating Plan Manual be amended to add (c) to that rule that allows a modifier calculated by the Texas Department of Insurance for an insured for a specific period to be reduced by an insurance company for use in calculating that insured's workers' compensation premium for the applicable period. Reasons for reducing the experience modifier include, but are not limited to, improved loss ratios and/or improved safety programs. The rule further provides that the experience modifier calculated by the Texas Department of Insurance will be the modifier used to meet any applicable statutory requirements. The Insurance Company negotiating the lower modifier with the policyholder is required to complete a Workers' Compensation Negotiated Experience Modifier form-NEM-1 (10-93) within ten working days from the inception date of the policy for each insured that has an experience modifier negotiated in accordance with the adopted rule.

The State Board of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.60 and 5.96.

The Board adopted the amendment to Rule IV(1) of the Texas Experience Rating Plan Manual and the Workers' Compensation Negotiated Experience Modifier form NEM-1 (10-93), both of which are attached hereto and incorporated by reference, by Board Order Number 60508.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative and Texas Register Act.

Issued in Austin, Texas, on October 13, 1993.

TRD-9330374 Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Effective date: November 3, 1993

Filed: October 13, 1993



The State Board of Insurance of the Texas Department of Insurance, at a public hearing first convened on August 30, 1993, and reconvened at 2:00 p.m. on September 16, 1993, under Docket Number 2041, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas, adopted a modified version of a proposal by the Office of Public Insurance Counsel (OPIC) to establish a mandatory discount for personal automobile coverage for each qualified person completing an alcohol and drug education course meeting certain criteria. OPIC's petition (Reference Number A-0793-17) was published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4945).

The new discount, which applies to liability, medical payments, personal injury protection, and collision coverages, is established by amending the Texas Automobile Rules and Rating Manual, Rule 74.E., "Driver Credits." The second sentence of that rule is amended to read:

"With the exception of application of the alcohol and drugs driving awareness training credits, the credits shall not be cumulative on any one auto, but application of one of these credits to one auto on a policy will not preclude application of other credits to other autos on the policy provided the necessary qualifications are met."

Rule 74.E. is further amended by adding Section 3 as follows.

"3. Alcohol and drugs driving awareness training credits.

"a. An auto afforded personal auto coverage shall have a credit of 5.0% applied to the rate otherwise applicable; provided satisfactory evidence (certificate, or photostat thereof) is presented to the company that the principal operator of such auto has successfully completed an alcohol and drug driving awareness course which meets the following standards:

"(1) The Texas Commission on Alcohol and Drug Abuse must certify the organization sponsoring the course as well as any instructor teaching the course.

"(2) The course must be approved by the Texas Commission on Alcohol and Drug Abuse.

"(3) The course must be composed of a minimum six hours of classroom instruction.

"b. If the policy insures two or more autos the credit shall apply to each auto principally operated by the person awarded the certificate of course completion.

"c. The credit shall apply for a period of 36 months subsequent to the date of issuance of the certificate of completion. Following such 36 month period, in order to again qualify for such credit, the course must be again successfully completed and evidence again presented to the company.

"d. Drivers who have been convicted of DWI or DUI or minor in possession within the last seven years are not eligible for the discount. Drivers who are convicted of DWI or DUI or minor in possession after taking the course will not be eligible for the discount for seven years from the date of the conviction."

The State Board of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.96, 5.98, and 5.101.

This 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.

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Board's action.

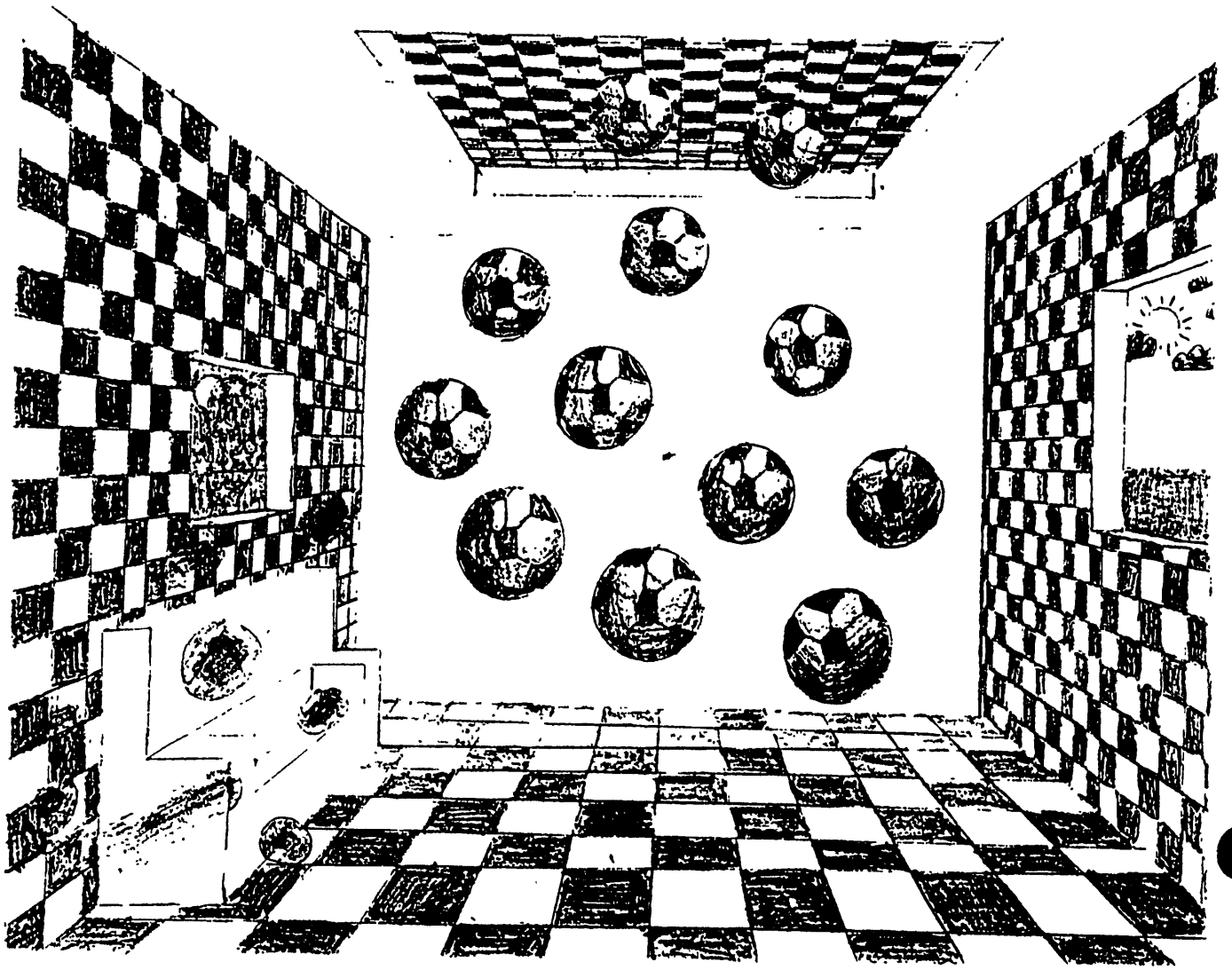
Issued in Austin, Texas, on October 13, 1993.

