

Texas Register

Volume 15, Number 29, April 13, 1990

Pages 2057-2186

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The *Texas Register* (ISSN 0362-4781) is published semi-weekly 100 times a year except June 1, 1990, July 20, 1990, November 9 and 27, 1990, and December 28, 1990. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711.

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Information Available: The eight 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

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Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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 accumulative quarterly and annual indexes to aid in researching material published.

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

In order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 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, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, sections number, or TRD number.

Texas Administrative Code

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

How To Cite: Under the TAC scheme, each agency 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 rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).



Texas Register Publications

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Typographers
Myra Herber
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Circulation/Marketing
Richard Kallus
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TAC Editor
Dana Blanton

TAC Typographer
Madeline Chrisner

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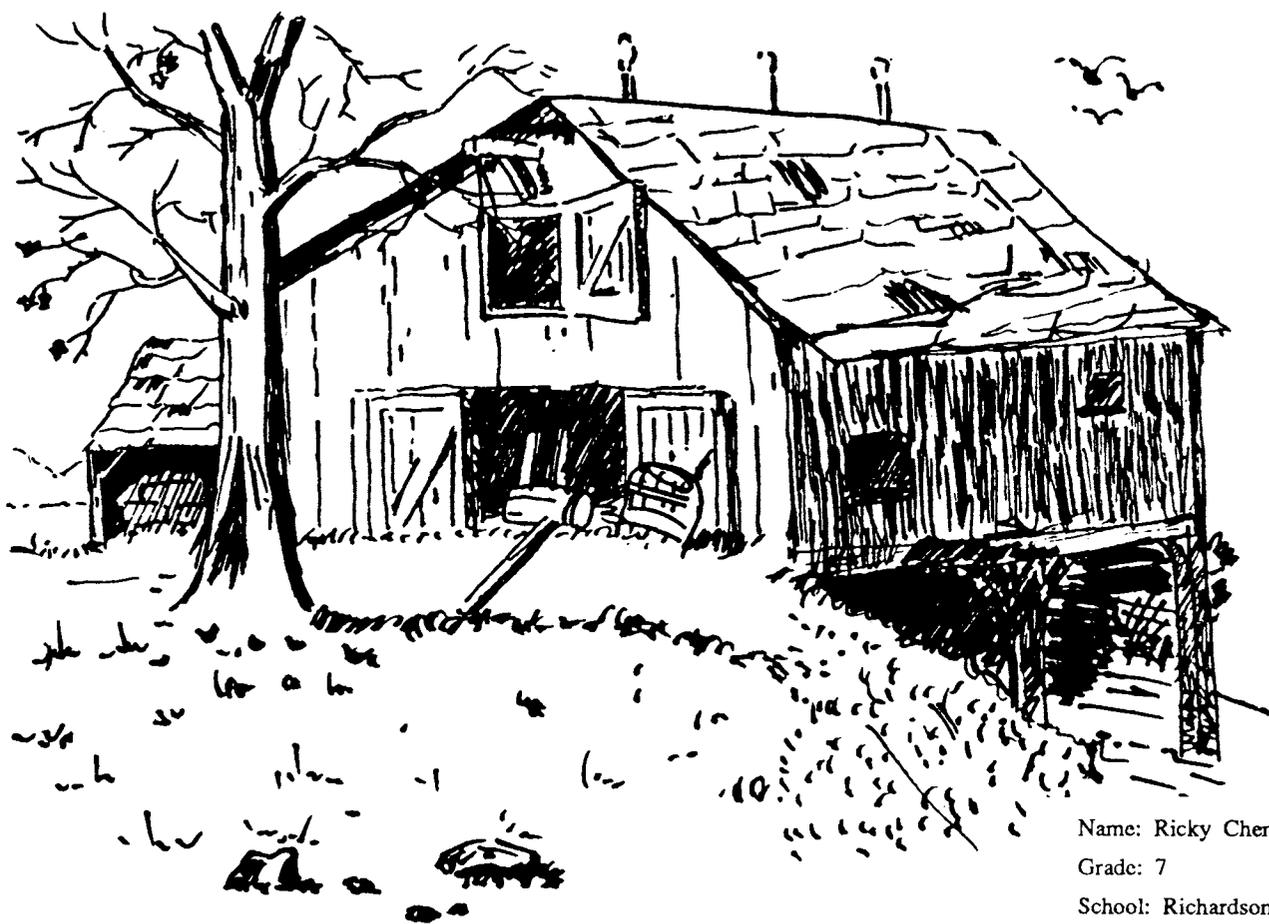
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2185-Correction of Error

Texas Water Commission

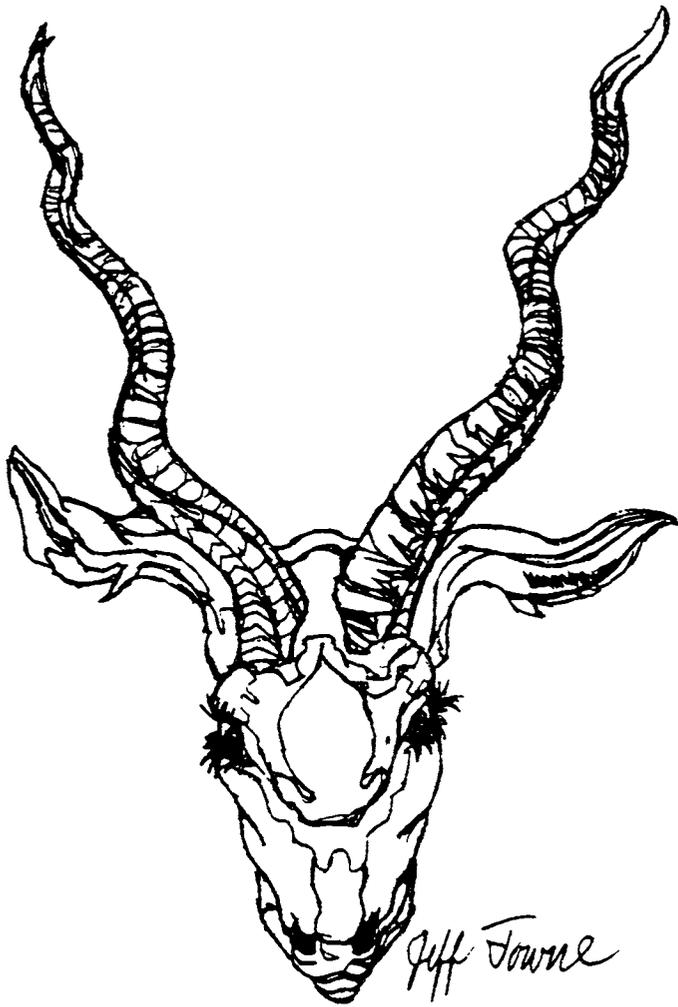
2185-Invitation for Bids



Name: Ricky Chen

Grade: 7

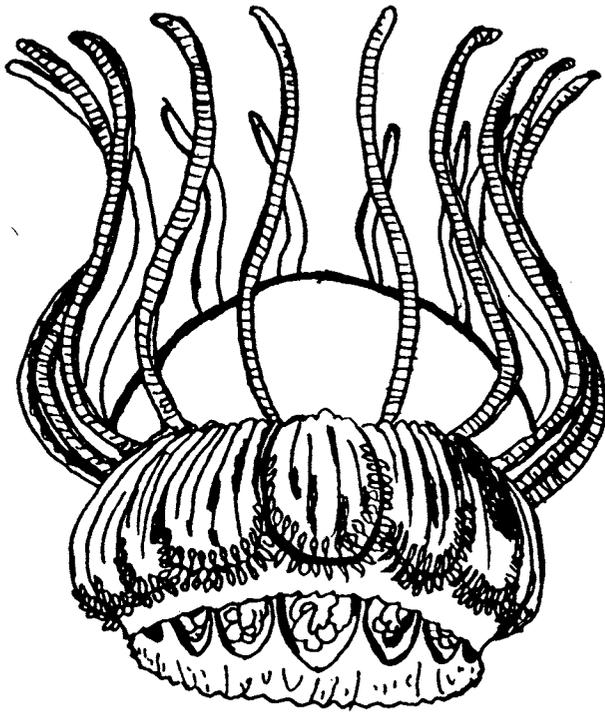
School: Richardson Jr. High, Richardson



Name: Jeff Towne

Grade: 7

School: Richardson Jr. High, Richardson



Name: Gong Rose

Grade: 7

School: Richardson Jr. High, Richardson



Name: Jeremy Weathers

Grade: 7

School: Richardson Jr. High, Richardson



Name: Ginger Strand

School: Plano East High, Plano



Pat Harris

Name: Pat Harris

School: Plano East High, Plano

TAC Titles Affected

TAC Titles Affected—April

The following is a list of the administrative rules that have been published this month.

TITLE 1. ADMINISTRATION

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1 TAC §5.301—1997

1 TAC §5.302—1997

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16 TAC §9.303—2097

16 TAC §9.340—2098

16 TAC §§9.501, 9.505, 9.506, 9.524, 9.525—2098

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16 TAC §§21.201-21.208—1883

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16 TAC §23.61—2118

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16 TAC §§63.1, 63.10, 63.20, 63.21, 63.30, 63.40, 63.60, 63.70, 63.71, 63.80-63.82, 63.90-63.94—1957

16 TAC §§67.1-67.28—1959

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16 TAC §§70.78, 70.90-70.95, 70.120—1919, 1925

16 TAC §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.60, 78.70-78.76, 78.80-78.82, 78.90-78.94—1960

40 TAC §§48.2701-48.2708, 48.2710, 48.2711—1963

40 TAC §48.9808—1967

40 TAC §56.701—1953

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40 TAC §101.11—1891

40 TAC §117.1—2165, 2170

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40 TAC §255.39—1967

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28 TAC §§5.1501-5.1503—1880

28 TAC §7.32—1995

28 TAC §7.50—1881, 1933

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28 TAC §28.1, §28.2—1881

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16 TAC §§64.5, 64.10, 64.15, 64.20—2075, 2136

28 TAC §64.10—1887

Part II. Texas Workers' Compensation Commission

28 TAC §41.1—1922, 1934

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

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31 TAC §§334.2, 334.3, 334.5-334.7—1939

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34 TAC §5.123—1887

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34 TAC §77.9, §77.11—2024

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34 TAC §155.4—1887, 1893

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37 TAC §§160.1-160.8—2030

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40 TAC §§3.2201, 3.2203, 3.2208—2037

40 TAC §§10.3102, 10.3106, 10.3107, 10.3114, 10.3116, 10.3122, 10.3123, 10.3155, 10.3159, 10.3160, 10.3165, 10.3167, 10.3170, 10.3172, 10.3173—2038

40 TAC §§10.33010, 10.3307, 10.3320-10.3324—2039

40 TAC §§10.3501-10.3506—1951

40 TAC §§10.7001, 10.7005, 10.7007—2040

40 TAC §15.200, §15.210—1889

40 TAC §15.441—2169

40 TAC §16.1502, §16.1503—1955

40 TAC §16.1601—1955

40 TAC §§16.1902, 16.1905, 16.1908, 16.1909—1055

40 TAC §§29.2301-29.2306—2155

40 TAC §§31.201-31.205—2159

40 TAC §48.2101, §48.2109—1889

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40 TAC §48.9808—1967

40 TAC §56.701—1953

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40 TAC §101.11—1891

40 TAC §117.1—2165, 2170

40 TAC §117.2—2031

Part IX. Texas Department on Aging

40 TAC §255.39—1967

TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

43 TAC §25.91—1922



The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in Chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made April 3, 1990

Pursuant to the Texas Government Code, §26.012, the Honorable John Barnhill, County Judge, Goliad County, previously had certified his disqualification to act as County Judge in the following case pending in the Goliad County court: Cause Number 1877, Estate of Helen McCampbell Torian, In the County Court of Goliad County. Judge Barnhill has requested the appointment of Charles Bluntzer of Goliad County.

To be Chairman of the **Texas Higher Education Coordinating Board** for a term at the pleasure of the Governor: Larry Jenkins. Mr. Jenkins will be replacing Hal Daugherty.

To be Vice-Chairman of the **Texas Higher Education Coordinating Board** for a term at the pleasure of the Governor: Dr. Charles C. Sprague. Dr. Sprague will be replacing Cipriano F. Guerra, Jr.

Appointments Made April 4, 1990

To be Chairman of the **Governor's Committee for Disabled Persons** for a term at the pleasure of the Governor: Jerry D. Cooper of Duncanville. Mr. Cooper will be replacing Kent Waldrep.

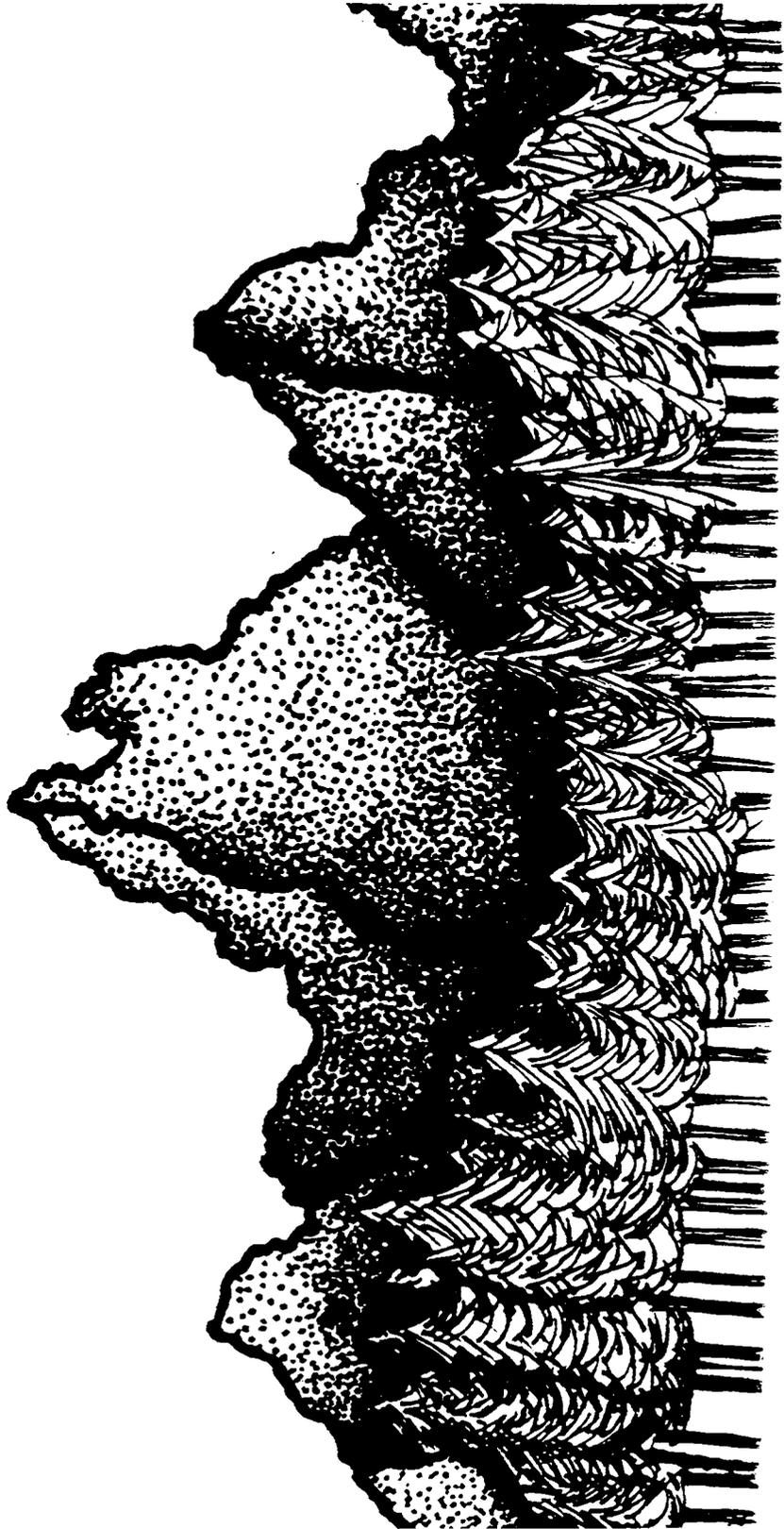
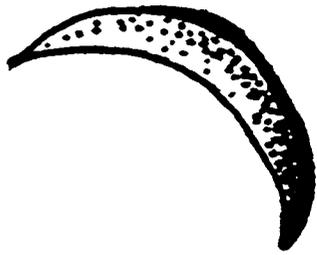
To be a member of the **Environmental Affairs Committee of the Interstate Oil Compact Commission** for a term at the pleasure of the Governor: A. Scott Anderson, 515 Congress Avenue, Suite 1910, Austin, Texas 78701.

To be a member of the **Energy Resources Committee of the Interstate Oil Compact Commission** for a term at the pleasure of the Governor: David H. Dewhurst III, 5 Post Oak Park, Suite 1400, Houston, Texas 77027.

To be a member of the **Heart of Texas Regional Review Committee** for a term at the pleasure of the governor: Harry F. Sims, Jr., 204 West Hayes, Whitney, Texas 76692. Mayor Sims is replacing Kent Wesley of Clifton, who is no longer eligible.

TRD-9003547





Name: Niki Maldonado

Grade: 8

School: Baker Middle School, La Porte

Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

Opinions

JM-1151 (RQ-1858). Request from Kenneth H. Ashworth, Commissioner, Texas Higher Education Coordinating Board, Austin, concerning eligibility for the Optional Retirement System, and related questions.

Summary of Opinion. The Government Code, §830.101, governs eligibility to participate in the optional retirement program established by Chapter 830 of the Government Code. Rider 31 of Article III of the General Appropriations Act for the 1989-1991 biennium, Acts 1989, 71st Legislature, Chapter 1263, at 5677, to the extent it attempts to expand the class of employees eligible to participate in the optional retirement program violates the Texas Constitution, Article III, §35, and is therefore invalid.

TRD-9003526

JM-1152 (RQ-1871). Request from Fred Toler, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, Austin, concerning status of contract jailers for certain purposes.

Summary of Opinion. Jailers employed in a jail operated by a private vendor under contract with a county are not "county jailers" as that term is defined in the Local Government Code, §85.005. Contract jailers are other county jail personnel within the meaning of the Government Code, §415.0541, and the Texas Commission on Law Enforcement Officer Standards and Education is authorized to establish standards for certification of these jailers in accordance with the provisions of this section. The standards for certification of contract jailers and all other jail personnel are contained in §415.0541. Other provisions in Chapter 415 relative to licensing of officers and county jailers are not applicable. The requirement that the commission establish standards for all county jail personnel is not limited to employees who exercise care, custody, control, or supervision of inmates.