TRD-9330373 Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Effective date: December 1, 1993

Filed: October 13, 1993





Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Wednesday, October 13, 1993, 8:00 a.m.
(Emergency meeting)

Schleicher County Courthouse Annex
Eldorado

According to the complete agenda, the Schleicher County Cotton Producers Board discussed and acted on hiring of personnel to conduct spring diapause program

Reason for Emergency The emergency status was necessary as a reasonably unforeseeable situation regarding hiring of personnel to conduct spring diapause program necessitated an immediated meeting of the board to enable the program to begin by October 15, as scheduled.

Contact: Mitch Jurecek, Route 1, Eldorado, Texas 76936, (915) 853-2231

Filed: October 12, 1993, 2 15 p.m.
TRD-9330301

Texas Commission for the Blind

Wednesday, October 20, 1993, 10:30 a.m.

Executive Hotel, 3232 West Mockingbird
Dallas

According to the complete agenda, the board's agenda consists of call meeting to order and introductions, review of letter dated October 2, 1993, from chairman of the elected committee of managers containing a list of complaints; response from agency staff on complaints, further comments from the elected committee of man-

agers, possible vote on amending, continuing, or terminating the Business Enterprises Program

Contact: Jean Wakefield, P O Box 12866,
Austin, Texas 78711, (512) 459-2600

Filed: October 12, 1993, 11 57 a.m.
TRD-9330286

Texas Bond Review Board

Wednesday, October 20, 1993, 10:00 a.m.
(Emergency meeting)

Texas Law Center, Room 203, 1414 Colorado
Austin

According to the complete agenda, the Open Work Session will have open discussion work session to discuss the Private Activity Bond Allocation Program as it pertains to single-family and multi-family housing.

Reason for Emergency. To allow notice of open work session to discuss timely matters pertaining to other related programs.

Contact: Jim Thomassen, 300 West 15th Street, Clements Building, Suite 409,
Austin, Texas 78701, (512) 453-1741

Filed: October 13, 1993, 3 16 p.m.
TRD-9330418

Thursday, October 21, 1993, 10:00 a.m.

Committee Room #1, Fifth Floor, Clements Building, 300 West 15th Street
Austin

According to the complete agenda, the board's agenda consists of: call to order, approval of minutes, consideration of pro-

posed issues, other business, announcement of executive session, and adjourn

Contact: Jim Thomassen, 300 West 15th Street, Clements Building, Suite 409,
Austin, Texas 78701, (512) 453-1741

Filed: October 13, 1993, 3 16 p.m.
TRD-9330417

Texas Department of Commerce

Tuesday, October 26, 1993, 9:00 a.m.

Crescent Hotel, Crescent Ball Room, Section One, 2200 Cedar Springs Road
Dallas

According to the complete agenda, the Partnership for Economic Development will welcome and introduce new members-Chairman Tom Lardner; discussion of the Partnership's annual report published this year, discussion of and development of work plan for the Partnership for the upcoming year; overview of grant proposal submitted to the U S. Department of Commerce to fund a statewide network of manufacturing assistance centers for use by businesses converting from production of defense-related goods and services and for businesses who need to update their equipment and need access to technology assistance Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Maria Tissing at (512) 320-9585 at least two days before this meeting so that appropriate arrangements can be made Please contact Maria Tissing if you need assistance in having English translated into Spanish

Contact: Maria Tissing, Suite 1252, 816 Congress Avenue, Austin, Texas 78701, (512) 320-9685.

Filed: October 14, 1993, 8:55 a.m.

TRD-9330430

Texas Cosmetology Commission

Wednesday, October 20, 1993, 9:30 a.m.

Texas Cosmetology Commission, 5717 Balcones Drive

Austin

According to the complete agenda, the Facial Instructor Committee will call the meeting to order; introductions; discussion of facial specialist instructor curriculum; discussion of facial specialist instructor examination; and adjourn.

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674

Filed: October 13, 1993, 10:30 a.m.

TRD-9330407

Sunday, November 7, 1993, 10:00 a.m.

Texas Cosmetology Commission, 5717 Balcones Drive

Austin

According to the complete agenda, the Practical Instructor Exam Committee will call the meeting to order; introductions; discussion of practical instructor examination; and adjourn.

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: October 13, 1993, 10:30 a.m.

TRD-9330406

Monday, November 8, 1993, 9:30 a.m.

Texas Cosmetology Commission, 5717 Balcones Drive

Austin

According to the complete agenda, the Practical Instructor Exam Committee will call the meeting to order; introductions; discussion of practical instructor examination; and adjourn.

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: October 13, 1993, 10:30 a.m.

TRD-9330405

Texas Planning Council for Developmental Disabilities

Thursday, October 21, 1993, 1:00 p.m.

Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Room 4240

Austin

According to the complete agenda, the Executive Committee will call the meeting to order; introductions; approval of minutes; chair's report; executive director's report; consideration of TPCDD travel; expense policy; input on TPCDD conflict of interest policy; review of TPCDD staffing pattern; budget status report; review of stipends applications; discussion of new stipends RFP; consideration of NADDC dues for FY 94; HHS long-term care task force support; and other discussion items.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: October 13, 1993, 12:50 p.m.

TRD-9330403

Interagency Council on Early Childhood Intervention

Wednesday, October 20, 1993, 9:00 a.m.

Room 201-A, Texas Department of Health, 4412 Spicewood Springs

Austin

According to the complete agenda, the council will receive public comments; discuss and possibly act on: the minutes from the meeting of September 22, 1993; presentation of advisory committee and director's forum report; procedures for council chairperson selection, meeting planning and information presentation; operating procedures and signature authority; options available for review and analysis of study of staff classification and compensation; memorandum of understanding or interagency contract for administrative support; expansion and new high risk infant transitional projects, MILESTONES (formerly high priority infant transitional services (HPITS)); action needed regarding Tri-County's contract; application for federal funding under the individuals with Disabilities Education Act (IDEA), Part H; policy revisions regarding the qualifications for early intervention specialists; adoption of Early Childhood Intervention rules, 25 Texas Administrative Code, §621.23 and §621.25; and the executive director's update.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7673. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 12, 1993, 2:54 p.m.

TRD-9330312

Advisory Commission on State Emergency Communications

Thursday, October 14, 1993, 1:30 p.m.

ACSEC Offices, Conference Room, 1101 Capital of Texas Highway South, B-100

Austin

According to the complete agenda, the Poison Control Committee met in an emergency meeting; called the meeting to order; recognized guests; heard public comment; discussed annual meeting held by the American Association of Poison Control Centers; discussed telephone network planning and system design; discussed commission directives; discussion on conducting site visits to the designated poison control centers; and adjourned.

Reason for Emergency: The emergency status was necessary to receive briefing by ACSEC staff and discussed activities of new program that have legislative timelines.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911. (Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting).

Filed: October 12, 1993, 4:57 p.m.

TRD-9330322

Texas Department of Health

Saturday, October 16, 1993, 9:00 a.m. (Emergency meeting)

Room S-402, the Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Continuing Education Committee of the Medical Radiologic Technologist Advisory Board will discuss and possible act on: correspondence concerning continuing education requirements for medical radiologic technologists; and request to add agency to list accepted by Texas Department of Health for continuing education approval.

Reason for Emergency: The emergency status was necessary due to unforeseeable circumstances.

Contact: Donna Hardin, 1100 West 49th Street, Austin, Texas 78756 (512) 837-6617. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 12, 1993, 11:52 a.m.

TRD-9330283

Saturday, October 16, 1993, 10:00 a.m.
(Emergency meeting)

Room S-402, the Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Credentials Committee of the Medical Radiologic Technologist Advisory Board will discuss and possibly act on applications recommended for disapproval by the program administrator; reinstatement requirements for the medical radiologic technologists.

Reason for Emergency: The emergency status was necessary due to unforeseeable circumstances.

Contact: Donna Hardin, 1100 West 49th Street, Austin, Texas 78756 (512) 837-6617. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 12, 1993, 11:52 a.m.

TRD-9330284

Saturday, October 16, 1993, 11:00 a.m.
(Emergency meeting)

Room S-400, the Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Medical Radiologic Technologist Advisory Board held an emergency meeting to discuss approval of the minutes of the June 26, 1993 meeting; discussed and possibly acted on: chairman's report and committee appointments; program administrator's report; continuing education committee report; credentialing committee report; applications disapproved by the credentialing committee, specialty certificates; proposed rules relating to the certification of Medical Radiologic Technologists, Title 25 TAC, §§143.1-143.15; and announcement of next meeting dates

Reason for Emergency: The emergency status was necessary due to unforeseeable circumstances.

Contact: Donna Hardin, 1100 West 49th Street, Austin, Texas 78756 (512) 837-6617. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 12, 1993, 11:52 a.m.

TRD-9330282

Thursday, October 21, 1993, noon.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

According to the agenda summary, the Texas Board of Health will be presented with the Health Reform Team presentation in Room M-652.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 13, 1993, 4:48 p.m.

TRD-9330419

Thursday, October 21, 1993, 1:00 p.m.

Room M-741, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas Board of Health Board Briefing Committee will discuss and possibly act on items of procedures for the October 22, 1993 meeting of the Texas Board of Health.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 13, 1993, 4:49 p.m.

TRD-9330425

Thursday, October 21, 1993, 2:00 p.m.

Room M-652, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas Board of Health Strategic Management Committee will discuss and possibly act on internal audit plan for fiscal year 1994; and internal audit for fiscal year 1993.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 13, 1993, 4:48 p.m.

TRD-9330424

Thursday, October 21, 1993, 3:00 p.m.

Room M-721, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas Board of Health, Health and Clinical Services Committee will discuss and possibly act on: proposed rules concerning injury prevention and control; final adoption of amendments to the rules concerning the Texas HIV Medication Program to expand

the formulary to include Rifabutin, amend the criteria for Interferon-Alpha, and delete specified drugs reimbursed to the Tuberculosis Elimination Division; and extension of terms of the members of the Technical Advisory Committee on Tuberculosis Elimination.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 13, 1993, 4:48 p.m.

TRD-9330423

Thursday, October 21, 1993, 4:00 p.m.

Room M-652, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas Board of Health, Health Financing Committee will discuss and possibly act on recommendation for proposed rules concerning vendor drug billing processes in the on-line system, recommendation for final adoption of rules concerning adolescent preventive service visits under the Early Periodic Screening, Diagnosis, and Treatment Program, recommendation for final adoption of rule concerning enrollment of military hospitals as Medicaid providers, recommendation for final adoption of rule concerning coverage of special transportation services provided to children with disabilities in Medicaid's School Health and Related Services Program, and method of presentation for fiscal year 1994 Medicaid operating plan

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 13, 1993, 4:48 p.m.

TRD-9330422

Thursday, October 21, 1993, 5:30 p.m.

Room M-741, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas Board of Health will conduct a discussion concerning personal public health priorities in Room M-741.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 13, 1993, 4:48 p.m.

TRD-9330420

Friday, October 22, 1993, 8:30 a.m.

Room M-721, Texas Department of Health,
1100 West 49th Street

Austin

According to the complete agenda, the Human Resources Committee of the Texas Board of Health will discuss and possibly act on: extension of terms of the members of the Technical Advisory Committee on Tuberculosis elimination; and final adoption of client/consumer comment procedure.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 13, 1993, 4:48 p.m.

TRD-9330421

Texas Department of Human Services

Friday, October 22, 1993, 9:00 a.m.

Texas Department of Health, Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Council for Social Work Certification will welcome members; review and discuss Chapter 50, Human Resources Code; general staff report; other business; and adjournment.

Contact: Michael Doughty, P.O. Box 149030, Austin, Texas 78714-9030, (512) 834-6755.

Filed: October 13, 1993, 10:47 a.m.