TRD-9003525

JM-1153 (RQ-1861). Request from Kenneth H. Ashworth, Executive Director, Texas Higher Education Coordinating Board, Austin, concerning constitutionality of legislation creating Central Texas University.

Summary of Opinion. The Texas Constitution, Article VII, §17, does not prohibit the creation of Central Texas University in accordance with new Chapter 113 of the Education Code, as enacted by the 71st Legislature in the Regular and First Called Sessions.

TRD-9003527

Requests for Opinions

(RQ-1966). Request from John J. Gavin, Chairman, Commission on Insurance, House of Representatives, Austin, concerning whether an individual surety may file a letter of credit for bail bond purposes under Texas Civil Statutes, Article 2372p-3.

(RQ-1967). Request from A. W. Pogue, Commissioner of Insurance, State Board of Insurance, Austin, concerning whether a notice of cancellation of appointment of an insurance company is excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-1968). Request from Tish Gonzalez, Acting Executive Administrator, Texas Housing Agency, Austin, concerning authority of the Texas Housing Agency to enter into agreements to indemnify an independent contractor, and related question.

(RQ-1969). Request from George Pierce, Chairman, Urban Affairs Committee, House of Representatives, Austin, concerning whether a San Antonio park ranger is a "police officer" under Chapter 142 of the Local Government Code.

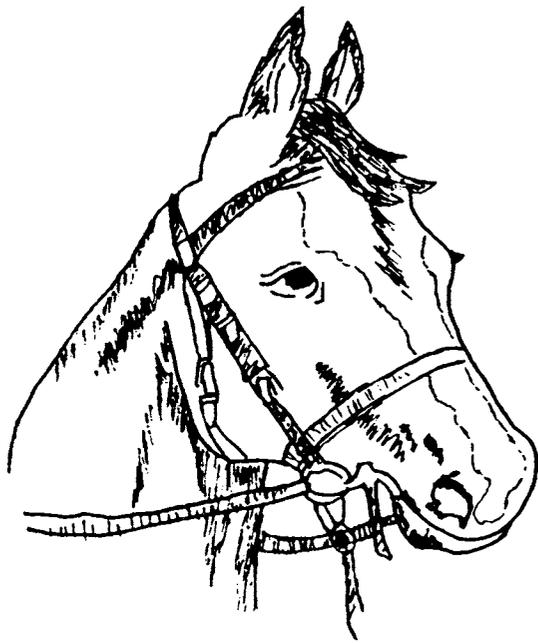
(RQ-1970). Request from Mike Driscoll, County Attorney, Harris County, Houston, concerning authority of a county to trim, remove or sell trees from county road right-of-way without compensation to their owners, and related questions.

(RQ-1971). Request from Fred G. Rodriguez, Bexar County Criminal District Attorney, Bexar County Courthouse, San Antonio, concerning whether information about the release of arrestees in personal bond is excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-1972). Request from Larry W. Schenk, City Attorney, City of Longview, Longview, concerning whether a particular letter from a potential plaintiff is sufficient to invoke the exception of the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(3).

(RQ-1973). Request from David T. Garcia, County Attorney, Brooks County, Falfurrias, concerning disposition of a county drug seizure account.

TRD-9003528



Name: Ban Candy

Grade: 8

School: Richardson Jr. High, Richardson

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 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Customer Service and Protection

• 16 TAC §23.55

The Public Utility Commission of Texas is renewing the effectiveness of the emergency adoption of new §23.55, for a 60-day period effective April 17, 1990. The text of new §23.55 was originally published in the December 22, 1989, issue of the *Texas Register* (14 TexReg 6703).

Issued in Austin, Texas on April 6, 1990.

TRD-9003532 Mary Ross McDonald
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: April 17, 1990

Expiration date: June 16, 1990

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



TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 64. Representing Claimants Before the Board

• 28 TAC §§64.5, 64.10, 64.15, 64.20

The Texas Workers' Compensation Commission adopts on an emergency basis the repeal of §§64.5, 64.10, 64.15, and 64.20, concerning legal representation of claimants before the agency. The repeals are adopted on an emergency basis in response to pending litigation.

The repeals are simultaneously proposed for adoption by regular action, and appear elsewhere in this issue of the *Texas Register*.

The repeals are adopted under Senate Bill 1, §17.12(b) (71st Legislature, Second Called Session, 1989), which provides for delegation by the Texas Workers' Compensation Commission to the executive director of necessary powers to administer the workers' compensation laws in effect prior to January 1, 1991, which delegation was effected on April 1, 1990; and under Texas Civil Statutes, Article 8307, §4(a), which authorize the adoption of rules necessary for the administration of the workers' compensation laws in effect prior to January 1, 1991.

§64.5. Requirement for Written Contract.

§64.10. Attorney Fees.

§64.15. Expenses.

§64.20. Disbursement Statement.

Issued in Austin, Texas, on April 4, 1990.

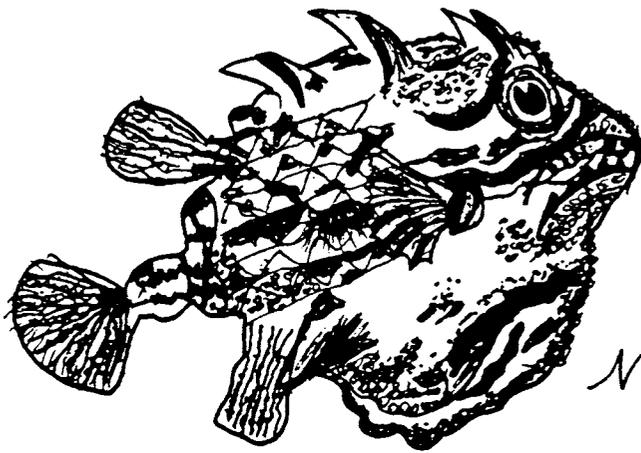
TRD-9003494 George E. Chapman
Executive Director
Texas Workers'
Compensation
Commission

Effective date: April 4, 1990

Expiration date: August 2, 1990

For further information, please call: (512)
448-7962





*Nicolette
Joth*

Name: Nicolette

Grade: 8

School: Richardson Jr. High, Richardson

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 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 7. Local Records

Microfilming Standards for Local Governments

• 13 TAC §§7.21-7.33

The Texas State Library and Archives Commission proposes new §§7.21-7.33, concerning rules for the production, processing, testing, certification, and storage of microfilmed local government records. The new sections establish standards and procedures for local government offices and local government records custodians to follow if they microfilm public records.

Marilyn von Kohl, local records division director, 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 will be in effect will be an estimated additional cost of \$37,632, in 1990; \$31,988, in 1991; and \$35,000, in 1992-1994. The effect on local government for the first five-year period the sections will be in effect will be an estimated additional cost of \$574,000, in 1990; \$602,700, in 1991; \$631,400, in 1992; \$666,100, in 1993; and \$688,800, in 1994. There will be an estimated reduction in cost of \$54,144, in 1991; \$56,851, in 1992; \$59,558, in 1993; and \$62,265, in 1994. The cost of compliance for small business will be none, because the sections do not establish standards required for businesses. The cost of compliance for small businesses and the cost for the largest businesses affected by the sections will be the same (i.e., none) based on the cost per employee, cost of labor per hour, or cost per \$100 of sales.

Ms. Von Kohl 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 continuation of the standards governing the microfilming of local government records required to be met under laws in effect prior to September 1, 1990. The possible economic cost to persons who are required to comply with the sections as proposed will be none.

Comments on the proposal may be submitted to Adele Rehder, Micrographics Consultant, Local Records Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

The new sections are proposed under the Government Code, Title 4, Chapter 204, which requires the Texas State Library and Archives Commission to adopt rules establishing standards and procedures for the microfilming of local government records.

§7.21. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these rules shall have the meanings defined in Local Government Code, Title 6, Subtitle C, Chapter 201, or the standards of the Association for Image and Information Management.

AIIM—The Association for Information and Image Management.

ANSI—The American National Standards Institute.

Archival record—A record having a permanent retention period.

Archival film—Photographic film that is suitable for preservation of records having a permanent retention period when stored under archival conditions.

Archival storage conditions—Environmental conditions suitable for preserving photographic film that is to be retained permanently.

Custodian—The appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

Diazo—Coated film containing sensitized layers composed of diazonium salts that react with couplers to form azo dye images.

Dmax—Measurement of maximum obtainable density taken from a completely exposed area of film (i.e. leader or trailer).

Essential record—Any local government record necessary to the resumption or continuation of government operations in an emergency or disaster, to the re-creation of the legal and financial status of the government, or to the protection and fulfillment of obligations to the people of the state.

Film—Microfilm.

First generation film—Film produced directly from a subject.

Legible—The quality of a letter or numeral which enables the observer to identify it positively and quickly to the exclusion of all other letters and numerals.

Local government record—Any document, paper, letter, book, map,

photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business, except for materials excluded under Local Government Code, Title 6, Subtitle C, Chapter 201.

Long-term film—Microfilm containing long-term records.

Long-term records—Records having a retention period of 10 years or more but less than permanent.

Master negative—The camera negative film.

Medium-term film—Microfilm containing medium-term records.

Medium-term records—Records having a retention period of fewer than 10 years.

Medium-term storage conditions—Storage conditions meeting ANSI/AIIM standards to ensure of life of 10 years for medium-term film.

Microfilm—Roll microfilm, microfiche, computer output microfilm (COM), and all other formats produced by any method of microphotography or other means of miniaturization on film.

Microfilming—The methods, procedures, and processes used to produce microfilm.

Readable—The quality of a group of letters or numerals which makes them recognizable as words or whole numbers.

Records management officer—The person designated to act as a records management officer pursuant to Local Government Code, Title 6, Chapter 201.

Record series—File units or documents arranged in accordance with a filing system or maintained as a unit because they relate to a particular subject or function, result from the same activity, have a particular form, or because of some other relationship arising out of their creation, receipt, or use.

Retention period—The minimum time that must pass after the creation, recording, receipt of a record, or the fulfillment of certain actions associated with a record before it is eligible for destruction.

Vesicular—Film in which the light-sensitive component is suspended in a

plastic layer in which optical vesicles are created on exposure to form the latent image.

§7.22. General.

(a) Where these rules do not specify a standard or procedure, ANSI/AIIM standards are the minimum requirements for all microfilming of local government records.

(b) The originals of records that have been microfilmed may not be destroyed prior to the expiration of their retention periods unless the microfilm has met minimum standards of the tests required under these rules.

(c) These rules apply to the microfilming of any local government record which is to be maintained solely in microfilm format and to all microfilm which is created or maintained as a back-up or security copy of a medium-term, long-term, archival, or essential record.

(d) Custodians must maintain, or require to be maintained, a legible log of the microfilming process, or other documentation which together contains the same information as a log, identifying records filmed; when, where, and by whom the original hardcopy records (if any) were received, prepped, and filmed; volume of records prepped; quality control tests conducted; the results of quality control tests; dates records filmed; disposition of records after filming; dates film processed; disposition of film; reduction ratio used; image orientation; records series contained on each microfilm; and equipment on which each roll was filmed and processed. The log or equivalent documentation must be retained until final disposition of all film documented in the log or equivalent.

(e) Chemicals, film, and processor used in processing must be compatible.

(f) The records custodian, records management officer or other authorized representative of the governing body of a local government may make unannounced inspections of the microfilm facilities in which the master negative of the local government is filmed, processed, or stored.

(g) Master negative film produced for a local government, or second generation film if maintained as the master negative under §7.31 of this title (relating to Jacketing), shall be the property of the local government and the local government shall have the same responsibilities for ensuring its management and preservation as it would have for the records under the Local Government Code, Title 6, Subtitle 6, if they were not microfilmed. If the master negative is to be stored by a service provider, the local government may demand and receive delivery of the master negative film upon two days' notice.

(h) If a record series contains

material to which access by the public is restricted or confidential and the microfilm copy of the record series is to be made available for public use, a duplicate copy from which the restricted or confidential information has been expunged must be made and used as a public reference copy.

§7.23. Image Sequence.

(a) The image sequence on film must be:

(1) leader (minimum of 700 millimeters (28 inches) of blank film);

(2) retakes according to required sequence of subsection (c) of this section (if any);

(3) density target;

(4) resolution target;

(5) roll number target (if information is not contained on the start of roll target);

(6) start of roll target;

(7) special targets (which may include restriction or classification target and bibliographic target);

(8) title page target;

(9) records being microfilmed;

(10) declaration by camera operator target (if information is not contained on the certificate of legality and authenticity);

(16) certificate of legality and authenticity;

(17) end of roll target;

(18) retakes according to required sequence of subsection (c) of this section (if any);

(19) trailer (minimum of 700 millimeters (28 inches) of blank film).

(b) Each roll of microfilm produced for a local government office must bear a unique number within the generating department.

(c) The filming sequence for retakes must be:

(1) start retake target identifying roll number and beginning of retake;

(2) title target identifying the retake records;

(3) the retake records;

(4) certificate of legality and authenticity;

(5) end retake target identifying roll number and end of retakes.

(d) A leader or trailer must be a minimum length of 700 millimeters (28 inches) in length.

(e) All splices must be made on clear portions of film and must not cover

any images.

(f) If more than 0.5% of the original images between the start target and the certificate of legality and authenticity (approximately 15 images per 100 foot roll) need to be refilmed the entire roll must be refilmed.

(g) All splices must be by ultrasonic or adhesive methods and in accordance with Splices for Imaged Film Dimensions and Operational Constraints ANSI/AIIM MS18-1987 (or latest revision).

§7.24. Standards for Film Quality, Resolution, Density, Definition, and Chemical Stability.

(a) Master negatives must meet the specifications in Image Media (Film)-Silver Gelatin Type-Specifications for Stability ANSI IT 9.1-1989 (or latest revision).

(b) Diazo film must meet specifications in Image Media (Film)-Ammonia Processed Diazo Films-Specifications for Stability ANSI IT9.5-1988 (or latest revision), vesicular film must conform to Photography (film)-Processed Vesicular Film-Specifications for Stability ANSI PH1.67-1985 (or latest revision), and thermally processed film must conform to Thermally Processed Silver Film ANSI IT9.5-1988 (or latest version).

Duplicate film must meet the specifications in Operational Procedures/inspection and Quality Control of Duplicate Microforms of Documents and From COM ANSI/AIIM MS43-1988 (or latest version).

(c) All microfilm must comply with the standard For Photography (Film)-Micrographic Sheet and Roll Films-Dimensions ANSI PH1.51-1983 (or latest version).

(d) The following ANSI standards must be complied with in the processing and filming of records: Specifications for 16-and 35-mm Microfilms in Roll Form ANSI/AIIM MS14-1988 (or latest revision), Micrographics-Microfiche ANSI/AIIM MS5-1985 (or latest revision), Information on Microfiche Headings ANSI Z39.32-1981 (or latest revision), Method for Measuring Thickness of Buildup Area on Unitized Microfilm Carriers (Aperture, Camera, Copy and Image Cards) ANSI/AIIM MS9-1987 (or latest revision), and Method for Determining Adhesion of Protection Sheet to Aperture Adhesive of Unitized Microfilm Carrier (Aperture Card) ANSI/AIIM MS10-1987 (or latest revision).

(e) Images of documents of identical dimensions must be uniformly placed on the film and must be free of any obstructions, shadows, glare, fog, overlap of records, scratches, overexposure, underexposure, water spots, or foreign objects in filming area that would interfere with the

document being filmed.

gram per millimeter squared.

(f) All silver gelatin film tested must have a residual thiosulphate content greater than zero but not exceeding 0.014

(g) The following is the minimum acceptable range of performance reading for all film.

Reduction Ratio	Smallest ISO Test Chart 2 Pattern Read	Planetary Camera Lines pairs/ millimeter	Rotary Camera Lines pairs/ millimeter
8:1	10.0	80	—
12:1	9.0	108	42
15:1	7.1	106	54
16:1	7.1	114	58
17:1	6.3	107	61
20:1	5.6	112	60
21:1	5.6	119	76
24:1	5.0	120	86
28:1	4.5	126	100
30:1	4.5	135	108
34:1	4.0	136	122
36:1	4.0	144	129
42:1	3.2	136	126
48:1	2.8	134	144

(h) The following are the acceptable ranges of background densities

measured from a densitometer for all film. Any of the listed documents may be micro-

filmed at a lesser density, but poor quality documents are not likely to be filmed successfully at higher densities.

CLASSIFICATION	DESCRIPTION OF DOCUMENT	DENSITY
Group 1	High quality, high-contrast printed books, white or near white paper with black print.	1.30-1.50
Group 2	Fine line originals, black pencil writing and records with small high contrast printing.	1.15-1.40

Group 3	Pencil and ink drawings, faded printing and very small printing, such as footnotes at the bottom of a printed page.	1.00-1.20
Group 4	Low-contrast manuscripts and drawings, graph paper with fine, pale lines, poor contrast, aged records; colored paper with colored print, letters typed with a worn ribbon.	0.80-1.00
Group 5	Extremely poor contrast records.	0.70-0.85
Group 6	Computer-output microfilm. (Full Reversal Processing)	1.50-2.00

(i) The base-plus-fog density of unexposed area of processed, clear-based film must not exceed a 0.10 reading, except that when a tinted-base film is used, the density must not exceed a 0.30 reading.

§7.25. Tests and Other Methods of Inspection and Verification of Accuracy.

(a) General.

(1) If a defect is found on any roll or fiche the microfilm roll or fiche immediately preceding and following the sample roll or fiche on which the defect was found must be inspected. If a defect is found on those rolls or fiche, the microfilm roll or fiche preceding and following those rolls or fiche must be inspected until all defective film has been identified.

(2) Water used in microfilming must meet the requirements in Practice for Operational Procedures/Inspection and

Quality Control of First-Generation Silver-Gelatin Microfilm ANSI/AIIM MS23-1983 (or latest version).

(b) The following tests must be utilized in the production of all film.

(1) Methylene Blue Test. Methylene Blue Test as specified in Photography (chemicals)—Residual Thiosulfate and Other Chemicals in Films, Plates and Papers—Determination and Measurements ANSI PH4. 8-1985 (or latest revision) must be followed.