TRD-9330380

Texas Incentive and Productivity Commission

Friday, October 22, 1993, 10:00 a.m.

Clements State Office Building, Second Floor, Conference Room #202, 15th and Lavaca Streets

Austin

According to the agenda summary, the commission will call the meeting to order and members present; approval of minutes of previous meeting; consideration of employee suggestions for approval; approval to publish revisions to State Employee Incentive Program Rules for comment; consideration of agency applications for 1993 Productivity Bonus Program awards; consideration of 1994 productivity plans;

report on administrative matters; and adjournment.

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: October 13, 1993, 4:49 p.m.

TRD-9330426

Texas Department of Insurance

Wednesday, October 20, 1993, 9:00 a.m.

333 Guadalupe Street, Room 100

Austin

According to the agenda summary, the State Board of Insurance will consider: personnel; litigation; solvency; commissioner's orders re: apptmts to Bds of Directors for: HMO Solvency Surv. Com; Texas Life, Accident, Health and Hosp. Serv. Ins. Guaranty Assoc. and Title Ins. Guaranty Assoc. and Mandated Benefit Review Panel (Art. 21.521), amended by HB 2055); staff reports; granting of meeting or hearing on petitions for: approval of Spanish translation-personal auto policy; new form filing by Tex. Dept. of Banking, "BOND FOR WITHDRAWAL OF EXCESS FUNDS"; proposed endorsement (new Rule 13 and Rule 50) to amend Texas Auto Rules and Rating Man. and Tex. Std. Prov. for auto policies; approval of filings of commercial auto endorsements by: Zurich Ins. Co.; British American Ins. Co.; Ins. Co. of N. America, etal; INA Co. Mut. Ins. Co.; INA Co. Mut. Ins. Co.; and Ins. Co. of N. America, etal; filings for individual and independent commercial crime forms by: Employers Ins. of Wausau, and Wausau Underwriters Ins. Co.; a filing of claims-made endorsement by The Medical Protective Co., and other states endorsement by Colonial Cas. Ins. Co.; consideration by Board and Commissioner of authorization for publication for comment of: new Chpt. 26, 28 TAC, Secs. 26.1 et seq, relating to Small Empl. Health Ins. Regs. (on HB 2055) and related policy provisions, and new Chpt. 26, 28 TAC Subchp. F, Secs. 3.501, et seq, relating to group health mandatory coverage privilege; consideration of commercial inland marine form filings by Royal Indem. Co., etal; commercial property form filings by: American and Foreign Ins. Co., etal, Mutual Service Cus. Ins. Co., Preferred Risk Mut. Ins. Co., etal; commercial multi-peril form filings by: Cigna Ins. Co., etal, Zurich Ins. Co. and American Guar. and Liab. Ins. Co., Continental Cas. Co., etal, and Aetna Cas. & Surety Co., etal, commercial gen. liab. endorsement filings by: Continental Cas. Co., etal, and Gen. Cas. Co. of Wisconsin and Regent Ins. Co., and Employers Ins. of Wausau, etal; filings for rate

and rule revision (independent personal umbrella program) by: SAFECO Ins. Co. of America, and Maryland Ins. Co. (rate only); filing of new endorsements and revised forms by National Chiropractic Mut. Ins. Co.; filing by Lumbermen's Mut. Cas. Co. and American Motorists Ins. Co., designated insurer status; and Optometric Protector Plan filing by American Casualty Co. of Reading, PA.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701 (512) 463-6332.

Filed: October 12, 1993, 3:43 p.m.

TRD-9330316

Wednesday, October 20, 1993, 9:00 a.m.

333 Guadalupe Street, Room 100

Austin

According to the complete agenda, the State Board of Insurance, under Docket Number 1800, will consider additions and deletions to the membership of the Quality Assurance Review Team and other matters relative to Board Order Number 59076, dated September 11, 1991.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6332.

Filed: October 12, 1993, 3:43 p.m.

TRD-9330317

Texas State Board of Medical Examiners

Friday, October 15, 1993, 9:00 a.m. (Emergency Meeting)

Harris County Medical Society, 1133 M. D. Anderson Boulevard, #400

Houston

According to the complete agenda, the District Review Committee Number One called the meeting to order; executive session to review investigative files; and adjourned.

Reason for Emergency: The emergency status was necessary as information had come to the attention of the agency and required prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728.

Filed: October 14, 1993, 9:02 a.m.

TRD-9330432

Thursday, October 21, 1993, 10:00 a.m. (Emergency Meeting)

1812 Centre Creek Drive, Suite 300

Austin

According to the complete agenda, the Hearings Division agenda will include pro-

bation appearances by the following licensees: Edward Allen Balli, M.D.; Juan U. Contin, M.D.; Stephen Edward Driscoll, M.D.; Howard Monroe Lee, Jr., M. D.; and Luke Elgene Robinson, M.D.

Reason for Emergency: The emergency status is necessary as information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728.

Filed: October 14, 1993, 9:01 a.m.

TRD-9330431

Monday, October 25, 1993, 10:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

According to the complete agenda, the Hearings Division agenda includes probation appearances, modification requests and termination requests (Executive sessions under authority of Open Meetings Act, §§51.071 and §51.074 of the Government Code, Article 4495b, §2 07(b), 2 09(o), 3.05(d), Texas Civil Statutes, and Attorney General Opinion H-484

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728.

Filed: October 14, 1993, 9:02 a.m.

TRD-9330433

Texas Natural Resource Conservation Commission

Monday, October 25, 1993, 10:00 a.m.

Stephen F. Austin State Office Building, Room 119, 1700 North Congress Avenue
Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing to consider the City of Los Fresnos' application for a sewer Certificate of Convenience and Necessity (CCN) and for an amendment to Water CCN Number 10537. Applicant also proposes decertification of portions of East Hondo Water Supply Corporation's water CCN Number 11552 and Olmito Water Supply Corporation's Water CCN Number 10537. Proposed utility service area is approximately two miles in all directions of the City of Los Fresnos in Cameron County. Docket Numbers 30035-C and 30036-C.

Contact: Cindy Hurd, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-1770.

Filed: October 14, 1993, 8:38 a.m.

TRD-9330428

Tuesday, October 26, 1993, 10:00 a.m.