(A) A test must be performed once a week on a test strip from the master negative.

(B) A test must also be performed whenever the fixing chemicals in the processor are changed, on the last roll of film processed in an old batch and on the first roll processed in the new batch.

(C) The test must be performed on a scheduled basis within 14 days of processing. If film fails to meet the standards established by these rules, it must be rewashed and retested within the 14 days of initial processing.

(D) Once a year, two random test strips must be taken from the same roll; one must be sent to an independent testing laboratory and the other to the laboratory which performs the weekly test, for verification of test results.

(E) If results are not within 0.002 gram per millimeter squared, two additional test strips from the same roll will be sent to another independent testing laboratory and to the regular testing laboratory, for verification of test results.

(2) Density test.

(A) Testing procedures as specified in Practice for Operational Procedures/Inspection and Quality Control of First-Generation Silver-Gelatin Microfilm ANSI/AIIM MS23-1983 (or latest version) must be performed by the film processor and, if processing is performed by a service bureau, again upon receipt of film from service bureau, by the custodian, records management officer, or local government office, or independent testing facility under contract with the local government or custodian.

(B) Dmax reading must range from 1.65 to 1.79.

(C) Background density must measure 1.1 (+/-) 0. 2.

(3) Resolution test. Resolution test must be conducted in accordance with Practice for Operational Procedures/Inspection and Quality Control of First-Generation Silver-Gelatin Microfilm ANSI/AIIM MS23-1983 (or latest version).

(A) The resolution test must be performed by the film processor and, if processing is performed by a service bureau again upon receipt of film from service bureau, by the custodian, records management officer, or other authorized representative of the governing body of a local government, or independent testing facility under contract with the local government or custodian.

(B) The resolution target must meet the Microcopying-ISO Test Chart Number 2-Description and Use in Photographic Documentary Reproduction ANSI/ISO 3334-1979 (or latest version) and/or Test Chart for Rotary Microfilm Cameras ANSI/AIIM MS17-1983 (or latest version) and/or Recommended Practice for Identification of Microforms ANSI/AIIM MS19-1987 (or latest version). Photocopies must not be used.

(4) Visual inspection.

(A) If filming or processing is done by a service bureau, a visual inspection must be conducted by the custodian, records management officer, or local government with a duplicate copy. The master negative may not be used for routine inspections. Inspection must be completed within two weeks of completion of the methylene blue test.

(B) All film of records having permanent or long-term retention periods must be inspected image by image, roll by roll, or fiche by fiche.

(C) Medium-term film must be inspected on a basis of every third fiche or every three meters (10 feet) of each third roll.

(c) If film processing is done by a service bureau, the local government must obtain a certified statement of the results of density, resolution, methylene blue, and visual inspection tests to the local government within three days of completion of tests.

(d) If microfilm is not to be stored by the service bureau which processed the film, the local government must obtain test results at the same time it obtains the microfilm. The custodian or records management officer or local government office, or independent testing facility under contract with the local government or custodian, must verify the results reported by the processor by performing separate density, resolution, and visual inspection tests as set forth in these rules. A hard copy print may be made for inspection of legibility.

(e) An inspection of stored master negative microfilm must be conducted every two years, except if film has been stored under temperature and/or humidity conditions other than those required under these rules, it must be inspected yearly.

(1) A minimum of 10% of the total volume of microfilm of each local government office (1.0% for volumes over 10,000) and a cross section of all microfilm (roll, jacket, microfiche, aperture card, COM, etc.) must be inspected for deterioration such as peeling emulsion, brittleness, film curl, discoloration, molding, and blemishes on the film.

(2) Of the microfilm selected, 70% shall never before have been inspected, 20% shall have been inspected during the previous inspection two years before, and 10% shall be a sample of the oldest and newest film.

(3) A resolution and density re-reading must be part of the inspection.

(4) Cans, boxes, and reels used to store the film must be inspected for evidence of rust, corrosion, and other deterioration.

(5) Master negatives must be inspected on a light box with rewinds.

(6) The following information must be logged for each inspection and the log retained until final disposition of the film recorded in the log:

(A) the quantity of microfilm that is permanent, medium- or long-term and the format (roll, fiche, or COM);

(B) the quantity and identification of microfilm inspected;

(C) the condition of the microfilm, including description of any deteri-

oration such as peeling emulsion, brittleness, film curl, discoloration, molding, and blemishes on the film;

(D) the corrective action required (if necessary);

(E) the date(s) of inspection and signed certification of inspector;

(F) the date corrective action was completed.

(7) The inspection log must be maintained by year and within each year numerically according to microfilm roll number.

(8) If deterioration is found, a more extensive inspection must be conducted to locate all deteriorating film.

(9) Any deteriorating film must immediately be removed from the storage area and a new master negative created.

§7.26. Certification.

(a) The certificate of legality and authenticity must state either:

(1) "I hereby certify that the microfilming of the images between the title page and this certificate of legality and authenticity has been in strict accordance with Local Government Code, Chapter 204 and rules adopted under that chapter; that each image is a true, correct, and exact copy of the page or pages of the identified instrument of writing, legal document, paper or record which was created by or received in the identified office in the normal course of that office's official business; and that no splice was made in the original negative film between the title page and this certificate;" or

(2) "The microfilming of the images between the title page and the certificate of legality and authenticity has been in strict accordance with the Local Government Code, Chapter 204; each image is a true, correct, and exact copy of the page or pages of the identified instrument of writing, legal document, paper, or record which had been filed for record on the date and at the time stamped on each; and no splice was made in the original negative film between the title page and this certificate."

(b) The certificate of legality and authenticity must contain the printed or typed name of government, name of office, the name and title of the records custodian or deputy, and the date and place certified, and must be signed by the custodian or, if the camera operator is a deputy of the custodian, it may be signed by the deputy.

§7.27. *Use of Editorial and Technical Targets.*

(a) A title page target must be included on each roll or fiche and must identify the local government and subordinate organizational unit(s), the records of which are included on the reel or fiche; title of the records (with identification of contents if not obvious from series titles); microfilm roll number; security classification (if any); and date(s) of records being filmed.

(b) Restriction or classification targets, if used, must identify the office or agency authorizing the classification or restriction; the statutory or administrative authorization for the restriction or classification; the beginning record and ending record of the record series of which the classified or restricted items are a part; the date of filming; and the nature of the restriction or classification.

(c) Declaration by camera operator target or certificate of legality and authenticity must state where, when, and by whom records were filmed, signature and title of camera operator, the camera and the reduction ratio used.

(d) Targets must all face the same direction as the records being microfilmed. The letters on the target title must be readable to the naked eye without magnification and at least two millimeters (0.08 inch) high.

(e) If the condition of the original record is of poor quality and it is anticipated the images will not be legible and readable when displayed on a microfilm reader or when reproduced in paper copy, a target or stamp stating the reason for the poor image quality, such as "the following image is illegible because of the faded condition of the original record" must be placed before or directly on the image(s).

§7.28. *Master Negatives.*

(a) Master negatives of all film must be stored in a building separated from that in which duplicate copies, if any, or the original records are housed, and under conditions that meet the requirements of this section.

(b) Clean, lint-free cotton gloves must be used to handle silver gelatin film.

(c) Storage requirements.

(1) Storage containers and reels must be made from a noncombustible and noncorrosive material such as anodized aluminum, plastic, and must conform to Photography (film)-16-mm 100-foot, 16-mm 200-foot, 35-mm 100-foot, and 70-mm 100-foot Spools for Recording Instruments, Microfilms, and Still-Picture Cameras—Dimensions ANSI PH1.33-1986 (or latest version) and Imaging—Media Photographic Processed Films, Plates, and Papers Filing Enclosures and Storage Containers ANSI

IT9.2-1988 (or latest version).

(2) Containers must be labelled to indicate that they contain master negative microfilm and the roll number, title of record, and office of origin.

(3) Containers for film rolls must be fully enclosed and composed of inert material such as metal, plastic, or acid-free paper.

(4) No printed material, except information on the label, may be inside a microfilm storage container.

(5) Inks used on the outside of the container and on the label must not bleed, spread, or transfer, nor be a source of products that may damage the photograph or the enclosure itself.

(6) Containers must be stored in a closed housing such as a drawer, or on shelves and racks that are enclosed by a door and free from all contaminants that may harm the film.

(7) Film must be wound firmly, but not tightly, and must not be wound closer than 6.35 millimeters (1/4 inch) from the outer edge of the reel.

(8) Rubber bands, paper clips, tape, and other foreign objects harmful to film may not be used to secure film.

(9) Adhesives used to secure film must have no harmful effect on microfilm when applied to Whatman Number 1 filter paper and must pass the photographic activity test as outlined in Imaging Media—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers ANSI IT9.2-1988 (or latest version).

(10) Paper may be used to secure rolls, if it conforms to the specifications contained in Photography (processing)-Processed Films, Plates, Papers—Filing Enclosures and Storage Containers ANSI/ACS PH1.53-1988 (or latest version).

(A) Paper in direct contact with film must have a pH of 7.5 to 9.5, over 87% alpha cellulose content, over 2.0% alkali reserve, and matte surface for the paper in accordance with Imaging Media Photographic Processed Films, Plates, and Papers Filing Enclosures and Storage Containers ANSI IT9.2-1988 (or latest version).

(B) Paper not in direct contact with film must have a pH between 7.2 and 9.5 and alkali reserve must be the molar equivalent to at least 2.0% calcium carbonate.

(11) Different types of film (for example, silver, diazo, and vesicular) may not be stored together, nor share the same air circulation.

(12) Film must be handled by the edges in nonimage areas.

(13) Microfiche and COM of permanent records must be stored in a protective acid-free envelopes when not in use.

(14) If multiple microfiche of permanent records are in one envelope, a buffer acid-free slip sheet must be placed between each microfiche to prevent sticking.

(15) Microfilm must be enclosed in a way that does not cause abrasion.

(16) COM of permanent records must be housed in acid-free envelopes and buffer acid-free slip sheets must be placed between all sheets.

(17) Film must be stored at least three inches above the floor of the storage area.

(18) Film must be stored out of direct exposure to fluorescent light, sunlight, and other strong lights.

(19) Routine housekeeping procedures must be maintained to minimize mold, dust, dirt, rodents, insects, and chemical vapors.

(20) No flammable materials, or materials that develop reactive fumes or vapors, or chemicals may be stored near microfilm.

(21) If temperature and humidity automatic environmental control systems are not used, temperature and humidity must be checked frequently with a reliable hygrometer, such as a sling psychrometer.

(22) Smoking, food, and drink must be kept away from the microfilm equipment and microfilm.

(23) Storage rooms and vaults must meet the following standards:

(A) be separate from temporary storage facilities, offices, or work areas and must offer protection from unauthorized access, fire, water, steam, structural collapse, and other potential hazards;

(B) be located as far as possible from an urban or industrial area where contaminants may be present in harmful concentrations;

(C) be equipped with a fire alarm and suppression system and with automatic fire control dampers in ducts carrying air to or from the vault, and be capable of withstanding temperatures to 150 degrees C (302 degrees Fahrenheit) for four hours;

(D) be equipped with a system capable of removing gaseous impurities such as sulfur dioxide, nitrous oxide, ammonia, peroxide and hydrogen sulfide as

specified in Photography (Film) Processed Safety-Film Storage ANSI PH1.43-1985 (or latest version);

(E) if subject to invasion of solid particles that can abrade film or react on the images, have mechanical filters or electrostatic precipitators installed having a cleaning efficiency of at least 80% when tested with atmospheric air in accordance with Photography (film)-Processed Safety Film Storage ANSI PH 1.43-1985 (or latest version);

(F) have approximately 0.05 inch of pressure above atmospheric pressure maintained by means of an independent air-conditioning system;

(G) for permanent records, be equipped with an air conditioning system that maintains a constant relative humidity range between 30% and 40% and a temperature not exceeding 21 degrees C (70 degrees Fahrenheit), with fluctuations limited to -15 degrees C (5 degrees Fahrenheit) and +/- 5.0% relative humidity in a 24-hour period;

(H) for storage of medium- and long-term records be equipped with air condition system that maintains a constant relative humidity range between 30% and 60% and a temperature between 20 degrees C (68 degrees Fahrenheit) and 25 degrees C (77 degrees Fahrenheit) and maximum variation of +/- 5.0% relative humidity in a 24-hour period.

§7.29. Labelling and Indexing.

(a) All container information must be typed on a self-adhesive label.

(b) Container label information must include the roll number, name of government, office of origin, record series title, date of records, volume number (if any), and retakes (if any).

(c) Microfiche and jacket labelling must comply with Information on Microfiche Headings ANSI Z39.32-1981 (or latest version) and Microfiche Jacket Formatting and Loading Techniques AIIM TR11-1987 (or latest version) and must have the following information on the heading of each fiche: name of government, office of origin, record series title, description of content if less than full records series, and dates included.

(d) Aperture cards must have the following label heading information: name of government, office of origin, records series title and/or record locator number, and dates included.

(e) An indexing method must be used on all film, archival, long-term, and medium-term to identify each image location. All film using an image mark must

be marked in accordance with Image Mark (Blip) Used in Image Mark Retrieval Systems ANSI/AIIM MS8-1988 (or latest version).

(f) If bar coding is used it must meet standards of Bar Coding on Microfiche Production and Dynamic Distribution Control AIIM TRI2-1988 (or latest version).

§7.30. Computer Output Microfilm (COM).

(a) Standards for production, processing, testing, and storage of computer output microfilm are the same as those established in these rules for other microfilm formats, except as stated in this section.

(b) COM master negatives must be wet processed silver gelatin film for archival records. Thermally processed silver film may be used for medium- and long-term records. Copies produced for administrative or reference purposes may be diazo, vesicular, or wet processed or thermally processed silver film.

(c) Off-film certification for COM must contain the following:

(1) name of the organization or custodian of records;

(2) identification of the record series;

(3) the date the records were microfilmed;

(4) signature, printed name, and title of individual who loads the COM recorder, splices film, and places COM in envelopes.

(d) The following standards must be met:

(1) specifications in Recommended Practice for Operational Practices/Inspection and Quality Control for Alphanumeric Computer-Output Microforms ANSI/AIIM MSI-1988 (or latest version);

(2) Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Records and From COM ANSI/AIIM MS43-1988 (or latest version);

(3) Alphanumeric COM Quality Test Slide ANSI/AIIM MS28-1987 (or latest version);

(4) COM Input Tape Formats AIIM TR5-1983 (or latest version);

(5) using software or hardware commands when possible for labelling the film, the following eye-readable titling information should appear:

(A) name or organization or custodian of the records;

(B) name of report or record;

(C) run date;

(D) start target;

(E) end target.

(e) A reduction ratio not exceeding 48:1 must be used.

(f) Testing and other methods of inspection.

(1) Inline processors shall use the alphanumeric COM quality test form slide as specified in Alphanumeric COM Quality Test Slide ANSI/AIIM MS43-1988 (or latest version).

(2) The aperture of the densitometer must be smaller than the density squared (two millimeters at 1:48).

(3) The density of the routine sample must be within +/- 0.05 of the reference sample.

(4) The densitometer must be adjusted to read a calibrated step tablet to an accuracy of +0.02 and a repeatability of +0.01 between a density of one and two.

(5) Density measurements must be made at a minimum ratio of five readings per 1,000 images.

(6) Resolution targets must be evaluated under a microscope to determine if the resolution loss from printing is acceptable. A maximum acceptable loss is one pattern per generation.

(7) A processor control log of density must be maintained in accordance with Recommended Practice for Alphanumeric Computer-Output Microforms Operational Practice for Inspection and Quality Control AIIM/ANSI MS1-1988 (or latest version).

(A) Offline processors must be monitored with process control strips (sensitometric strips) at a minimum at the start of processing each day, after changing chemicals, and whenever the output film fails to meet the established quality level.

(B) Inline processors must use the alphanumeric COM quality test form slide in accordance with Recommended Practice for Alphanumeric Computer-Output Microforms-Operational Practice for Inspection and Quality Control AIIM/ANSI MS1-1988 (or latest version).

§7.31. Jacketing.

(a) Standards for production, processing, testing, and storage of jackets are the same as those established in these rules for other microfilm formats, except as stated in this section.

(b) For archival records the first generation silver gelatin microfilm in roll form must be used for storage.

(c) For medium- and long-term records a second generation silver gelatin roll must be made from the first generation silver gelatin roll and stored in accordance with provisions of §7.28 of this title (relating to Master Negatives). The first generation silver gelatin roll may be loaded into jackets.

(d) A duplicate of a first generation film must have a resolution loss of no more than one test pattern of the test objects as described in Microcopying-ISO Test Chart Number 2-Description and Use in Photographic Documentary Reproduction ANSI/ISO 3334-1979 (or latest version).

(e) The jacket heading must be right reading and upright and the microimages must be right reading.

(f) Heading information must be created with a black carbon-type ribbon or other ink that will not bleed, spread, or transfer.

(g) All jacketed film must comply with Microfilm Jacket Formatting and Loading Techniques AIIM TR11-1987 (or latest version) and Microfilm Jackets ANSI/AIIM MS11-1987 (or latest version).

§7.32. Expunction of Records.

(a) Expungement of records must comply with Recommended Practice for the Expungement, Deletion, Correction, or Amendment of Records on Microfilm ANSI/AIIM MS42-1989 (or latest version).

(b) If the film is spliced the following information must be inserted in place of the expunged record(s):

- (1) a start of expungement target;
- (2) replacement documents for documents that were expunged (if necessary);
- (3) an expungement certificate containing the following information:

(A) order of the district court or other authorizing agency or, if the order shows information to be expunged, the number of the order;

(B) the frame numbers that have been expunged;

(C) the signature, printed name, and title of the custodian of expunged records;

(D) the date of expungement.

(c) If the abrasion method is used, an expungement certificate containing the following information must be maintained

and preserved until the microfilm's final disposition:

(1) order of the district court or other authorizing agency or, if the order shows information to be expunged, the number of the order;

(2) the frame numbers that have been expunged;

(3) the signature, printed name, and title of the custodian of expunged records;

(4) the date of expungement.

(d) Images on film may not be expunged by punching holes through film, by using opaque, by blotting images with ink-type pen, or by using chemical means such as potassium dichromate (bleach) on film emulsion.

§7.33. Public Access to Information. Local governments must adopt procedures to ensure that the public has the same access to information on microfilm as they would be entitled to if the information were recorded in another medium.

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

Issued in Austin, Texas on April 9, 1990.

TRD-9003599 Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 463-5460

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Appli- cability and Requirements

• 16 TAC §§9.3, 9.15, 9.21, 9.24

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety and welfare of the general public.

§9.3. Categories of Licensees. A prospective licensee may apply to the LP-Gas Division for a license to engage in one or more of the following categories:

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

(13) Category M-recreational vehicle installers and repairmen, which covers the sale, service, and installation of recreational vehicle containers, and the installation, repair, and service of recreational vehicle appliances, piping, and LPG systems including recreational vehicle motor fuel systems and containers;

(14) Category N-manufactured housing installers and repairmen, which covers the service and installation of containers that supply fuel to manufactured housing, and the installation, repair, and service of appliances and piping systems for manufactured housing.

§9.15. LP-Gas Report Forms. Under the provisions of the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted by reference the following forms for use by the Liquefied Petroleum (LP-Gas) Division. These forms are available to the public upon request directed to the LP-Gas Division in Austin:

(1)-(10) (No change.)

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

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

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

(14)[(13)] LPG Form 18B. Statement of Lost or Destroyed LPG Form 4 Decal;

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

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

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

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

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

(20) LPG Form 26. Franchise Tax Certification;

(21) LPG Form 27. Application for Testing Laboratories Registration;

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

(23)[(19)] LPG Form 500a. Notice of LP-gas Installation;

(24)[(20)] LPG Form 501. Completion Report;

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

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

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

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

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

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

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

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

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

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

§9.21. Application for an Exception to a Safety Rule.

(a) (No change.)

(b) Form. The application or pleading must be type written on paper not to exceed 8-1/2 inches by 11 [14] inches and have an inside margin of at least one inch. Any annexed exhibits must be folded to the same size as the pleading itself. The content must be double-spaced and appear on one side of the paper only.

(c)-(e) (No change.)

(f) Hearings.

(1) (No change.)

(2) Notice.

(A) The division shall pre-

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

(B) (No change.)

(3) (No change.)

(g)-(i) (No change.)

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

§9.24. Insurance Requirements.

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

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

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

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

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

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

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

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

(b)-(e) (No change.)

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

Issued in Austin, Texas, on April 2, 1990.

TRD-9003571

Crill Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: May 14, 1990

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

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• 16 TAC §9.4, §9.29

(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 to repeal and replace §9.4, concerning registration fees for testing laboratories and §9.29, concerning filings required for LP-gas installations(s). In addition, the commission proposes amendments to §§9.3, 9.15, 9.21, and 9.24, concerning categories of licensees, LP-gas report forms, applications to be used in applying for exceptions to LP-Gas Safety Rules, and insurance requirements for LP-gas dealers. The commission also proposes new §§9.11, 9.13, 9.14, 9.16, and 9.23, concerning licensing examination exemptions for general installers and repairmen, containers for hot air balloons, severability clause, franchise tax and assumed name certificates, and insurance endorsement requirements.

The commission proposes to repeal and replace §9.4 and §9.29 due to extensive changes in the rules. The changes, however, are mainly for clarification and do not effect the spirit or intent of the rules. New §9.4 establishes more specific procedures for registration with the LP-Gas Division, designates the form to be used when applying for registration, and the date by which the form must be filed in order to avoid registration cancellation, and requires insurance pursuant to the Texas Natural Resources Code, §113.135. New §9.29 establishes procedures for the submission of required LP-gas forms regarding proposed or recently completed LP-gas installation(s).

The commission proposes the amendments to §§9.3, 9.15, 9.21, and 9.24 to clarify the existing rules and to assure uniformity with state law.

New §9.11 would recognize master and journeyman plumber licenses issued by the Texas State Board of Plumbing Examiners and Class A and B air conditioning and refrigeration contractor licenses issued by the Department of Licensing and Regulation, and exempts persons holding those licenses from category D, K, M, or N management examination and seminar requirements. New §9.13 is proposed to clarify that fuel cells used solely in hot air balloons are outside the jurisdiction of the LP-Gas Division. New §9.14 will insure that the remaining rules will remain in effect if one or more of the rules should be found invalid. New §9.16(a) requires license applicants to certify either that their Texas franchise taxes are current or that those taxes are not applicable to their company(s). New §9.16(b) requires all

companies performing LP-gas activities under an assumed name (dba) to file that name with the commission. Lastly, new §9.23 establishes a minimum 30 day notice before cancellation of any insurance certificate required by the LP-Gas Division.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Petru also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed would be an increase in compliance due to more clearly understandable rules, a more efficient license application process and an increase in safety afforded to the general public due to the updated and revised insurance and safety requirements. There will be no effect on small businesses as a result of enforcing the repeals. The only anticipated economic cost to individuals required to comply with the proposed repeals would be the cost of insurance to those individuals not already having the required minimum insurance of which they must show proof under §9.4. The exact cost of such insurance is determined by the State Board of Insurance.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The repeals are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.4. Registration Fees for Testing Laboratories.

§9.29. Filings Required for LP-Gas Installations.

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

Issued in Austin, Texas, on April 2, 1990.

TRD-9003570

Carl Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 463-7152

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• 16 TAC §§9.4, 9.11, 9.13, 9.14,
9.16, 9.23, 9.29

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 liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.4. Registration Fees for Testing Laboratories.

(a) Each testing laboratory that proposes to test any container for the purpose of determining the safety of the container for LP-gas service in the State of Texas must apply for registration with the division and renew thereafter by midnight April 30th of each year, by submitting a fee as required in paragraph (2) of this subsection, along with any information the division may reasonably require, but not limited to the following:

(1) LPG Form 27, Application for Testing Laboratories Registration;

(2) an original non-refundable registration fee of \$300. The annual registration fee shall be \$150. Late renewals are permitted by submitting the original registration fee plus a \$75 penalty fee, which must be received by midnight June 30th;

(3) submit written procedures for the testing activities to be performed. Such written procedures shall be in accordance with the current publication "American Society for Non-Destructive Testing," Document SNT-TC-1a, ASME Code, Section VIII, Division I. Procedures relating to hydrostatic testing must include the use of a pressure chart recorder;

(4) certificates of insurance as required by the Texas Natural Resources Code, §113.135.

(b) After reviewing the necessary material for registration, the division will notify the applicant in writing of registration approval or denial.

(c) Any modifications of such procedures must be submitted for approval prior to implementation.

(d) Failure of any testing laboratory to renew its registration by midnight June 30th will result in a formal hearing to consider the cancellation of the registration as set forth in the Texas Natural Resources Code, §113.135.

§9.11. General Installers and Repairmen Exemption.

(a) Any person who is currently licensed as a master or journeymen plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B air conditioning and refrigeration contractors license issued by the Department of Licensing and Regulation may apply for and be granted an exemption to the Category D, K, M, or N management examination and seminar requirements by

submitting to the commission the following information:

(1) LPG Form 16B, Application for Examination Exemption by a Master or Journeymen Plumber/Class A or B Air Conditioning and Refrigeration Contractor;

(2) a copy of the person's current license issued by either the Texas State Board of Plumbing Examiners or the Department of Licensing and Regulation;

(3) a \$15 original filing fee; and

(4) upon request by the division, any other information the division may reasonably request.

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

(c) Exempted individuals as noted in subsection (a) can not perform LP-gas related activities until:

(1) that individual or individuals' company complies with all other applicable licensing requirements of a Category D, K, M, or N licensee or;

(2) that individual is a bona fide employee of an active Category D, K, M, N, or E licensee.

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

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

(f) In order to maintain qualified status, each person issued an examination exemption card shall submit a copy of his current license issued either by the Texas State Board of Plumbing Examiners or the Department of Licensing and Regulation and pay a \$10 fee annually to the commission on or before the 31st day of May of each year. If both of these items are not received by the deadline, that person shall cease performing all LP-gas related activities granted by this exemption and may not resume such activities until that person is in receipt of his examination exemption card. Late renewals are permitted for a period of time not to exceed two years by paying a late filing penalty plus the yearly renewal fee(s) as follows:

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

(2) The applicant's exemption has been expired for greater than 92 days, but not longer than two years, the applicant's penalty fee is \$25 plus a \$10 annual fee. If an applicant's exemption has been expired for longer than two years, the

applicant cannot renew his exemption and must apply for a new original exemption.

(g) Failure to comply with any of the LP-Gas Safety Rules and/or the Texas Natural Resources Code, Chapter 113, will subject the exempted individual to the same enforcement provisions applicable to any licensee, registrant, or violator.

(h) Each applicant for license who plans to substitute a person as noted in subsection (a) of this section for his company representative may do so provided that person complies with all of the other requirements of a licensee's company representative as noted in §9.7 of this title (relating to Examination of Representative).

(i) Each applicant for license who substitutes a person as noted in subsection (a) of this section may do so provided the person(s) listed on LPG Form 1A, Branch Outlet List, complies with all of the other requirements of a licensee's operations supervisor(s) as noted in §9.8 of this title (relating to Designation of Operations Supervisor).

(j) Any person who is issued this exemption agrees to comply with the current edition of the LP-Gas Safety Rules. In the event the exempt individual surrenders, fails to renew, or has his license revoked either by the Texas State Board of Plumbing Examiners or Department of Licensing and Regulations, that person will immediately cease performing any LP-gas activity granted by this section. The examination exemption card must be returned immediately to the LP-Gas Division and all rights and privileges surrendered.

§9.13. Containers for Hot Air Balloons. Any fuel cell approved by the Federal Aviation Administration (F.A.A.) and intended to be solely used as a fuel cell for hot air balloons is outside the jurisdiction of the LP-Gas Division.

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

§9.16. Franchise Tax Certification and Assumed Name Certificates.

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

(b) Any applicant for license must list all names on LPG Form 1, Application

for License, under which LP-gas related activities requiring licensing are to be conducted. Any company performing LP-gas activities under an assumed name (dba) must file with this office copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office.

§9.23. Insurance Endorsement Requirements.

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

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

(2) LPG Form 997A, Motor Vehicle Bodily Injury and Property Damage Liability, certificate of insurance must have Liquefied Petroleum Gas Licensee Motor Vehicle Endorsement Texas Railroad Commission Form Endorsement number TE 2326A attached to the policy and to any successor policies.

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

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

§9.29. Filings Required for LP-Gas Installations.

(a) Prior to the installation of any LP-gas container at a school, convalescent home, hospital, retail LP-gas cylinder filling/motor fuel service station, or any LP-gas container installation which would result in an aggregate water capacity of 10,000 gallons or more, plans and specifications for the complete LP-gas installation must be submitted on LPG Form 500, Application for Tentative Approval of LP-Gas Installation, to the LP-Gas Division for tentative approval. Tentative approval must be obtained prior to the setting of the LP-gas container and prior to construction of the LP-gas installation. The LP-Gas Division must be notified prior to implementation of any field alterations or additions during construction (except

maintenance and repairs) that may necessitate resubmission of plans and specifications for reapproval consideration. No LP-gas shall be introduced into any LP-gas container at a school, convalescent home, or hospital that has not been granted final approval by the division. No LP-gas container may be placed into LP-gas service until after final approval has been granted by the division. When there is an immediate need for LP-gas supply under emergency circumstances the division director may waive the requirement for final inspection and final approval for a reasonable time period prior to introduction of a reasonable amount of LP-gas into the container and placement of such container into LP-gas service. Final approval will follow a physical inspection of the completed installation, which indicates that it was installed in accordance with the approved plans and specifications and was installed in full compliance with all applicable LP-Gas Safety Rules. The division will review all applications within a reasonable time period. However, if no action has been taken on an application within 14 calendar days after receipt in this office the applicant must notify the division in writing if immediate review is necessary. With 10 calendar days after receipt of such notification in this office the division must notify the applicant in writing of its finding.

(b) When LP-gas container replacements of the exact same size (not water gallon capacity) or less are being installed in the exact same location at LP-gas storage installations of 10,000 water gallon capacity or greater, a LPG Form 501, Completion Report, shall be filed with the division in accordance with this section.

(c) A LPG Form 501, Completion Report, may be filed in lieu of submission of plans and specifications for LP-gas container replacement at a school, convalescent home, hospital, or at retail LP-gas cylinder filling and motor fuel service stations, provided the replacement container:

(1) has an aggregate water capacity of less than 10,000 water gallons;

(2) is installed in the exact same location; and

(3) where the new aggregate water capacity will not increase the minimum distance requirements to buildings and property lines under §9.65 of this title (relating to LP-Gas Storage Distance Requirements). Such filing must be made in accordance with the applicable subsection(s) of this section.

(d) LPG Form 500, Application for Tentative Approval, LPG Form 500a, Notice of LP-Gas Installation, and LPG Form 501, Completion Report, including plans and specifications, are not required prior to installation of bulkheads and emergency shutoff valves (ESV's) or when maintenance and improvements are being made to the piping system at existing LP-

gas bulk storage, retail cylinder filling and motor fuel service stations, schools, convalescent homes, and hospitals which have been previously approved. The commission or division director may require the submission of plans and specifications when deemed necessary to ensure compliance with applicable LP-Gas Safety Rules.

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

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

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

(3) vehicular traffic in the area;

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

(5) type of operations on the premises;

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

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

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

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

(f) If the division director declines administratively to approve the installation, the applicant shall be notified in writing. The applicant may modify the submission and resubmit for approval, or may request a hearing on the matter in accordance with the general rules of practice and procedure of the commission. The proposed installation shall not be operated or used in LP-gas service in this state until approved by the commission or by the division director following a hearing.

(g) After installation of any LP-gas container having an aggregate water capacity under 10,000 gallons at a public building as defined in §9.2 of this title (relating to Definitions), an LPG Form 501, Completion Report, must be submitted to the LP-Gas Division postmarked within 10 calendar days after completion of the LP-gas installation. No LP-gas shall be introduced into any LP-gas container that is not installed in accordance with the statutes of the State of Texas, or with the LP-Gas Safety Rules in effect at the time of installation.

(h) A manufacturer's data report (LPG Form 5), Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing (LPG Form 8), and any other documentation pertinent to establishing installation compliance with the safety rules must be submitted when requested by the division.

(i) A nonrefundable fee of \$25 shall be submitted with each set of plans and specifications as required by the applicable subsections of this section relating to the installation of container(s). A nonrefundable, resubmission fee of \$5.00 shall be included with each incomplete or revised set of plans and specifications resubmitted.

(j) A nonrefundable fee of \$5.00 shall be submitted with each LPG Form 501, Completion Report, as required by the applicable subsection(s) of this section, for each LP-gas container. A nonrefundable resubmission fee of \$5.00 shall be included for each LPG Form 501 resubmitted.

(k) If application is made for a license under any category in which plans or specifications are submitted for installation of bulk storage and/or retail LP-gas cylinder filling and motor fuel service stations, the license to operate shall not be issued before tentative approval of the installation has been granted by the division. Final approval will follow a physical inspection of the completed installation in accordance with the applicable subsection(s) of this section.

(l) When an applicant is notified of an incomplete LPG Form 500, Application for Tentative Approval of LP-Gas Installation, or LPG Form 500a, Notice of LP-Gas Installation, the applicant has 120 calendar days from the date of notification to resubmit with the deficiencies corrected or the original application will expire. A new application must be filed should the applicant wish to reactivate division review of the proposed LP-gas site. However, if the applicant notifies the division in writing, which must be postmarked before the expiration date, and requests an extension of time following the 120 calendar days, the application may be renewed for an additional number of days stipulated by the division director.

(m) If the tentatively approved installation is not completed within one year from the date original approval was granted, the applicant must notify the division in writing prior to the date of expiration and either request withdrawal of the original application or request an extension of time to complete the installation. The division director shall make final determination on the request for extension of time.

(n) It is the applicant's responsibility to notify the LP-gas division when the installation is complete and is ready for inspection in order to determine if final approval may be granted.

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

Issued in Austin, Texas, on April 2, 1990.

TRD-9003573

Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: May 14, 1990

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

Subchapter B. Basic Rules

- 16 TAC §§9.36, 9.40, 9.51, 9.61-9.65, 9.67, 9.70

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations which will protect or tend to protect the health, safety, and welfare of the general public.

§9.36. Approval of Valves, Fittings, and Equipment. All valves, fittings, and equipment (such as vaporizers, carburetors, relief valves, excess flow valves, regulators, cut-off valves, etc.) which are required in the complete assembly, shall be approved by the Railroad Commission of Texas. A LPG Form 502, Application for Liquefied Petroleum Gas Equipment and Component Approval, must be submitted to the LP-Gas Division for any equipment or components required to be approved, and any other data the commission may reasonably require. [Applications for approval shall be accompanied by such drawings, specifications, laboratory test reports, and other data as the commission may require.] Exception: Valves, fitting, and equipment need not be approved by the commission if they are listed by a nationally recognized testing laboratory, i.e., Underwriter's Laboratory (U.L.), Factory Mutual (F.M.), or American Gas Association (A.G.A.), and such other laboratories approved by the LP-Gas Division provided the LP-Gas Safety Rules do not prohibit their use in LP-gas service. Approval under this section does not ensure conformity with other state and federal regulations. Any subsequent modifications to approved LP-gas systems, equipment, and components will require resubmission to the LP-Gas Division prior to installation or usage. The division will review all applications within a reasonable time period. However, if no action has been taken on an application within 14 calendar days after receipt in this office, the applicant must notify the division in writing if immediate review is necessary. Within 10

calendar days after receipt of such notification in this office, the division must notify the applicant in writing of its finding.

§9.40. Manufacturer's Nameplates and Markings on ASME Containers.

(a) LP-gas shall not be introduced into any ASME container which is not equipped with a manufacturer's original nameplate or a manufacturer's replacement nameplate permanently attached to the container. The following minimum information must be readable on the manufacturer's nameplate for containers built prior to September 1, 1984: name of container manufacturer, manufacturer's serial number, working pressure, and water capacity. No American Society of Mechanical Engineers (ASME) container manufactured on or after September 1, 1984, and embodied in Divisions II, III, IV, V, VI, IX, X, [and] XI, and XIV, shall be used in the State of Texas unless such container has a stainless steel nameplate permanently attached to the container by continuous fusion welding around the perimeter of the nameplate.

(b)-(e) (No change.)

§9.51. Maximum Vapor Pressure and Container Working Pressure.

(a) (No change.)