John H. Reagan State Office Building,

Room 103, 105 West 15th Street

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing to consider: La Joya Water Supply Corporation's application for a sewer Certificate of Convenience and Necessity (CCN)-Docket Number 30100-C, to amend La Joya's water CCN Number 10559 and to transfer Ozuna Water Supply's CCN Number 12332 to La Joya-Docket Number 30101-C to allow La Joya to provide sewer utility service and expand their water utility service in Hidalgo County; City of Mission's application to provide sewer utility service in Hidalgo County-Docket Number 30147-C; and consideration of consolidation of City of Palmview's application for a CCN to provide sewer utility service in Hidalgo County-Docket Number 9965-C.

Contact: Leslie Craven, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: October 14, 1993, 8:39 a.m.

TRD-9330429

Texas Optometry Board

Thursday-Friday, October 21-22, 1993, 9:30 a.m. and 8:00 a.m. respectively.

Dallas Parkway Hilton, 4801 LBJ Freeway
Dallas

According to the agenda summary, the board will hold informal conferences of the Investigation-Enforcement Committee: the continuing education committee will meet, followed by the rules committee with the full board in attendance; all committees will meet at 8:00 a.m. on Friday, followed by special board meeting to consider reports of committees, legal counsel, executive director, secretary-treasurer, consider adoption of proposed Rule 273.9 (public interest information); discuss matters involving therapeutic advisory council, Health Professions Council, §§5.11, 5.15, and 5.17; DEA numbers available to therapeutic optometrists; general mailings, hear report on State Health Care Reform; general matters regarding legislation, Sunset Advisory Commission; proposed rules to implement House Bill 1479; and meet in executive session in compliance with §51.074 and §51.071, Government Code.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: October 12, 1993, 4:27 p.m.

TRD-9330320

Public Utility Commission of Texas

Friday, October 22, 1993, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12370-petition of Houston Lighting and Power Company to implement a revised fuel factor.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 12, 1993, 10:04 a.m.

TRD-9330280

Railroad Commission of Texas

Monday, October 18, 1993, 9:30 a.m.
(Emergency meeting)

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

According to the complete emergency revised agenda, the commission considered a motion for rehearing for Docket Number 7B-0201625, application of Burk Royalty Company to inject fluid into a reservoir productive of oil or gas, Bogard Waterflood Unit Lease, Well Number 302, Tom Darling (Conglomerate) Field, Haskell County

Reason for Emergency: The emergency status was necessary as action on the motion for rehearing was required at the next regularly scheduled meeting, October 18, 1993, otherwise the motion for rehearing would be overruled by operation of law and the commission would lose jurisdiction

Contact: Charles Dickson, P.O. Box 12967, Austin, Texas 78701, (512) 463-6925

Filed: October 13, 1993

TRD-9330404

Texas National Research Laboratory Commission

Wednesday, October 20, 1993, 10:30 a.m.

InfoMart Exhibition Hall, 1950 Stemmons Freeway, Room 3021

Dallas

According to the agenda summary, the Commission will convene meeting; roll call of members, chairman's report-Charles R.

Perry; executive director's report-Edward C. Binger; special report-Harriet Peppel, TxDOC; executive session; program action items: finance and audit; site acquisition and development; research and education; personnel, procurement and EEO; public comment; and adjourn.

Contact: Karen Chrestay, 1801 North Hampton Road, Suite 400, DeSoto, Texas 75115, (214) 709-3800.

Filed: October 12, 1993, 4:24 p.m.

TRD-9330319

Texas Turnpike Authority

Thursday, October 21, 1993, 2:00 p.m.

3015 Raleigh Street

Dallas

According to the agenda summary, the Contract Awards Committee's agenda includes consideration of the following: award of contracts DNT-206 and DNT-181; approval of various change orders and supplemental agreements to existing contracts; consider selection of a team of investment bankers for possible refinancing of the DNT revenue bonds Series 1989; consider an RFQ for a public relations firm; and consider traffic and revenue study of the Houston Ship Channel Bridge.

Contact: Jerry Shelton, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: October 12, 1993, 11:55 a.m.

TRD-9330285

University of Houston

Monday, October 18, 1993, 2:00 p.m.

S&R II, Room 201, University of Houston, 4800 Calhoun Boulevard

Houston

According to the agenda summary, the Animal Care Committee will discuss and/or act upon the following: approval of September minutes; renewal protocols; selection of dates for facilities inspection. (January meeting is moved to January 24, 1994 because of Martin Luther King holiday on January 17).

Contact: Julie T. Norris, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 743-9222.

Filed: October 13, 1993, 1:53 p.m.

TRD-9330408

University of Texas Health Science Center at San Antonio

Wednesday, October 27, 1993, 3:00 p.m.

Room 422A-Medical School, 7703 Floyd Curl Drive

San Antonio

According to the agenda summary, the Institutional Animal Care and Use Committee will discuss approval of minutes; protocols for review; subcommittee reports; and other business.

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7822, (512) 567-3717.

Filed: October 12, 1993, 2:53 p.m.

TRD-9330311

Texas Water Development Board

Wednesday, October 20, 1993, 3:00 p.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 513-F

Austin

According to the complete agenda, the Policy and Finance Committee will consider approval of the minutes of the meeting of September 15, 1993; consider \$4,850,000 application from the Park Board of Trustees City of Galveston, for financial assistance for beach renourishment; consider El Paso County Lower Valley Water District Authority's Phase III project application; briefing and discussion on the status of the oil overcharge funds for the Agricultural Water Conservation Loan program; briefing on present and future EDAP projects; consider hardship criteria for EDAP facility planning applications; and may consider items on the agenda of the October 21, 1993 board meeting. Additional non-committee board members may be present to deliberate but will not vote in the committee meeting.

Contact: Craig D. Pedersen, P O Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: October 12, 1993, 3:14 p.m.

TRD-9330313

Thursday, October 21, 1993, 9:00 a.m.

1700 North Congress Avenue, Stephen F Austin Building, Room 118

Austin

According to the agenda summary, the Texas Water Development Board will consider: minutes; financial, executive, and committee reports, extensions to loan commitments for Brownsville and Sebastian

WSC; sale and transfer of assets and obligations from Chalk Hill WSC to Chalk Hill Special Utility District; financial assistance for Cities of Jasper, Terrell, Texas City, and San Benito, and Panhandle Ground Water Conservation District No 3; resolution for Dan Black; transfer \$25,000 Research and Planning Fund grant to Texas Agricultural Extension Service; salary of the Internal Auditor; resolution supporting National Geography Awareness Week; selection of underwriters; extension of time on existing commitment for City of Arcola; amendment to facility planning contract for Olmito WSC; \$11,250 increase in financial assistance to City of El Paso; EDAP financing issues and use of federal funds; status of Hydrographic Survey Program and charge schedule; and appointments to board of directors of the San Jacinto River Authority.