(b) Exception: 200 psig working pressure vessels in LP-gas service in Texas prior to September 1, 1981, may be continued in service for commercial propane provided that they are fitted with relief valves set for 250 psig normal start to discharge and are used in compliance with the other provisions of this chapter. For the purpose of this exception, "commercial propane" is defined as having a vapor pressure not in excess of 210 psig at 100 degrees Fahrenheit. This exception does not apply to LP-gas motor fuel and mobile fuel containers.

§9.61. Report of LP-Gas Incident/Accident.

(a) In case of an incident involving a single release of LP-gas liquid during or following LP-gas transfer or during container transportation, or an

accident at any location where liquefied petroleum gas (LP-gas) is the cause or is suspected to be the cause, the licensee [dealer] owning, operating, or servicing the equipment or the installation shall notify the LP-Gas Division. This notification shall be by telephone as soon as feasibly possible after the licensee [dealer] has knowledge of the incident or accident. Any loss of LP-gas liquid which is less than 1.0% of the gross gallons delivered, stored, or withdrawn need not be reported. However, if any loss of LP-gas liquid occurs as a result of a pullaway it must be reported.

(b) Information which must be reported to the division must include: date and time of the incident or accident; type of structure or equipment involved; resident's or operator's name; physical location; number of injuries and/or fatalities; whether fire, explosion, or gas leak has occurred; whether gas is leaking now; and whether immediate assistance from the division is requested. Any person reporting must leave his [their] name and telephone number where he may [they can] be reached for further information.

(c) Any transport unit required to be registered with the commission under the Texas Natural Resources Code, §113.131 which is involved in an accident in which [where] there is damage to the tank, piping appurtenances, or any release [a loss] of LP-gas liquid resulting from an accident must be reported to the commission in accordance with this section regardless of the accident location. Any LP-gas powered motor vehicle used for school transportation or mass transit including any state owned vehicle that is involved in an accident resulting in a substantial release of LP-gas liquid or damage to the LP-gas conversion equipment, must be reported to the commission in accordance with this section regardless of accident location.

(d) Following the initial telephone report, an LPG Form 20, Report of LP-Gas Incident/Accident, must be submitted to the LP-Gas Division. The report must be postmarked within 14 calendar days of the date of initial notification to the division.

§9.62. Removal from LP-Gas Service.

(a) If the commission or division director determines that any LP-gas container constitutes an immediate danger to the public health, safety, and welfare, it shall require the immediate removal of liquid and vapor LP-gas by a properly licensed company to the extent necessary to eliminate the danger. If the commission or division director determines that any LP-gas appliance, equipment, or system constitutes an immediate danger to the public health, safety, and welfare, it shall require the immediate disconnecting by a properly licensed company of such appliance, equipment, or system from the LP-gas container it services.

(b) If the affected entity disagrees with the placement of a warning tag he may request an investigation into the matter. The division director shall notify such entity of his finding. If the entity disagrees, the entity may request or the commission on its own motion may call a hearing. Such installation shall be brought into compliance or removed from service until such time as the final decision is rendered.

§9.63. Uniform Protection Standards.

(a) (No change.)

(1) Fencing.

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

(E) A minimum clearance of two [five] feet shall be maintained between the fencing and the container, material handling equipment, and the entire dispensing system.

(F)-(G) (No change.)

(2)-(4) (No change.)

(b) (No change.)

§9.64. Uniform Safety Requirements.

(a)-(o) (No change.)

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

Table 1

LP-Gas Containers Having An Aggregate Water Capacity of	Separation from Oxygen Containers Having an		
	Aggregate capacity of more than 400 Cubic Feet (CF)* to 20,000 CF* including un-connected reserves	Aggregate capacity of more than 20,000 Cubic Feet (CF)* including un-connected reserves	
1,200 gallons or less	20 feet	25 feet	
Over 1,200 gallons	20 feet	50 feet	
LP-Gas Containers Having An Aggregate Water Capacity of	Separation from Gaseous Hydrogen Containers Having An		
	Aggregate capacity of less than 400CF*	Aggregate of 400 CF* to 3,000 CF*	Aggregate capacity of more than 3,000 CF*
500 gallons or less	None	10 feet	25 feet
Over 500 gallons	None	25 feet	50 feet

*Cubic Feet measured at 70°F. and atmospheric pressure.

(q) Lifting lugs. Lifting lugs in good repair on an ASME container filled to no more than five percent of water capacity may be used for lifting or lowering. Additional means must be utilized when lifting or lowering an ASME container with more than five percent of its water capacity.

(r) Protection Against Contamination. Any cargo, stationary, portable, mobile fuel, or motor fuel container that may have contained product other than LP-gas must 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 a 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 1838-64, Copper Strip Corrosion of Liquefied Petroleum (LP) Gases.

(s) Contents of Containers. Any LP-gas introduced into a container shall not contain anhydrous ammonia or hydrogen sulfide. The party responsible for such contamination shall have one of the following tests performed, and shall immediately submit the tests results to the division director:

(1) Litmus Paper Test for NH₃;

(2) Lead Acetate Test for H₂S; and

(3) test contained in For Contaminants Gas Processors Association (GPA) 2140.

§9.65. LP-Gas Storage Distance Requirements.

(a) Distances to buildings and property lines. Stationary LP-gas storage containers and material handling equipment shall be located outside of and no closer to any building or to any adjacent property line as indicated in Figure 1. Container(s) of 500 gallons, aggregate capacity, or less in vapor service are exempt from the adjacent property line requirements.

Aggregate Water Capacity of Storage	Minimum Distance
0- 500 gallons	10 feet
501- 2000 gallons	15 feet
2001- 4000 gallons	25 feet
4001- 8000 gallons	50 feet
8001- 12,000 gallons	75 feet
12,001 gallons and over	100 feet

Figure 1

[Container(s) of 500 gallons, aggregate capacity, or less in vapor service is exempt from the adjacent property line requirements.]

(b) The minimum distance

requirements to a building shall not be applicable at installations having a aggregate water capacity greater than 8,000 gallons when the building is single story, not used for human occupancy, the floor area of the building does not exceed 30

square feet, and is located in excess of 50% of the minimum distance. A maximum of one building at any one installation may be located in accordance with this paragraph.

Aggregate Water Capacity of Storage	Minimum Distance	Vertical Bulkhead and Pneumatically Actuated ESV's	Vertical or Horizontal Bulkhead and Cable or Pneumatically Actuated ESV's
8001- 12,000 gallons	60 feet	60 feet	67 feet
12,001 gallons and over	80 feet	80 feet	90 feet

Stationary LP-gas storage containers and material handling equipment may be located no closer to any buildings and/or adjacent property lines, in accordance with Figure 1a, provided bulkhead(s) and emergency shutoff valves (ESV's) have been installed and are maintained in good working order at all times.

Figure 1a

(c)[(b)] Distances to rights-of-way. Stationary LP-gas storage containers, automatic dispensing equipment, and material handling equipment shall be located no closer to any roadway, highway, [and] railroad, pipeline, or utility right-of-way, as indicated in Figure 2. Where the LP-gas

storage containers, automatic dispensing equipment, and material handling equipment are located adjacent to railroad pipeline or utility rights-of-way, a written waiver must be filed by the right-of-way owner indicating that a building will not be constructed within

the distance requirements of subsection (a) of this section without prior written notification to the LP-Gas Division. The division director shall make final determination as to whether the affected LP-gas operations can continue on the premises once the building is completed.

Aggregate Water Capacity of Storage	Minimum Distance
0 - 500 gallons	10 feet
501 - 2000 gallons	15 feet
2001 - 4000 gallons	25 feet
4001 gallons and over	50 feet

Figure 2

(d)[(c)] Manufactured housing provisions. The following requirements apply only to manufactured housing.

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

(e)[(d)] No stationary LP-gas storage container shall be placed in any area directly beneath an electric transmission line (does not include a customer service line) in that area directly beneath the transmission line and that area which is six [20] feet to either side of the line. If this distance is not adequate to prevent the broken ends of the electric transmission lines from contacting the LP-gas container in the event of breakage of any conductor, then other suitable means of protection can be taken to prevent such contact which are acceptable to the director or the container must be located a sufficient distance from the transmission line to prevent such contact.

(f)[(e)] LP-gas installations completed on or after June 1, 1989, involving multi-container installations of 1,000 water gallon individual container capacity or greater shall have a minimum three feet separation from adjacent LP-gas containers and shall not be positioned end to end or perpendicular to other LP-gas containers.

(g) A retail operated cylinder filling and/or service station installation must be equipped with a pump. A remote control shall be provided outside the dispensing device, whereby the source of power to the pump may be readily shut off in the event of an accident. Any other LP-gas liquid dispensing installation need not be provided with a pump provided the storage container(s) are located one and one-half times the required distances

as shown in Figure 1 of subsection (a) of this section.

§9.67. LP-Gas Storage Protection.

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

(d) The bulkhead(s) and ESV's must be kept in proper working order at all times in accordance with the manufacturer's instructions and the LP-Gas Safety Rules. If the bulkhead(s) and ESV's are not in proper working order in accordance with the manufacturer's instructions and the LP-Gas Safety Rules, the installation is to be immediately removed from LP-gas service and not operated until the necessary repairs have been made.

§9.70. Maintenance.

[(a)] All LP-gas storage containers, valves, dispensers, accessories, piping, and transfer equipment shall be maintained in good operating condition.

[(b)] All LP-gas transport units, including the transport systems, cargo vessels, brakes, tires, and lighting systems of those units, shall be maintained in good operating condition.]

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

Issued in Austin, Texas, on April 2, 1990.

TRD-9003575

Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 463-7152

◆ ◆ ◆
• 16 TAC §9.39

(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 to repeal and replace §9.39 concerning field welding. In addition, the commission proposes amendments to §§9.36, 9.40, 9.51, 9.61-9.65, 9.67, and 9.70, concerning commission approval of valves, fittings, and equipment, manufacturer's nameplates and markings on American Society of Mechanical Engineers (ASME) containers, the maximum vapor pressure of a product at 100 degree Fahrenheit which may be transferred to a container, reports to be filed in the case of an LP-gas incident or accident, uniform protection standards for LP-gas transfer systems and storage containers, uniform safety requirements for LP-gas handling, LP-gas storage distance requirements LP-gas storage protection, and maintenance of LP-gas storage containers and transport units. The commission also proposes new §9.41, concerning the retroactivity of the LP-Gas Safety Rules.

The commission proposes to repeal and replace §9.39 in order to clarify the existing rule. The commission proposes the amendments to §§9.36, 9.40, 9.51, 9.61-9.65, 9.67, and 9.70 to clarify the existing rules, to include a division number inadvertently left off in the last rule adoption, to provide that the division be notified when

there is a specified release of LP-gas into the atmosphere, to provide that accidents involving LP-gas powered motor vehicles be reported to the division, to establish a recourse for entities if they feel a warning tag was placed on their installation in error, to establish a form to be submitted to the division concerning reported accidents, to establish safety rules concerning the lifting of containers, to exempt certain buildings from the minimum distance requirements, to reduce the minimum distance requirements under certain specified conditions, to provide that LP-gas dispensing installations other than retail installations need not be equipped with pumps provided that the storage containers are located at one and one-half times the required minimum distance, to insure that all bulkheads and ESV's are kept in proper working order, and to avoid duplication in the rules. Lastly, the commission proposes new §9.41 in order to clarify the existing rules.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Petru also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeal as proposed would be an increase in compliance due to more clearly understandable rules, the expedited use of certain valves, fittings and equipment, the prolonged operation of aged, yet safe LP-gas containers, aid to the development of LP-gas rules and statistics, 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 as a result of enforcing the repeals. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The repeal is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.39. Field Welding.

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

Issued in Austin, Texas, on April 2, 1990.

TRD-9003574

Ciril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 463-7152

• 16 TAC §9.39, §9.41

The new sections are proposed under the Texas Natural Resources Code, §13.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.39. *Field Welding.* Field welding is permitted on saddle plates, lugs, or brackets attached to the containers by the manufacturer. Subframing of an LP-gas transport shall be performed by a current LP-gas Category A or B licensee.

§9.41. *Retroactivity.* Unless otherwise stated, the Safety Rules of the LP-Gas Division are not retroactive.

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

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TRD-9003576

Ciril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

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For further information, please call: (512) 463-7152

Subchapter E. Division III

• 16 TAC §9.125, §9.135

The Railroad Commission of Texas proposes to amend §9.125 and §9.135, concerning lettering of bulk storage containers and bulkheads, and emergency shutoff valves (ESV's) on bulk storage facilities.

The commission proposes the amendments to §9.125 and §9.135 to clarify the existing rules.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

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. There will be no effect on small businesses as a result of enforcing the section. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.125. *Lettering.* All bulk storage installations shall be lettered in letters not less than four [eight] inches high to indicate the name of the licensee operating the installation [and the nature of the contents]. Each container shall be lettered in letters not less than four inches in height to indicate the nature of the contents, i.e. LP-gas, Butane, or Propane. Such lettering shall be in sharp contrast to the background. A final determination as to whether the name of the installation is sufficient to properly identify the name of the installation will be made by the director. The previously stated lettering shall be so placed as to be readily visible to the public.

§9.135. *Bulkheads and Emergency Shutoff Valves.*

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

(c) Emergency shutoff valves (ESV's) shall be installed in fixed piping of the transfer system upstream of the bulkhead with a flexible wire braided hose not more than 24 inches long installed between the ESV's and the bulkhead.

(1) (No change.)

(2) ESV's shall incorporate all of the following means of closing:

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

(C) manual shutoff from a remote location. Remote controls shall be connected to each ESV. Emergency remote controls [shall be conspicuously marked] and shall be located and maintained to be readily accessible in emergencies. Each emergency remote control location shall be lettered "push-emergency shutoff valve" or "pull-emergency shutoff valve", whichever is applicable, in letters not less than one inch in height. Such lettering shall be readily visible from the location of the bulkhead and ESV.

(3)-(4) (No change.)

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

Issued in Austin, Texas, on April 2, 1990.

Earliest possible date of adoption: May 14, 1990

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

Subchapter F. Division IV

• 16 TAC §9.144

(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 §9.144, concerning the use of thermometer wells in trucks and trailers. The commission also proposes to amend §9.168, concerning the markings required on truck tanks and semi-trailer tanks used in the transportation of liquefied petroleum gases.

The commission proposes to repeal §9.144 to avoid retroactive application of the requirement for thermometers. The commission proposes the amendment to §9.168 in order to clarify the existing rule.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Petru also has determined that for each year of the first five years the repeal as proposed are in effect the public benefit anticipated as a result of enforcing the repeal will be an increase in compliance due to more clearly understandable rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The repeal is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.144. Thermometer Well.

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

Issued in Austin, Texas on April 2, 1990.

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

• 16 TAC §9.168

The amendment is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.168. Lettering

(a) Refer to §9.502 in Division XIV of this title (relating to Markings and Inspection Requirements).

(b) **The month and year of the retest date shall be located on the curb side of the unit at the forward head to shell seam of the container.]**

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

Issued in Austin, Texas, on April 2, 1990.

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 463-7152

Subchapter G. Division V

• 16 TAC §§9.171, 9.172, 9.187, 9.190, 9.191

The Railroad Commission of Texas proposes to amend §§9.171, 9.172, 9.187, 9.190, and 9.191, concerning motor fuel containers and permanently mounted mobile fuel containers, school bus installations, the filling of motor fuel and mobile fuel containers, and identification labels for LP-gas powered vehicles.

The commission proposes the amendments to §§9.171, 9.172, 9.187, 9.190, and 9.191 to clarify the existing rules and to provide that subsequent school bus conversions by the same licensee for the same user will not require resubmission of plans and specifications.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Petru also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed would be an increase in compliance due to more clearly understandable and workable rules. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons required to comply with the proposed sections.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.171. Definitions and Applicability.

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

(1) **Approved**—Unless otherwise noted, means approved by the Railroad Commission.

(2) **Auxiliary engine**—An engine used for purposes other than propelling a vehicle.

(3) **Public transportation vehicle**—Includes, but is not limited to, taxis, buses (other than school buses), airport courtesy cars, and any vehicle for hire to transport persons.

(4) **Mass transit vehicle**—Any vehicle used by a political subdivision of a state, city, or county which is used in the conveyance of the general public.

(5) [(4)] **School bus**—A vehicle that is sold or used for purposes that include carrying students to and from school or related events but does not include a bus designed and sold for operation as a common carrier in urban transportation.

(b) (No change.)

§9.172. Containers.

(a) (No change.)

(b) The minimum design working pressure for DOT [D.O.T.] containers shall not be less than 240 psig [p.s.i.g.]. The minimum design working pressure for ASME [A.S.M.E.] containers shall not be less than 250 psig [p. s.i.g.], except that containers installed on any vehicle within enclosed spaces (including recesses or cabinets) shall have a minimum design working pressure not less than 312 psig [p.s.i.g.]. A **pickup type vehicle, equipped with a**

camper shell not used for human occupancy, shall not be required to comply with the minimum 312 psig container requirement.

(c) LP-gas motor fuel containers on passenger-carrying vehicles shall not exceed 200 gallons aggregate water capacity. No more than two containers shall be mounted on a vehicle. This subsection shall not prevent a LP-gas motor fuel line from being connected to a cargo tank on a LP-gas bobtail delivery unit properly registered with this division.

(d)-(f)(No change.)

§9.187. School Bus and Mass Transit Installations [Installation].

(a) This section applies to LP-gas systems supplying LP-gas to propel school bus and mass transit vehicles [engines]. Prior to the initial installation of or conversion to a [an] LP-gas [carburation] system on any [form of] vehicle to be used as a school bus by either public or private educational institutions[,] or mass transit vehicles, the ultimate consumer or licensee making the initial installation or conversion shall submit a LPG Form 503, Application to Install a LP-Gas System on School Bus Mass Transit Vehicles, [specifications] and other [such] information deemed necessary [as the commission may reasonably require] to the LP-Gas Division for review [examination]. [Specifications shall include, but not be limited to, the number of units to be installed or converted according to such specifications, vehicle identification numbers, and the name of the licensee making such installations or conversions]. Upon completion, of the division's review of the required material [examination], a copy of the proposed specifications will be returned, marked either for correction or to indicate the submission complies with the LP-Gas

Safety Rules [tentative approval]. Once the specifications are returned, the ultimate consumer or licensee will be notified if the LP-gas converted vehicle may be immediately placed into LP-gas service upon completion of the LP-gas system. [Final approval will follow a physical inspection of each completed installation or conversion by an inspector of the LP-Gas Division to ensure compliance.] If the installation varies from the originally approved form, resubmission of the specifications is required. The division's review of such resubmission will follow the above described procedure. [Any changes, alterations, or additions will necessitate resubmission of specifications for approval]. Any subsequent conversion by the same licensee for the same user will not require resubmission of plans and specifications, provided the conversions are made in accordance with the originally approved specifications. However, a LPG Form 504, Notice of Subsequent Conversion by the Same Licensee, must be submitted and approval granted prior to any subsequent conversion to notify the commission of such conversion. When such installation or conversion is completed by the licensee, he shall notify the division in writing that such installation or conversion is ready for inspection. The division will review all applications within a reasonable time period. If no action has been taken on an application within 14 calendar days after receipt in this notice, the applicant must notify the division in writing if immediate review is necessary. Within 10 calendar days after receipt of such notification in this office, the division must notify the applicant in writing of its finding. The commission or division director may require an inspection of any LP-gas converted vehicle prior to the LP-gas system being placed into service.