Contact: Craig D. Pedersen, P O Box 13231, Austin, Texas 78711, (512) 463-7847

Filed: October 13, 1993, 3 14 p m

TRD-9330415

Texas Water Resources Finance Authority

Thursday, October 21, 1993, 9:00 a.m.

1700 North Congress Avenue, Stephen F Austin Building, Room 118

Austin

According to the complete agenda, the Texas Water Resources Finance Authority will consider approval of the minutes of the meeting of September 16, 1993; selecting underwriters for all TWRFA negotiated bond sales and other transactions occurring prior to August 31, 1995, with provision for post transaction and fiscal year end performance evaluation, and a request for an exchange refunding of the City of Copperas Cove (Coryell/Lampasas County) Waterworks and Sewer System Revenue Bonds, Series 1977, held in the Texas Water Resources Finance Authority's portfolio

Contact: Craig D. Pedersen, P O Box 13231, Austin, Texas 78711, (512) 463-7847

Filed: October 13, 1993, 3 14 p.m

TRD-9330414

Regional Meetings

Meetings Filed October 12, 1993

The Appraisal District of Jones County Board of Directors will meet at the District's Office, 1137 East Court Plaza, Anson, October 21, 1993, at 8:30 a.m. In-

formation may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9330298.

The Education Service Center, Region XIII Board of Directors met at the ESC, Region XIII, ESC Conference Rooms 202 and 203, 5701 Springdale Road, Austin, October 18, 1993, at 12:45 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300. TRD-9330296.

The Liberty County Central Appraisal District Appraisal Review Board will meet at 315 Main Street, Liberty, October 21, 1993, at 9:30 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9330281.

The North Central Texas Council of Governments Air Carrier System Policy Committee will meet in the South Texas Room, Amon G. Carter Exhibits Hall, Will Rogers Memorial Center, 3400 Crestline Road, Fort Worth, October 26, 1993, at 4:00 p.m. Information may be obtained from Julie K. P. Dunbar, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9330310.

The North Central Texas Council of Governments Air Carrier System Policy Committee will meet in the Commissioners' Court, Dallas County Administration Building, 411 Elm Street, First Floor, Dallas, October 27, 1993, at 4:00 p.m. Information may be obtained from Julie K. P. Dunbar, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9330309.

The Trinity River Authority Legal Committee will meet at 5300 South Collins, Tarrant County, Arlington, October 19, 1993, at 10:30 a.m. Information may be obtained from James L. Murphy, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343. TRD-9330297.

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**Meetings Filed October 13,
1993**

The Bexar Appraisal District Board of Directors met at 535 South Main Street, San Antonio, October 18, 1993, at 4:00 p.m. Information may be obtained from Beverly Houston, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD-9330370.

The Brazos River Authority Board of Directors met at 4400 Cobbs Drive, Waco, October 18, 1993, at 9:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9330368.

The Brazos Valley Development Council Regional Solid Waste Management Advisory Committee will meet at 1706 East 29th Street, Bryan, October 21, 1993, at 3:00 p.m. Information may be obtained from Jill Hyde, P.O. Drawer 4128, Bryan, Texas 77805, (409) 776-2277. TRD-9330410.

The Central Texas Mental Health Mental Retardation Center Board of Trustees met at 408 Mulberry Drive, Brownwood, October 18, 1993, at 5:00 p.m. Information may be obtained from Saul Pullman, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574, Ext. 102. TRD-9330371.

The Dewitt County Appraisal District Board of Directors will meet at 103 Bailey Street, Cuero, October 19, 1993, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9330411.

The Education Service Center, Region 20 Board of Directors will meet at 1314 Hines Avenue, San Antonio, October 27, 1993, at 2:00 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208-1899, (210) 299-2400. TRD-9330401.

The Education Service Center, Region Two Board of Directors will meet at 209 North Water Street (Board Room), Corpus Christi, October 19, 1993, at 6:30 p.m. Information may be obtained from Dr. Ernest Zamora, 209 North Water Street, Corpus Christi, Texas 78401, (512) 883-9288. TRD-9330377.

The Guadalupe-Blanco River Authority Board of Directors will meet at the Victoria Bank and Trust Building, 120 Main Place, Fifth Floor, Board Room, Victoria, October 21, 1993, at 10:00 a.m. Information may be obtained from James E. Arnst, P.O. Box 271, Sequin, Texas 78156-0271, (210) 379-5822. TRD-9330409.

The High Plains Underground Water Conservation District Number One Board of Directors will meet at the Railroad Crossing Restaurant, 14th Avenue and Lubbock Highway, Canyon, October 19, 1993, at 6:30 p.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9330378.

The Johnson County Rural Water Supply Corporation Credentials Committee will meet at the JCRWSC Office, Highway 171 South, Cleburne, October 19, 1993, at 5:30 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9330416.

The Middle Rio Grande Development Council Texas Review and Comment System held an emergency meeting at the MRGDC Operations Conference Room, 209 North Getty Street, Uvalde, October 15,

1993, at 4:00 p.m. The emergency status was necessary as the need to review applications to comply with requirements by this date. Information may be obtained from Dora T. Flores, P.O. Box 1100, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9330413.

The Middle Rio Grande Development Council Monitoring-Oversight Committee will meet at the La Salle County Courthouse, Cotulla, October 20, 1993, at 9:30 a.m. Information may be obtained from Erma A. Alejandro, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 278-2527. TRD-9330376.

The Nortex Regional Planning Commission Executive Committee will meet at the Galaxy Center, Suite 200, 4309 Jacksboro Highway, Wichita Falls, October 28, 1993, at noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (817) 322-5281. TRD-9330412.

The Region One Education Service Center Board of Directors will meet at 1900 West Schunior, Edinburg, October 19, 1993, at 7:00 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (512) 383-5611. TRD-9330379.

The Trinity River Authority of Texas Administration Committee will meet at 5300 South Collins, Tarrant County, Arlington, October 20, 1993, at 10:00 a.m. Information may be obtained from James L. Murphy, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343. TRD-9330402.