(b)-(i) (No change.)

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

(a) (No change.)

(b) Any vehicle used in public transportation service or any recreational vehicle shall not be refueled while occupied. Any vehicle containing appliances shall have all pilot lights extinguished prior to refueling. Signs shall be prominently displayed, with letters not less than 1/2 inch in height stating:

- (1) turn off engine;
- (2) extinguish all pilot lights and open flames;
- (3) vehicles must be vacated during the filling process.

(c) (No change.)

§9.191. Identification Labels. LP-gas may not be introduced into any vehicle powered by LP-gas [and] designed for regular use on public roadways unless such vehicle is properly identified pursuant to this section. Such vehicles shall be identified by a weather-resistant diamond-shaped label located on an exterior vertical or near-vertical surface on the lower right rear of the vehicle [(on the trunk of a vehicle so equipped, but not on the bumper of any vehicle)] inboard from any other markings. When LP-gas mobile fuel containers are located in compartments or cabinets which obstruct view of said containers, such a label shall be placed on the access door of the compartments or cabinets. The label shall be approximately 4 3/4 inches (120 millimeters) long by 3 1/4 inches (83 millimeters) high. The markings shall consist of a border and letters "PROPANE" (letters one inch minimum height centered in the diamond) of silver or white reflective luminous material on a black background as follows:



Note: This section shall not be applicable to any LP-gas transport.

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

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TRD-9003580 Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

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For further information, please call: (512) 463-7152

◆ ◆ ◆
Subchapter J. Division VIII

• 16 TAC §9.242, §9.246

The Railroad Commission of Texas proposes to amend §9.242 and §9.246, concerning venting of appliances definitions, and the installation of venting systems.

The commission proposes the amendment to §9.242 and §9.246 to clarify the existing rules.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

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. There will be no effect on small businesses as a result of enforcing the sections. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Drawer 12976, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.242. Venting of Appliances Definitions.

- (a) (No change.)
- (b) Types of approved venting materials.
 - (1) (No change.)
 - (2) Type "BW" is an UL listed vent pipe, marked as Type BW, of oval double wall construction with an aluminum

liner, used with fire stops and other listed components for venting gas appliances in walls. (See Figure 1, of this section.) [page 82 of LP-Gas Docket Number 1, which is incorporated herein and made a part hereof for any and all purposes.]

(3) (No change.)

(c) (No change.)

§9.246. Installation.

(a)-(h) (No change.)

(i) Type B, BW, and Type L venting systems shall terminate in a listed cap, marked "UL." Refer to Figure 2 in §9.247 of this title (relating to Power Venting) to [Figure 2 on page 82 of LP-Gas Docket Number 1, which is incorporated herein and made a part hereof for any and all purposes, shall] determine the minimum height a venting system shall extend above a roof surface.

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

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TRD-9003581 Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
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For further information, please call: (512) 463-7152

Subchapter K. Division IX.

• 16 TAC §9.265, §9.270

The Railroad Commission of Texas proposes to amend §9.265 and §9.270, concerning the installations of LP-gas service station and cylinder filling storage containers, and LP-gas dispensing devices.

The commission proposes the amendments to §9.265 and §9.270 to clarify the existing rules, and to avoid duplication in the rules.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

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. There will be no effect on small businesses as a result of enforcing the sections. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

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

(a) Approval and training requirements.

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

(4) All fuel storage installations shall be lettered in letters not less than four inches high to indicate the name of the licensee operating the installation. A final determination as to whether the name of the installation is sufficient to properly identify the name of the installation will be made by the director.

(b) (No change.)

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

§9.270. Dispensing Devices.

(a) (No change.)

[(b)] LP-gas shall be transferred from the storage containers by means of pumps so designed and equipped as to allow control of the flow and to prevent leakage or accidental discharge. A supplemental remote control shall be provided outside the dispensing device whereby the source of power to the pump may be readily shut off in the event of fire or other accident.]

[(b)][(c)] A remote control shutoff [shut-off] valve or an access flow check valve is required at the dispenser inlet.

(c)[(d)] Dispensing hose specification. (see §9.54(a)-(e) of this title (relating to Hose Specifications.))

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

(d)[(e)] Location.

(1)-(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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TRD-9003582 Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
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For further information, please call: (512) 463-7152

Subchapter L. Division X

• 16 TAC §9.284

The Railroad Commission of Texas proposes to amend §9.284, concerning pipings and fittings.

The commission proposes the amendment to §9.284 in order to avoid duplication in the rules.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, 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. Petru 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 an increase in compliance due to a more clearly understandable rule. There will be no effect on small businesses as a result of enforcing the section. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The amendment is proposed under the Texas

Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.284. Piping and Fittings.

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

[(c)] Any portion of either piping or hose which may at any time be closed at both ends shall be equipped with a suitable spring loaded relief valve, or an approved spring loaded by-pass valve communicating directly with the tank.]

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

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TRD-9003583 Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

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

Subchapter M. Division XI

• 16 TAC §9.303

The Railroad Commission of Texas proposes to amend §9.303, concerning the storage of LP-gas cylinders.

The commission proposes the amendment to §9.303 to clarify the existing rule.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, 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. Petru 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 an increase in compliance due to a more clearly understandable rule. There will be no effect on small businesses as a result of enforcing the section. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Drawer 12976, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.303. Cylinder Storage.

(a) (No change.)

(b) Storage outdoors. Cylinders in storage shall be protected against tampering by unauthorized persons in accordance with §9.63(a)(1) of this title (relating to Uniform Protection Standards). Completely self-contained, securely housed, and well ventilated cylinder storage racks which have been approved for use by the Railroad Commission of Texas, and which are locked when not in operation, may be exempt from such fencing requirements. Cylinders which have been in service shall not be stored closer than 10 feet to any combustible building or group of buildings or to any line of adjoining property. Except, cylinders may be located against a noncombustible building with the following provisions:

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

(c) (No change.)

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

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TRD-9003584

Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
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For further information, please call: (512) 463-7152

78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.340. Automatic Dispenser Installation.

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

(e) The requirements of plans and specifications as noted in subsections (a)-(d) of this section shall not apply to existing LP-gas installations previously approved by the division, provided that a LPG Form 501, Completion Report, is filed and received by the division, post-marked within 10 calendar days of the date of completion of the LP-gas automatic dispenser installation addition.

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

Issued in Austin, Texas, on April 2, 1990.

TRD-9003585

Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

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For further information, please call: (512) 463-7152

test. Each container safety relief valve must be removed from the cargo tank and tested. Each safety relief valve must open at the required set pressure and reset to a leak-tight condition at 90% of the set-to-discharge pressure or being replaced. During such test, the internal pressure must be hydraulically generated to 1 1/2 times the working pressure of the container.

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

§9.505. Thermometers and Thermometer Wells Required. Each cargo container unit shall be equipped with a thermometer well that is threaded and [oil] filled with an acceptable head transfer medium to adequately determine the temperature of the product. A readable thermometer must be installed in the thermometer well at all times.

§9.506. Liquid or Vapor Discharge Openings.

(a) Each liquid or vapor discharge opening (except safety relief valves and liquid gauging device openings) in an [a] MC-330/331 cargo container must be equipped with a remotely controlled internal shutoff valve. However, on any liquid or vapor discharge opening of less than 1 1/4 inch national pipe thread (NPT), an excess flow valve together with a manually operated external valve may be used in place of a remotely controlled internal shutoff valve. The requirements of this subsection do not apply to an engine fuel line on a truck-mounted container opening of not over 3/4 inch NPT [national pipe thread shall be] equipped with a valve having an integral excess flow valve. Any product inlet opening (i.e. sprayfill) must be equipped with a remotely controlled internal shutoff valve or back-pressure check valve.

(b) (No change.)

(1)-(7) (No change.)

§9.524. Issuance of LPG Form 4 Decal.

(a)-(e) (No change.)

(f) This subsection shall not prevent a container manufacturer/fabricator from introducing a reasonable amount of LP-gas into a newly constructed container in order to properly test the vessel, piping system, and appurtenances prior to the initial sale of the container. The liquid LP-gas must be removed from the cargo container prior to the unit leaving the container manufacturer/fabricator premises.

(g) A maximum of 150 gallons of LP-gas can be introduced into a newly constructed cargo container, when such container will provide the motor fuel to the chassis engine for the purpose of providing sufficient fuel to allow the unit

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Subchapter N. Division XII

• 16 TAC §9.340

The Railroad Commission of Texas proposes to amend §9.340, concerning installation of automatic dispensers.

The commission proposes the amendment to §9.340 in order to provide a simplified manner of compliance for existing LP-gas installations previously approved by the division.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, 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. Petru 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 an increase in compliance due to the simplified rule. There will be no effect on small businesses as a result of enforcing the section. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Drawer 12976, Austin, Texas

◆ ◆ ◆
Subchapter P. Division XIV

• 16 TAC §§9.501, 9.505, 9.506, 9.524, 9.525

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.501. Testing Requirements.

(a) (No change.)

(b) Each container less [without] fittings must be subjected to a hydrostatic chart-recorded test for a continuous period of 30 minutes. The phrase "less fittings" as used in this subsection shall not be construed to prevent the safety relief valve(s) from being blocked and applicable shutoff valve(s) for the container opening(s) being closed at the time of the hydrostatic testing. If the safety relief valve(s) will be blocked, the blocks must be placed immediately prior to the test and must be removed immediately upon completion of the hydrostatic

to reach its destination.

§9.525. Container Appurtenances and Related Equipment.

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

(d) Acme-threaded adapters or hose couplings must be of brass material. Extended type hose couplings (steel-aluminum construction) with a female acme connection of 1 3/4 inch or less are acceptable.

(e)-(f) (No change.)

(g) Each cargo container mounted after June 1, 1989, must meet the following requirements.

(1) The front gross axle weight ratio GAWR must equal to 25% (plus or minus 5%) of the gross vehicle weight GVW and the rear GAWR must equal to 75% (plus or minus 5%) of the GVW. However, the manufacturer's GAWR shall not be exceeded.

(2) Tilt cab chassis must equal to 33 3/10% (plus or minus 5%) of the front GAWR and 66 66/100% (plus or minus 5%) for the rear GAWR. However, the manufacturer's GAWR shall not be exceeded.

(3) The cab to axle distance must be equal to or greater than two-thirds of the container length.]

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

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TRD-9003587 Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

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For further information, please call: (512) 463-7152

• 16 TAC §9.507

(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 to repeal §9.507, concerning protection of cargo containers and their appurtenances against contamination. The commission also proposes to amend §§9.501, 9.505, 9.506, 9.524, and 9.525, concerning testing requirements for cargo containers, the requirement of thermometers and thermometer wells, liquid or vapor discharge openings, the issuance of LPG Form 4 decals, and container appurtenances and related equipment.

The commission proposes the repeal of §9.507 in order to avoid duplication in the rules. The commission proposes the amendments to §§9.501, 9.505, 9.506, 9.524, and 9.525 to clarify existing rules and to eliminate a costly and unnecessary rule.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Petru also has determined that for each year of the first five years the repeal as proposed are in effect the public benefit anticipated as a result of enforcing the repeal will be an increase in compliance due to more clearly understandable rules and the elimination of a costly and unnecessary rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The repeal is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public.

§9.507. Protection Against Contamination.

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

Issued in Austin, Texas on April 2, 1990.

TRD-9003586 Cril Payne
Assistant Director, Legal
Division-General Law
Texas Railroad
Commission of Texas

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

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

Subchapter A. Scope and Definitions

• 16 TAC §13.1, §13.2

(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 to repeal and replace Subchapters A-E of Chapter 13 concerning the regulations for compressed natural gas and proposes to add new Subchapter F. The commission proposes the repeal and replacement of these subchapters due to the extensive changes in the subchapter sequence and regapping of section numbers. The majority of the sections are changing to permit further clarification. However, the spirit and intent of the sections will remain the same.

Certain portions of these rules were drafted in whole or in part from the 1988 Edition of National Fire Protection Association (NFPA) pamphlet number 52, Compressed Natural Gas (CNG) Vehicular Fuel Systems.

The commission proposes the repeal of §13.1 and §13.2 and proposes new §§13.1-13.4 in Subchapter A concerning scope, definitions, and CNG forms. The commission proposes the new sections to clarify the scope of the CNG rules, add new definitions, and to identify which CNG forms must be completed in reference to the specific application.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, has determined that for the first five-year period the proposed 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. 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 the more clearly understandable rules, and an increase in safety afforded to the general public. There will be no effect on small businesses as a result of enforcing the sections. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The repeals are proposed under the Texas Natural Resources Code, §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards concerning the compressed natural gas industry and its operations which will protect the health, safety, and welfare of the general public.

§13.1. Scope.

§13.2. Definitions.

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

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TRD-9003598 Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

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For further information, please call: (512) 463-7152

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• 16 TAC §§13.1-13.4

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards concerning the compressed natural gas industry, and its operations which will protect the health, safety, and welfare of the general public.

§13.1. Scope.

(a) This chapter applies to the design and installation of Compressed Natural Gas (CNG) engine fuel systems on vehicles of all types and CNG systems used for compression, storage, sale, transportation, delivery, or distribution of CNG for any purpose.

(b) This chapter also applies to all CNG mobile fuel systems.

(c) This chapter does not extend to the design and installation of any CNG system on ships, barges, sailboats, or other types of watercraft. Such installation is subject to the American Boat and Yacht Council (ABYC) and any other applicable standards.

§13.2. Retroactivity. Unless otherwise stated, the regulations for the Compressed Natural Gas Subdivision of the LP-Gas Division are not retroactive. Any installation of a CNG system must meet the requirements of the rules and regulations of the CNG Subdivision at the time of installation.

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

Approved—Acceptable to the subdivision or the Railroad Commission.

Cascade storage system—Storage in multiple cylinders.

CNG cylinder—A cylinder or other container designed for use or used as part of a CNG system.

CNG system—A system of safety devices, cylinders, piping, fittings, valves, compressors, regulators, gauges, relief devices, vents, installation fixtures, and other CNG equipment intended for use or used in any building or public place by the general public or in conjunction with a motor vehicle fueled by CNG and any system of equipment designed to be used or used in the compression, sale, storage, transportation for delivery, or distribution of CNG in portable CNG cylinders, but does not include a natural gas pipeline located upstream of the inlet of the compressor.

Commission—The Railroad Commission of Texas.

Compressed natural gas (CNG)—Natural gas which is a mixture of hydrocarbon gases and vapors, consisting principally of methane (CH₄) in gaseous form that is compressed and used, stored, sold, transported, or distributed for use by or through a CNG system.

CNG cargo tank—A container in accordance with American Society of Mechanical Engineers (ASME) or Department of Transportation (DOT) specifications and used to transport CNG for delivery.

Cylinder service valve—A hand-wheel-operated valve connected directly to a CNG cylinder.

Dispensing station—A CNG installation that dispenses CNG from any source by any means into fuel supply cylinders installed on vehicles or into portable cylinders.

Filled by pressure—A method of transferring CNG into cylinders by using pressure differential.

Fuel supply cylinder—A cylinder mounted upon a vehicle for storage of CNG as fuel supply to an internal combustion engine.

Location—A site operated by a CNG licensee at which the licensee carries on an essential element of its CNG-related activities, but where the activities of the site alone are not enough to qualify such site as an outlet.

Manifold—The assembly of piping and fittings used for interconnecting cylinders.

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

Mobile fuel system—Any CNG system installed on a vehicle designed to furnish CNG to any apparatus that uses or consumes CNG, excluding motor fuel installations used to propel a motor vehicle.

Motor vehicle—A self-propelled vehicle licensed for highway use or used on a public highway.

Outlet—A site operated by a CNG licensee at which the business conducted materially duplicates the operations for which the licensee is initially granted a license. Elements to be considered in determining the existence of an outlet include, but are not limited to, the following:

(A) storage of CNG on the site;

(B) sale or distribution of CNG from the site;

(C) licensee supervision of employees at the site;

(D) proximity of the site to other outlets;

(E) communication between the site and other outlets; and

(F) nature of licensee activities.

Person—An individual, sole proprietor, partnership, joint venture, corporation, or other entity.

Point of transfer—The point where the fueling connection is made.

Pressure relief valve—A device designed to prevent rupture of a normally charged cylinder.

Residential fueling facility—An assembly at a residence used for the compression and delivery of natural gas into vehicles with its associated equipment and piping.

Settled pressure—The pressure in a container at 70 degrees Fahrenheit, which cannot exceed the marked service or design pressure of the cylinder.

Subdivision—The Compressed Natural Gas Subdivision of the Liquefied Petroleum Gas Division of the Railroad Commission of Texas.

Transport—Any vehicle or combination of vehicles and CNG cylinders designed or adapted for use or used principally as a means of moving or delivering CNG from one place to another. This shall include, but not be limited to, any truck, trailer, semitrailer, cargo tank, or other vehicle used in the distribution of CNG.

Ultimate consumer—The individual controlling CNG immediately prior to its ignition.

§13.4 CNG Forms. Under the provisions of the Texas Natural Resources Code, Chapter 116, the Railroad Commission of Texas has adopted by reference the following forms for use by the Compressed Natural Gas Subdivision (CNG) of the Liquefied Petroleum Gas Division (LP-Gas). These forms are available to the public upon request directed to the CNG Subdivision of the LP-Gas Division in Austin:

(1) CNG Form 1001. Application for License;

(2) CNG Form 1001A. Branch Outlet List;

(3) CNG Form 1003. Compressed Natural Gas License;

(4) CNG Form 1004. Compressed Natural Gas Vehicle Identification;

(5) CNG Form 1007. Compressed Natural Gas Transport Registration;

(6) CNG Form 1008. Manufacturer's Report of Retest or Repair;

(7) CNG Form 1016. Application for Examination;

(8) CNG Form 1018. Statement of Lost or Destroyed License;

(9) CNG Form 1018B. Statement of Lost or Destroyed CNG Form 1004 Decal;

(10) CNG Form 1019. Inventory of Compressed Natural Gas Storage Cylinders;

(11) CNG Form 1020. Report of Compressed Natural Gas Incident/Accident;

(12) CNG Form 1021. Notice of Intent to Appear;

(13) CNG Form 1026. Franchise Tax Certification and Assumed Name Certificate;

(14) CNG Form 1027. Application for Qualification as Self-Insurer;

(15) CNG Form 1028. Application to use Irrevocable Letter of Credit as an Alternative to Insurance;

(16) CNG Form 1500. Compressed Natural Gas System Installation;

(17) CNG Form 1501. Completion Report;

(18) CNG Form 1502. Application for Compressed Natural Gas Equipment and Component Approval;

(19) CNG Form 1503. Application to Install a CNG System on School Bus/Mass Transit Vehicles.

(20) CNG Form 1504. Notice of Subsequent Conversion by the same Ultimate Consumer or Licensee.

(21) CNG Form 1996A. Insurance Filing Certifying Worker's Compensation Coverage, including Employer's Liability Coverage;

(22) CNG Form 1996B. Statement in Lieu of Insurance Filing Certifying Worker's Compensation Coverage, including Employer's Liability Coverage;

(23) CNG Form 1997A. Insurance Filing Certifying Motor Vehicle Bodily Injury Insurance and Property Damage Liability Insurance;

(24) CNG Form 1997B. Statement in Lieu of Insurance Filing Certifying Motor Vehicle Bodily Injury Insurance and Property Damage Liability Insurance;

(25) CNG Form 1998A. Insurance Filing Certifying General Liability Insurance;

(26) CNG Form 1998C. Statement in Lieu of Insurance Filing Certifying General Liability Insurance;

(27) CNG Form 1999. Notice of Insurance Cancellation.

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

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TRD-9003597

Crll Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
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For further information, please call: (512) 463-6949

Subchapter B. General Rules for CNG Equipment Qualifications

• 16 TAC §§13.11-13.22

The Railroad Commission of Texas proposes to repeal and replace Subchapters A-E of Chapter 13 concerning the regulations for compressed natural gas and proposes to add new Subchapter F. The commission proposes the repeal and replacement of these subchapters due to the extensive changes in the subchapter sequence and regapping of section numbers. The majority of the sections are changing to permit further clarification. However, the spirit and intent of the sections will remain the same.

Certain portions of these rules were drafted in whole or in part from the 1988 Edition of National Fire Protection Association (NFPA), pamphlet number 52, Compressed Natural Gas (CNG) Vehicular Fuel Systems.

The commission proposes the repeal of §§13.11-13.22 and proposes new §§13.21-13.39 concerning the general rules for compressed natural gas and equipment qualification in Subchapter B. Section 13.23 will insure that the remaining rules will remain in effect if one or more of the rules should be found invalid. Section 13.24 will mandate that plans and specifications be submitted to the LP-Gas Division for approval prior to the installation of compressed natural gas upon school buses or mass transit vehicles. Section 13.25 will inform the public which CNG systems, equipment, and components need to be approved by the commission and which may fall under the exception. Section 13.35, concerning the application for an exception to a safety rule, will permit the individuals who are required to comply with the safety rules an opportunity to file a request for an exception to the rules. Section 13.36 will insure a more accurate incident/accident reporting system and will permit the LP-Gas Division to later adopt necessary safety rules if the reports indicate a trend in certain types of CNG related incidents/accidents. Section 13.37 will require any applicant for an original or renewal license to certify that its franchise taxes are current and will also indicate what the LP-Gas Division will require when a CNG license

applicant performs under an assumed name. Section 13.38 will allow the commission or the division director to take the necessary action when there is an immediate threat to the health, safety, and welfare of the general public.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, has determined that for the first five-year period that §13.25 is in effect there will be fiscal implications for state government and small businesses as a result of enforcing or administering the section. However, these fiscal implications cannot be calculated at this time because the Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, does not have the historical data necessary to estimate the number of future CNG system installations and reports. The remainder of the proposed repeals will have no fiscal implications for state or local governments or small businesses.

Mr. Petru also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed will be due process, flexibility, and an increase in safety afforded to the general public, as well as an increase in compliance due to the more clearly understandable rules.

The anticipated economic cost to persons who are required to comply with §13.25(c) and (d) are the fees and resubmission fees that must be submitted with CNG Form 1501 and CNG Form 1500, respectively. There is an anticipated economic cost to individual businesses who are required to comply with §13.38 as proposed. In the case where a disconnection of any CNG appliance, equipment, or system is needed, a properly licensed company may assess a fee when such a disconnection is conducted. There is no anticipated economic cost to individuals who are required to comply with the remainder of the sections as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The repeals are proposed under the Texas Natural Resources Code, §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards concerning the Compressed natural Gas industry and its operations which will protect the health, safety, and welfare of the general public.

§13.11. Applicability.

§13.12. Odorization.

§13.13. Approval of CNG Systems and Equipment.

§13.14. Design and Construction of Cylinders and Pressure Vessels.

§13.15. *Pressure Relief Devices.*

§13.16. *Pressure Gauges.*

§13.17. *Pressure Regulators.*

§13.18. *Piping.*

§13.19. *Valves.*

§13.20. *Hoses and Hose Connections.*

§13.21. *Compression Equipment.*

§13.22. *Vehicle Fueling Connection.*

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

Issued in Austin, Texas on April 2, 1990.

TRD-9003596
Crl Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: May 14, 1990

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

◆ ◆ ◆
• 16 TAC §§13.21-13.39

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the Compressed Natural Gas industry and its operations which will protect the health, safety, and welfare of the general public.

§13.21. *Applicability.* The provisions of this subchapter apply to pressurized components of a compressed natural gas (CNG) system, and are applicable to both engine fuel systems and compression, storage, and dispensing systems.

§13.22. *Odorization.*

(a) Compressed natural gas shall have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over one-fifth of the lower limit of flammability.

(b) Compressed natural gas shall be odorized according to the provisions of Texas Civil Statutes, Article 6053, §2, as amended and as it may be amended from time to time.

§13.23. *Severability.* If any item, clause, or provision of these rules is for any reason declared invalid, the remainder of the provisions shall remain in full force and effect and shall in no way be affected,

impaired, or invalidated.

§13.24. *School Bus and Mass Transit Installations.*

(a) This section applies to compressed natural gas (CNG) systems supplying CNG to propel school bus and mass transit vehicles. Prior to the initial installation of or conversion to a CNG system on any vehicle to be used as a school bus by either public or private educational institutions or mass transit vehicles, the ultimate consumer or licensee making the initial installation or conversion shall submit a CNG Form 1503, Application to Install a CNG System on School Bus/Mass Transit Vehicles, and other information as deemed necessary to the CNG Subdivision of the LP-Gas Division for review. Upon completion of the division's review of the required material, a copy of the proposed specifications will be returned, marked either for correction or to indicate the submission complies with the CNG rules. Once the specifications are returned, the same ultimate consumer or licensee will be notified if the CNG converted vehicle may be immediately placed into CNG service upon completion of the CNG system. If the installation varies from the originally approved form, resubmission of the specifications is required. The division's review of such resubmission will follow the above described procedure.

(b) Any subsequent conversion by the same licensee for the same user will not require resubmission of plans and specifications, provided the conversions are made in accordance with the originally approved specifications. However, a CNG Form 1504, Notice of Subsequent Conversion by the same Ultimate Consumer or Licensee, must be submitted and approval granted, prior to any subsequent conversion to notify the commission of such subsequent conversion.

(c) When such installation or conversion is completed by the ultimate consumer or licensee, he shall notify the subdivision in writing that such installation or conversion is ready for inspection.

(d) The subdivision will review all applications within a reasonable time period. If no action has been taken on an application within 14 calendar days after receipt in this office, the applicant must notify the subdivision in writing if immediate review is necessary. Within 10 calendar days after receipt of such notification in this office, the subdivision must notify the applicant in writing of its finding. The commission or division director may require an inspection of any CNG converted vehicle prior to the CNG system being placed into service.

§13.25. *Approval of CNG Systems, Equipment, and Portable/Stationary CNG System Installation Filings, and Inspection.*

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

(1) *Tentative construction approval*—The authority issued by the commission allowing construction of a CNG installation.

(2) *Final approval*—The authority issued by the commission allowing the introduction of CNG into a container, cylinder, or system.

(b) Application for tentative construction approval. A CNG Form 1500, CNG System Installation, must be submitted to the CNG Subdivision prior to construction or installation of a CNG portable or stationary system at a public or private school, hospital, convalescent center, or at a CNG compression, storage, or dispensing system in two circumstances: when CNG is sold to the general public; when a public transportation facility services its own CNG-converted vehicles. When the CNG system's aggregate supply is in excess of 12,200 standard cubic feet, commercial users shall also be required to submit CNG Form 1500, CNG System Installation. Such system shall not be placed into CNG service until final approval is granted by the CNG Subdivision, after a physical inspection determines that the CNG system is installed in full compliance with both the tentative construction approved plans and specifications, and all applicable CNG safety regulations. The subdivision will review all applications within a reasonable time period. However, if no action has been taken on an application within 14 calendar days after receipt in this office, the applicant must notify the subdivision in writing if immediate review is necessary. Within 10 calendar days after receipt of such notification in this office, the subdivision must notify the applicant in writing of its finding. When such installation or conversion is completed by the ultimate consumer or licensee, he shall notify the subdivision in writing that such installation(s) or conversion(s) is ready for inspection. If installation of the tentatively approved CNG system is not completed within one year from the date of approval, the applicant must notify the division in writing prior to the date of expiration as defined in this subsection, whether the applicant wishes to withdraw the original application or request an extension of time to complete the installation. The CNG Subdivision director shall make the final determination on the request for extension of time.

(1) Notification of incomplete CNG Form 1500, CNG System Installation. When an applicant is notified of an incomplete CNG Form 1500, CNG System Installation, the applicant has 120 calendar days from the date of notification to resubmit with the discrepancies corrected or the original application will expire. Should the

applicant wish to reactivate subdivision review of the proposed CNG site, a new application must be filed. However, if the applicant notifies the subdivision in writing before the expiration date and requests an extension of time following the 120 calendar days, the application may be renewed for an additional number of days stipulated by the CNG subdivision director.

(2) Fees. A nonrefundable fee of \$26 shall be submitted with each CNG Form 1500, CNG System Installation. A nonrefundable fee of \$6.00 shall be submitted for each CNG Form 1500, CNG System Installation, resubmitted.

(c) Completion of CNG portable/stationary systems. A CNG Form 1501, Completion Report, must be submitted to the CNG Subdivision post-marked within 10 calendar days of completion of a CNG portable/stationary system at facilities open to the general public or where CNG deliverability to a commercial user is 12,200 standard cubic feet or less, except as noted under subsection (b) of this section. No CNG system shall be placed into CNG service that does not comply with the rules promulgated by the Railroad Commission of Texas in effect at the time of installation.

(1) Fees. A nonrefundable fee of \$6.00 shall be submitted with each CNG Form 1501, Completion Report, originally filed.

(2) Resubmission fee. A nonrefundable fee of \$6.00 shall be submitted for each CNG Form 1501, Completion Report, resubmitted.

(d) Approval of CNG systems equipment and components. Compressed Natural Gas systems, equipment, and components, i.e., containers, pressure vessels, pressure relief devices, including pressure relief valves, pressure gauges, pressure regulators, valves, hose and hose connections, vehicle fueling connections, engine fuel systems, and electrical equipment related to CNG systems shall be approved by the Railroad Commission for use in the State of Texas. A CNG Form 1502, Application for Compressed Natural Gas Equipment and Component Approval, must be submitted to the CNG Subdivision for any equipment or component which is required to be approved, and other data as the commission may reasonably require. Exception: Equipment and components need not be approved by the commission if they are listed by a nationally recognized testing laboratory, i.e., "Underwriter's Laboratory (U.L.), Factory Mutual (F.M.), American Gas Association (A.G.A.)", or the "Canadian Gas Association", and such other laboratories approved by the CNG Subdivision, provided the "Regulations for Compressed Natural Gas" do not prohibit their use in CNG service. Approval under this subsection does not ensure conformity with other state and federal regulations.

Any subsequent modifications to approved CNG systems, equipment, and components will require resubmission to the CNG Subdivision prior to installation or usage. Devices not otherwise specifically provided for shall be constructed to provide safety equivalent to that required for other parts of the system.

(e) Issuance of license. If application is made for a license under any category in which plans or specifications are submitted for installation of retail storage and/or dispensing equipment, the license to operate shall not be issued before tentative construction approval of the installation has been granted by the subdivision. Final approval will follow a physical inspection of the completed installation in accordance with subsection (d) of this section.

(f) Administrative denial. The CNG Subdivision director or his delegate shall examine all drawings, plans, reports, and specifications required by statute or commission regulation to be submitted for approval. The director shall determine whether the design, manufacture, construction, or use of the depicted item, system, operation, procedure, or installation complies with division rules. The director shall also determine whether the materials submitted for approval pose a threat to the health, safety, and welfare of the general public. If the director declines administratively to approve the submission, he shall notify the applicant in writing of the deficiencies. The applicant may modify the submission and resubmit it for approval, or may request a hearing on the matter. The subject of the submission shall not be operated or used in CNG service in this state until it has been approved by the commission or division director.

§13.26. Design and Construction of Cylinders and Pressure Vessels.

(a) Cylinders and pressure vessels shall be fabricated of steel, aluminum, or composite materials.

(b) Cylinders shall be manufactured, inspected, marked, tested, and retested in accordance with United States Department of Transportation (DOT) regulations and exemptions for compressed natural gas (CNG) service. Fuel supply cylinders shall have a rated service pressure of not less than 2,400 psig at 70 degrees Fahrenheit. Cascade storage cylinders shall have a rated service pressure of not less than 3,600 psig at 70 degrees Fahrenheit. Note: Currently, there are no cylinder specifications in DOT regulations for CNG. Current documents covering these cylinders are DOT exemptions. These are single purpose documents issued to a single company for a specific CNG application.

(c) DOT regulations requiring "+" (plus) and "*" (star) markings on DOT cylinders shall not apply to CNG cylinders.

(d) Pressure vessels and containers other than cylinders shall be manufactured, inspected, marked, and tested in accordance with the Rules for the Construction of Unfired Pressure Vessels, American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII (Division 1).

(e) In addition to other marking requirements, cylinders shall be labeled with the words, FOR CNG ONLY in letters at least one inch high in a contrasting color, and in a location which will be visible after installation. Decals or stencils are acceptable.

(f) Field welding or brazing for the repair or alteration of a cylinder or ASME pressure vessel is prohibited.

§13.27. Pressure Relief Devices.

(a) Each fuel supply cylinder shall be fitted with a pressure relief device in accordance with the following:

(1) pressure relief devices for cylinders shall be in accordance with Compressed Gas Association (CGA) Pamphlet S-1.1 and be of the "Combination Rupture Disk- Fusible Plug CG-5" type in which the fusible plug has a nominal yield temperature of 212 degrees Fahrenheit;

(2) only one combination rupture disk-fusible plug shall be installed in any pressure relief device opening;

(3) the pressure relief device shall communicate with the fuel and be vented to the atmosphere by a method that will withstand the maximum pressure which will result;

(4) the discharge flow rate of the pressure relief device shall not be reduced below that required for the capacity of the container upon which the device is installed;

(5) the pressure relief device on cylinders shall be permanently marked with the manufacturer's name, initials, or trademark, the temperature rating (212 degrees Fahrenheit) of the fuse plug, and the maximum pressure rating of the rupture disk.

(b) Containers (other than cylinders) and pressure vessels shall be provided with one or more spring-loaded pressure relief valves set to open in accordance with the American Society of Mechanical Engineers (ASME) Code.

(c) The minimum rate of discharge of pressure relief devices shall be in accordance with Compressed Gas Association (CGA) Pamphlet S-1.1 (cylinders); S-1.2 (cargo and portable tanks); S-1.3 (storage cylinders); or the ASME Code, whichever is applicable.

(d) Pressure relief valves for CNG service shall not be fitted with lifting devices. The adjustment, if external, shall be provided with means for sealing the adjust-

ment to prevent tampering by unauthorized persons. If at any time such seal is broken, the valve shall be removed from service until it has been reset and sealed. Any adjustments necessary shall be made by the manufacturer or his authorized representative(s).

(e) Each pressure relief valve shall be plainly marked by the manufacturer of the valve, as follows:

- (1) with the pressure in pound per square inch (psi) at which the valve is set to start-to-discharge;
- (2) with the discharge capacity in cubic feet per minute (cfm); or
- (3) any other marking(s) as required by the Department of Transportation (DOT) or the ASME Code.

§13.28. Pressure Gauges.

(a) Pressure gauges shall be designed for the normal pressure and temperature conditions to which the devices may be subjected with a burst pressure safety factor of at least four.

(b) Dials shall be graduated to read 1.2 times the operating pressure of the system to which the gauge is attached.

(c) A gauge shall have an opening not to exceed 0.055 inches (number 54 drill size) at the inlet connection.

§13.29. Pressure Regulators.

(a) A pressure regulator inlet and each chamber shall be designed for its maximum working pressure with a pressure safety factor of at least four.

(b) Low pressure chambers shall provide for excessive pressure relief or be able to withstand the operating pressure of the upstream pressure chamber.

§13.30. Piping.

(a) Pipe, tubing, fittings, gaskets, and packing material shall be compatible with the fuel under the service conditions.

(b) All tubing shall be a minimum of Type 304 Stainless Steel. All tubing connections shall be made of manufactured multifarrel compression fittings.

(c) Piping, tubing, fittings, and other piping components between a cylinder or pressure vessel and the first shutoff valve shall be capable of withstanding a hydrostatic test of at least four times the rated working pressure without structural failure.

(d) Compressed natural gas piping shall be fabricated and tested in accordance with American National Standard Code for Chemical Plant and Petroleum Refinery Piping, American National Standards Institute (ANSI) B31.3. Such piping shall be American Standard Testing Material (ASTM) steel, Schedule 80, or better. All

pipe fittings shall be forged steel stamped 6,000 psi or greater.