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**Meetings Filed October 14,
1993**

The Education Service Center, Region VI Regional Advisory Committee will meet at the Lowman Student Center, Sam Houston State University, Huntsville, October 27, 1993, at 10:00 a.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9330436.

The Middle Rio Grande Private Industry Council Education Committee will meet at the Green House Cafe, 101 North Main Street, Cotulla, October 20, 1993, at 10:00 a.m. Information may be obtained from Erma A. Alejandro, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9330439.

The Panhandle Ground Water Conservation District Number Three Board of Directors will meet at the Water District Office, 300 South Omohundro, White Deer, October 20, 1993, at 8:00 p.m. Information may be obtained from C. E. Williams, P.O. Box 637, White Deer, Texas 79097, (806)

883-2501. TRD-9330440.

The Swisher County Appraisal District Board of Directors will meet at the Conestoga Restaurant, North Highway 87, Tulia, October 21, 1993, at 7:30 a.m. Information may be obtained from R. L. Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9330437.

The Wood Appraisal District Board of Directors will meet at 217 North Main Street, Conference Room, Wood County Appraisal District, Quitman, October 21, 1993, at 7:00 p.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9330438.



In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission for the Blind Request for Qualifications (RFQ)

Pursuant to Texas Civil Statutes, Article 664-4, the Texas Commission for the Blind (Commission) invites professionals with documented expertise in the field of indirect cost recovery and cost allocation plans for governmental entities to submit their qualifications to prepare an indirect cost reimbursement plan and negotiate with the federal government, under the provisions of OMB Circular A-87, the Commissioner's agency-wide cost allocation for the fiscal year ending August 31, 1995. Contingent upon the Commission's determination that the selected professional successfully carried out the work on the Fiscal Year 95 plan and an agreement was reached on the scope and compensation for future plans, the selected professional's contract may be extended to perform the cost allocation plan for Fiscal Year 96.

Proposers will be expected to develop an indirect cost reimbursement plan that enables the Commission to recover the maximum indirect costs possible from federal grants. The contractor selected will be responsible for all aspects of the plan, including obtaining raw cost and statistical data, identifying allocable costs, preparing and submitting the plan, and negotiating the final plan with the federal government for the Commission's use during Fiscal Year 95.

As a component of the cost allocation plan, the contractor selected must also identify the costs of providing facilities to each food concession stand operated under the Commission's Business Enterprises Program (BEP). This component must identify in state owned and leased buildings those costs that relate to the square footage occupied by BEP (for example utilities, security, janitorial services, groundskeeping and building maintenance) in carrying out their concession programs and the type and dollar amount of services used. The contractor selected will be responsible for any aspects of this component, including obtaining raw cost and statistical data and identifying allocable costs that are not available from the Texas consolidated state-wide allocation plan.

The Commission will evaluate demonstrated experience, competence, knowledge and qualifications, and ability to meet the federal filing deadline of February 28, 1994.

All firms wanting to submit their qualifications should contact James R. Johnson for an RFQ package. Submit requests to the attention of James R. Johnson, Purchasing Department, 4800 North Lamar Boulevard, Austin, Texas 78756 or call (512) 459-2640. A copy of the Commission's FY 93 Annual Financial Report will be provided upon request to assist in preparing a submission. Responses to this notice should be received by the Commission's Purchasing Office no later than 3:00 p.m. on November 12, 1993.

Issued in Austin, Texas, on October 13, 1993.

TRD-9330315 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Filed: October 12, 1993

Comptroller of Public Accounts Notice of Request for Proposals

Notice of Request for Proposals. Pursuant to the Texas Government Code, Chapter 2102, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) for Professional Services in the Area of Electronic Data Processing Auditing. The purpose of the RFP is to obtain proposals for professional services relating to general and application control audits of one or more various systems utilized in the Comptroller's operations. The successful proposer will be expected to begin the evaluation on or about November 20, 1993.

Contact. Parties interested in submitting a proposal should contact the Office of Comptroller of Public Accounts, Legal Counsel's Office, 111 East 17th Street, Room G26, Austin, Texas 78774, (512) 475-0866, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Tuesday, October 19, 1993, between 1:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter.

Closing Date. Proposals must be received in the Legal Counsel's Office no later than 4:00 p.m. (CZT), on November 4, 1993. Proposals received after this time and date will not be considered.

Award Procedure. All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposals best meet these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP—October 19, 1993, at 1:00 p.m. (CZT); Mandatory Letter of Intent Due—October 26, 1993, by 4:00 p.m. (CZT); Proposals Due—November 4, 1993, by 4:00 p.m. (CZT), and Contract Execution—November 15, 1993, or as soon thereafter as practical.

Issued in Austin, Texas, on October 13, 1993.

TRD-9330369

Arthur F. Lorton
Senior Legal Counsel
Office of Comptroller of Public Accounts

Filed: October 13, 1993

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Texas Education Agency
Request for Proposals

RFP #701-93-027. This request for proposal is filed under the Texas Education Code, §11.52(e) and §11.63(a)(3).

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals (RFP #701-93-927) from nonprofit organizations, institutions of higher education, private companies, or individuals for assistance in the implementation of a study of teacher preparation in Texas.

Description. The purpose of this study is to assess the quality of teacher preparation programs by examining the performance of first-year teachers. The objectives are to determine who is entering the work force and where they are teaching, to examine these teachers' experience in the classroom, to investigate the retention of these teachers, and to examine this evidence in relation to the route to certification and in light of both current program practices and state policy for the purpose of generating recommendations for improvements in each. Services required of the contractor selected include reviewing the study design, preparing a literature review, and assisting in developing survey instruments. The contractor will make 30-50 site visits throughout Texas to colleges and universities, regional education service centers, and school districts for the purpose of collecting data on programs and participants. Several sites will be incorporated into each regional trip, with the sites being geographically representative of Texas.

During each site visit, data will be collected from teachers, students, administrators, and others via interviews (individual and group), surveys, records review, and observations. All data will be analyzed, summarized, and reported to TEA according to the specifications of the study.

Dates of Project. Site visits will occur during the 1993-1994 school year. Proposers should plan for a starting date of no earlier than January 3, 1994, and an ending date of no later than August 31, 1994.

Project Amount. The project will receive funding for the 1993-1994 school year at a level not to exceed \$60,000. Funding of an equal or lesser amount may be available during the second year of the study. Funding for continuing the project in 1994-1995 will be contingent upon satisfactory progress of the 1993-1994 objectives and activities and general budget approval by the State Board of Education and the commissioner of education.

Selection Criteria. Proposals will be approved based upon the ability of each proposer to carry out all requirements contained in the request for proposal. Special consideration will be given to proposers who have a strong history of research in teacher education; have evidence of the ability to generate an array of valid, reliable data collection instruments; or have experience conducting classroom observations and student interviews.

The TEA is under no obligation to approve a proposal, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to

pay any costs incurred before the approval of a proposal. The issuance of the RFP in no way obligates TEA to award a contract or to pay any costs incurred in the preparation of a response.

Requesting the Proposal. A copy of the complete request for proposal (RFP #701-93-027) may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494, or by calling (512) 463-9304. Please refer to the RFP# in your request.

Further Information. For clarifying information about this request for proposal, contact Lauren Moede or Marilyn Rumbaut, Office of Policy Planning and Evaluation, Texas Education Agency, (512) 463-9701.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the Texas Education Agency by Friday, December 3, 1993, to be considered.

Issued in Austin, Texas, on October 13, 1993.

TRD-9330367

Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: October 13, 1993

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Criminal Justice Division, Office of the Governor
Requests for Applications Under the Juvenile Justice and Delinquency Prevention Act

Notice of Invitation for Applications. The Criminal Justice Division of the Governor's Office (CJD) is soliciting applications for grants to be awarded for projects under the federal Juvenile Justice and Delinquency Prevention (JJDP) Act.

One or more of the following types of projects may be awarded, depending on the availability of funds.

Community-Based Prevention Projects (maximum of \$100,000 per project), to provide increased outreach and coordination of the delivery of services within high-crime neighborhoods and communities. Eligible applicants are private non-profit organizations and local units of government, which may contract with other public or private agencies.

Mentor Projects (maximum of \$70,000 per project), to match school-age youths with mentors of similar cultural and socio-economic backgrounds. Eligible applicants are colleges, universities, local private non-profit corporations, and local units of governments, including independent school districts.

Comprehensive Service Projects (maximum of \$70,000 per project), to provide services to at-risk youths through schools. Services to families may be included. Eligible applicants are independent school districts, which must contract with public/private agencies and individual service providers in accordance with a standard rate schedule of services.

Juvenile Offender Employment Projects (maximum of \$70,000 per project), to provide youthful offenders released from juvenile detention and correctional facilities

invitations to bid and details on bidding on private consultant contracts expected to exceed \$10,000. Within ten days of the award of the contract, the agency must file with the Secretary of State a description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, Article 6252-11c, directs the contracting agencies to file copies of all documents, films, recordings, or reports developed by the private consultants with the Texas State Library. The Library is required to compile a list of the materials received and submit the list quarterly for publication in the *Texas Register*.

Below is a list of materials received for the third quarter of 1993. These materials may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin.

Agency: Attorney General,

Consultant: David M. Griffith & Associates, Ltd.,

Title: The state of Texas Attorney Generals Office legal services billing rates for fiscal year 1994

Agency: Comptroller of Public Accounts,

Consultant: KPMG Peat Marwick,

Title: Texas school performance review management (sic) and performance review of the Calhoun County Independent School District

Agency: Department of Human Services,

Consultant: Austin Data Management Associates,

Title: Professional services contract final report

Agency: Department of Information Resources,

Consultant: Deloitte and Touche,

Title: Department of Information Resources detailed design for integrating licensing functions at 'IDA' detailed design document implementation plan 3 v

Agency: Education Agency,

Consultant: Texas Center for Educational Research,

Title: Study on non-teaching services for the high-cost courses in the regular and vocational education programs, final report

Agency: General Land Office,

Consultant: Amundson and Associates,

Title: Texas General Land Office Tracker v.3.2 Budget Tracking System users guide

Agency: Library and Archives Commission,

Consultant: Russell Gregorczyk,

Title: 3 v. Internal audit of the Texas State Library and Archives, automated information systems, Internal audit of the Texas State Library and Archives, grants management system; Internal audit of the Texas State Library and Archives' Talkings Book Program

Issued in Austin, Texas, on October 12, 1993.

TRD-9330292 Raymond Hitt
Assistant Director
Texas State Library and Archives
Commission

Filed October 12, 1993

Public Utility Commission of Texas

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on September 29, 1993, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 18(b), 50, 52, and 54. A summary of the application follows.

Docket and Title Number. Application of GTE Southwest, Inc. to amend Certificate of Convenience and Necessity within Crockett County, Docket Number 12364, before the Public Utility Commission of Texas

The Application. In Docket Number 12364, GTE Southwest, Inc. seeks approval to amend to the exchange area boundary between its Ozona and Big Lake exchanges in order to provide telephone service to four applicants. GTE Southwest, Inc. proposes to provide telephone service to the four applicants from its Ozona exchange via rural radio service

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before November 5, 1993

Issued in Austin, Texas, on October 8, 1993

TRD-9330214 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed October 11, 1993

Railroad Commission of Texas

Notice of Hearing

The Railroad Commission of Texas will conduct a public hearing on proposed new Subchapter T of Chapter 5 rules relating to the Single State Registration System and repeals and amendments to Subchapter R of Chapter 5 rules relating to Interstate Carriers Which Are Exempt From Economic Regulation

The public hearing will begin at 9:00 a.m., on October 27, 1993. The hearing will be held in the William B. Travis State Office Building, Room 12-126, 1701 North Congress Avenue, Austin

The hearing will be conducted in compliance with the *General and Special Rules of Practice and Procedure before the Transportation Division*. Any interested member of the public may appear and offer comments. Cross-examination of witnesses will not be allowed, although the presiding examiner may ask questions of any person testifying

Access For The Disabled. Any individual with a disability who needs auxiliary aids and services in order to have an equal opportunity to effectively communicate and participate in this hearing must request such aids or services at least one week prior to the scheduled hearing by notifying the Personnel Office of the Railroad Commission of

Texas by mail at P.O. Box 12967, Austin, Texas
78711-2967, or by telephone at (512) 463-7327 or TDD
Number (512) 463-7284.

Issued in Austin, Texas, on October 12, 1993.

TRD-8330277 Mary Ross McDonald
Assistant Director-Legal Division-Gas
Utilities/LP Gas
Railroad Commission of Texas

Filed: October 12, 1993

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