(e) The following components or materials shall not be used:

- (1) fittings, street ells, and other piping components of cast iron or semi-steel other than those complying with American Society for Testing and Materials (ASTM) Specifications A-536 (Grade 60-40-18), A-395, and A-47 (Grade 35018);
- (2) plastic pipe, tubing, and fittings for high pressure service;
- (3) galvanized pipe and fittings;
- (4) aluminum pipe, tubing, and fittings;
- (5) pipe nipples for the initial connection to a cylinder or pressure vessel;
- (6) copper alloy with copper content exceeding 70%.

(f) Piping components such as strainers, snubbers, and expansion joints shall be permanently marked by the manufacturer to indicate the service ratings.

§13.31. Valves.

(a) Valves, valve packing, and gaskets shall be suitable for the fuel over the full range of pressures and temperatures to which they may be subjected under normal operating conditions.

(b) Shutoff valves shall have a design working pressure not less than the rated working pressure of the entire system with a safety factor of four.

(c) Valves of cast iron or semi-steel other than those complying with ASTM Specifications A-536 (Grade 60-40-18), A-395, and A-47 (Grade 35018) shall not be used as primary shutoff valves.

(d) Valves of a design that will allow the stem to be removed without removal of the complete bonnet or disassembly of the valve body, and valves with valve stem packing glands which cannot be replaced under pressure shall not be used. Exception: Where there is a shutoff valve of acceptable type between them and the container or pressure vessel (this does not apply to service valves).

(e) The manufacturer shall stamp or otherwise permanently mark the valve body to indicate the service ratings. Exception: Fuel supply container valves need not be marked as such.

§13.32. Hose and Hose Connections.

(a) Hose and metallic hose shall be of or lined with materials that are resistant to corrosion and the actions of compressed natural gas (CNG).

(b) Hose, metallic hose, flexible metal hose, tubing, and their connections shall be suitable for the most severe

pressure and temperature conditions expected under normal operating conditions with a burst pressure of at least four times the maximum working pressure.

(c) Hose assemblies shall be tested by the manufacturer or its designated representative prior to use at pressures equal to not less than twice the service pressure.

(d) Hose shall be continuously and distinctly marked, indicating the manufacturer's name or trademark, CNG service, and working pressure. Metallic hose shall have a manufacturer's permanently attached tag marked with the manufacturer's name or trademark, CNG service, and working pressure.

§13.33. Compression Equipment.

(a) Compression equipment shall be designed for use with compressed natural gas (CNG) and for the pressures and temperatures to which it may be subjected under normal operating conditions. It shall have pressure relief devices which shall limit each stage pressure to the maximum allowable working pressure for the cylinder and piping associated with that stage of compression.

(b) When CNG compression equipment is operated unattended, it shall be equipped with a high discharge and low suction pressure automatic shutdown control.

(c) Control devices shall be designed for the pressure, temperature, and service expected under normal operating conditions.

§13.34. Vehicle Fueling Connection.

(a) A vehicle fueling connection shall provide for the reliable and secure connection of the fuel system cylinders to a source of compressed natural gas (CNG).

(b) The fueling connection shall be suitable for the pressure expected under normal conditions and corrosive conditions which might be encountered.

(c) The fueling connection shall prevent escape of gas when the connector is not properly engaged or becomes separated.

(d) The refueling receptacle on an engine fuel system shall be firmly supported, and shall:

- (1) receive the fueling connector and accommodate the working pressure of the vehicle fuel system;
- (2) incorporate a means to prevent the entry of dust, water, and other foreign material. If the means used is capable of sealing system pressure, it shall be capable of being depressurized before removal;
- (3) have a different fueling connection for each pressure base vehicle fuel

system.

§13.35. Application for an Exception to a Safety Rule.

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

(b) **Form.** The application or pleading must be typewritten on paper not to exceed 8-1/2 inches by 11 inches and have an inside margin of at least one inch. Any annexed exhibits must be folded to the same size as the pleading itself. The content must be double-spaced and appear on one side of the paper only.

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

(1) a reference, by section number, to the applicable CNG rule;

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

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

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

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

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

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

(d) **Notice.**

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

days of receipt of application.

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

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

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

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

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

(A) the Texas Department of Highways and Public Transportation;

(B) the Texas Department of Public Safety; and

(C) all CNG loading and unloading facilities utilized by applicant.

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

(e) **Division review.** The division director or his delegate shall review the application when it is complete. If the commission has received no objections from any affected parties as defined in subsection (d) of this section, the director may grant administratively the exception if it will neither imperil nor tend to imperil the health, welfare, or safety of the general public. If the director declines administratively to grant the exception, he shall notify the applicant of the reasons and of any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application or may request a hearing on the matter.

(f) **Hearings.**

(1) When held. A hearing will be held when the commission receives a valid objection with any evidence or data to support the objection from any affected party, or when the applicant requests one following an administrative denial. To be granted a hearing, the applicant must file a request for hearing within two weeks of receiving notice of the administrative denial. Failure to request a hearing within this time period will constitute waiver of the right of hearing.

(2) Notice. The division shall

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

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

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

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

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

§13.36. Report of CNG Incident/Accident.

(a) In case of an incident involving a single release of compressed natural gas (CNG) during or following CNG transfer or during container transportation, or an accident at any location where CNG is the cause or is suspected to be the cause, the licensee owning, operating, or servicing the equipment or the installation shall notify the LP-Gas Division, CNG Subdivision. This notification shall be by telephone as soon as possible after the licensee has knowledge of the incident or accident. Any loss of CNG which is less than 1.0% of the gross amount delivered, stored or withdrawn need not be reported. However, any loss occurring as a result of a pullaway must be reported.

(b) Information which must be reported to the division must include: date and time of the incident or accident; type of structure or equipment involved; resident's or operator's name; physical location;

number of injuries and/or fatalities; whether fire, explosion, or gas leak has occurred; whether gas is leaking; and whether immediate assistance from the division is requested. Any person reporting must leave his/her name, and telephone number where he/she can be reached for further information.

(c) Any transport unit required to be registered with the commission in accordance with §13.69 of this title (relating to Registration of CNG Transport Units) which is involved in an accident where there is damage to the tank, piping appurtenances, or any release of CNG resulting from an accident must be reported to the commission in accordance with this section regardless of the accident location. Any CNG powered motor vehicle used for school transportation or mass transit including any state owned vehicle which is involved in an accident resulting in a substantial release of CNG or damage to the CNG conversion equipment must be reported to the commission in accordance with this section regardless of accident location.

(d) Following the initial telephone report, a CNG Form 1020, Report of CNG Incident/Accident, must be submitted to the LP-Gas Division, CNG Subdivision. The report must be postmarked within 14 calendar days of the date of initial notification to the division.

§13.37. Franchise Tax Certification and Assumed Name Certificate.

(a) Any applicant for an original or renewal license must file a CNG Form 1026, Franchise Tax Certification, with this office prior to the issuance of such license, certifying that its Texas franchise taxes are current or such taxes are not applicable to its company. Making a false statement as to franchise tax status is grounds for the denial, suspension, or revocation of the license granted by this division.

(b) Any applicant for license must list all names on CNG Form 1001, Application for License, under which CNG related activities requiring licensing are to be conducted. Any company performing CNG activities under an assumed name (dba) must file with this office, copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office.

§13.38. Removal from CNG Service.

(a) If the commission or division director determines that any compressed natural gas (CNG) cylinder constitutes an immediate danger to the public health, safety, and welfare, it shall require the immediate removal of the CNG by a properly licensed company to the extent necessary to eliminate the danger. If the

commission or division director determines that any CNG appliance, equipment, or system constitutes an immediate danger to the public health, safety and welfare, it shall require the immediate disconnection by a properly licensed company of such appliance, equipment, or system from the CNG cylinder it services.

(b) If the affected entity disagrees with the placement of a warning tag, he may request an investigation into the matter. The division director shall notify such entity of his finding. If the entity disagrees, the entity may request or the commission on its own motion may call a hearing. Such installation shall be brought into compliance or removed from service until such time as the final decision is rendered.

§13.39. Filling Unapproved Containers Prohibited. No licensee shall introduce compressed natural gas (CNG) into any container if he has knowledge or reason to believe that such CNG container or system was not installed in accordance with the statutes of the State of Texas, and with the rules and regulations in effect at the time of installation. Exception: This section does not apply to motor fuel or mobile fuel containers and systems installed on vehicles licensed in states other than Texas, provided that such motor fuel or mobile fuel containers and systems are in a safe operating condition.

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

Issued in Austin, Texas on April 2, 1990.

TRD-9003595 Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: May 14, 1990

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

◆ ◆ ◆ Chapter C. Engine Fuel Systems

• 16 TAC §§13.31-13.43

The Railroad Commission of Texas proposes to repeal and replace Subchapters A-E of Chapter 13 concerning the regulations for compressed natural gas and proposes to add new Subchapter F. The commission proposes the repeal and replacement of these subchapters due to the extensive changes in the subchapter sequence and regapping of section numbers. The majority of the sections are changing to permit further clarification. However, the spirit and intent of the sections will remain the same.

Certain portions of these rules were drafted in whole or in part from the 1988 Edition of National Fire Protection Association (NFPA),

pamphlet number 52, Compressed Natural Gas (CNG) Vehicular Fuel Systems

The commission proposes the repeal of §§13.31-13.43 and proposes new §§13.61-13.74 concerning classification and registration of licenses, insurance requirements and examination of representatives or employees of applicants for a license or license renewal in Subchapter C.

Section 13.61 will add more specific categories of licenses, add annual renewal license fees, permit more flexibility in obtaining licenses, mandate that state franchise certification comply with state law, state which forms must be completed in reference to the specific application, and provide that the insurers give a minimum of 30 days notice before an insurance cancellation. Section 13.62 specifically describes the insurance requirements for each category. Additionally, instances where certificates of insurance are not in complete compliance, but are in substantial compliance with the rules adopted under this subchapter, the applicant or licensee may be granted a 45 day extension to comply with all procedural and substantive requirements of this section and subchapter. Section 13.63 permits persons/businesses conducting CNG activities, in certain instances, to apply for self-insurance, rather than having to buy additional insurance. Section 13.64 provides an alternative to self-insurance.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, has determined that for the first five-year period §13.61 is in effect there will be fiscal implications for state government and for small businesses as a result of enforcing or administering the repeals. However, the fiscal implications cannot be calculated at this time because the Compressed Natural Gas Subdivision does not have the historical data necessary to estimate the number of licenses that may be obtained over the next five years. Refer to §13.61, Categories 1-9 for the specific license fees and annual renewal license fees. For the remainder of the sections in this subchapter as proposed, there will be no fiscal implications for state or local government and small businesses.

Mr. Petru also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit as a result of enforcing the repeals as proposed will be an increase in compliance due to the more clearly understandable rules, more flexibility in satisfying insurance requirements, a more efficient license application process once the insurance is in effect, and an increase in safety afforded to the general public due to the updated and revised safety requirements.

The only anticipated economic costs to persons who are required to comply with these sections as proposed are the license fees and annual renewal license fees.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The repeals are proposed under the Texas Natural Resources Code, §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the Compressed Natural Gas Industry and its operations which will protect the health, safety, and welfare of the general public.

§13.31. *Applicability.*

§13.32. *System Component Qualification.*

§13.33. *Installation of Fuel Supply Cylinders.*

§13.34. *Installation of Venting Systems.*

§13.35. *Installation of Piping.*

§13.36. *Installation of Valves.*

§13.37. *Installation of Pressure Gauges.*

§13.38. *Installation of Pressure Regulators.*

§13.39. *Installation of Fueling Connection.*

§13.40. *Labeling.*

§13.41. *System Testing.*

§13.42. *Report of Accidents.*

§13.43. *Maintenance and Repair.*

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

Issued in Austin, Texas on April 2, 1990.

TRD-9003594

Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

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

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Subchapter D. CNG Compression, Storage, and Dispensing Systems

◆ ◆ ◆
• 16 TAC §§13.51-13.66

(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 to repeal and replace Subchapters A-E of Chapter 13 concerning the regulations for compressed natural gas and proposes to add

new Subchapter F. The commission proposes the repeal and replacement of these subchapters due to the extensive changes in the subchapter sequence and renumbering of section numbers. The majority of the sections are changing to permit further clarification. However, the spirit and intent of the sections will remain the same.

Certain portions of these rules were drafted in whole or in part from the 1988 Edition of *National Fire Protection Association (NFPA) pamphlet number 52, Compressed Natural Gas (CNG) Vehicular Fuel Systems.*

The commission proposes the repeal of §§13.51-13.66 and proposes new §§13.91-13.107, concerning the protection of CNG compression, storage, and dispensing systems, installations of CNG equipment and systems, and their respective locations along with dispenser accuracy in Subchapter D. Section 13.94 will establish more reasonable distance requirements for the abovementioned installations.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, has determined that for the first five-year period the proposed 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. 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 as proposed will be an increase in compliance due to the more clearly understandable rules, and increase in safety afforded to the general public. There will be no effect on small businesses as a result of enforcing the sections. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The repeals are proposed under the Texas Natural Resources Code, §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the Compressed Natural Gas industry and its operations which will protect the health, safety, and welfare of the general public.

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§13.51. *Applicability.*

§13.52. *System Component Qualification.*

§13.53. *General.*

§13.54. *Location of Installations.*

§13.55. *Installation of Cylinders and Cylinder Appurtenances.*

§13.56. *Installation of Pressure Relief Devices.*

§13.57. *Installation of Pressure Regulators.*

§13.58. *Installation of Pressure Gauges.*

§13.59. *Installation of Piping and Hoses.*

§13.60. *Testing.*

§13.61. *Installation of Emergency Shut-down Equipment.*

§13.62. *Installation of Electrical Equipment.*

§13.63. *Stray or Impressed Currents and Bonding.*

§13.64. *Operation.*

§13.65. *Fire Protection.*

§13.66. *Maintenance.*

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

Issued in Austin, Texas, on April 2, 1990.

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Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

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◆ ◆ ◆
• 16 TAC §§13.61-13.74

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards concerning the compressed natural gas industry and its operations which will protect the health, safety, and welfare of the general public.

§13.61. *Licensing.*

(a) The Railroad Commission of Texas establishes the following classes of licenses and license fees. This section does not apply to an ultimate consumer who is not engaged in business in any of the following categories.

(1) Category 1. This category includes persons who manufacture, assemble, repair, sell, install, or subframe compressed natural gas (CNG) cylinders for use in this state. The Category 1 original license fee shall be \$500, the annual renewal license fee shall be \$300.

(2) Category 2. This category

includes persons who sell, install, service, or repair CNG systems, including cylinders, for use in this state. The Category 2 original license fee shall be \$150, the annual renewal license fee shall be \$75.

(3) Category 3. This category includes persons who sell, store, transport for delivery, or dispense CNG for use other than as an ultimate consumer and who sell, install, service or repair CNG systems as set out in Category 2. The Category 3 original license fee shall be \$500, the annual renewal license fee shall be \$150.

(4) Category 4. This category includes persons who engage in the testing of CNG cylinders. The Category 4 original license fee shall be \$200, the annual license renewal fee shall be \$100.

(5) Category 5. The operation of a CNG service station filling CNG in cylinders. The Category 5 original license fee shall be \$50, the annual renewal license fee shall be \$25.

(6) Category 6. The operation of a CNG cylinder filling and cylinder exchange dealership, including cylinder filling and the sale, transportation, installation, and connection of CNG in cylinders, and the replacement of cylinder valves, and the operation of a CNG service station as set out in Category 5. The Category 6 original license fee shall be \$500, the annual renewal license fee shall be \$150.

(7) Category 7. The operation of a cylinder filling and cylinder exchange dealership, including CNG cylinder filling, the sale of CNG in cylinders, sale of CNG cylinders, and the replacement of cylinder valves. The Category 7 original license fee shall be \$50, the annual renewal license fee shall be \$25.

(8) Category 8. Any CNG service station and CNG cylinder activity set out in Categories 5 and 7. The Category 8 original license fee shall be \$75, the annual renewal license fee shall be \$35.

(9) Category 9. The sale of CNG cylinders or systems. The Category 9 original license fee shall be \$50, the annual renewal license fee shall be \$25.

(b) Unless a person has obtained a license, under the provisions of these sections, the person may not engage in any of the activities previously listed. If a license expires or lapses, CNG operations shall immediately cease.

(c) Notwithstanding subsection (a)(2) of this section, no ultimate consumer is required to be licensed in order to perform those operations dealing only with the ultimate consumer.

(d) A license obtained by an individual, partnership, corporation, or other legal entity extends to the entity's employees who are performing CNG work, provided that each employee is qualified as required by this chapter.

(e) All licenses issued by the Compressed Natural Gas Subdivision expire each year at midnight on the 31st day of May. In order to continue operations without interruption, licensees must renew licenses yearly prior to the time of expiration.

§13.62. Insurance Requirements.

(a) Pursuant to the Texas Natural Resources Code, Chapter 116, the Railroad Commission of Texas has adopted the following insurance requirements for those persons or businesses licensed by the Compressed Natural Gas (CNG) Subdivision to do business in Texas.

(1) The CNG Subdivision shall not issue a license authorizing activities under §13.61 of this title (relating to Licensing), or renew an existing license unless the applicant for license or license renewal provides proof of required insurance coverage with an insurance carrier authorized to do business in this state, or if the applicant is unable to obtain coverage from such a carrier, provides on approval of the commission, proof of required insurance coverage issued by a surplus lines insurer that meets the requirements of the Texas Insurance Code, Article 1.14-2 and rules adopted by the State Board of Insurance under that article.

(2) A licensee shall not perform any licensed activity under §13.61 of this title (relating to Licensing) unless the insurance coverage required by this section is in effect.

(3) Except as provided in §13.65 of this title (relating to Statements in Lieu of Insurance Certificates), the types and amounts of insurance provided in paragraphs (4)-(7) of this section are required while engaging in any of the activities set forth in this section or any activity incidental thereto.

(4) All Category 3 or 6 licensees or ultimate consumers, who have purchased, leased, or obtained other rights in any vehicle defined as a CNG transport by this chapter, shall have motor vehicle liability coverage of a minimum of \$500,000 combined single limit for bodily injuries or death for all persons injured or killed in any accident, and loss or damage in any one accident to property of others.

(5) Each member of each category shall have worker's compensation coverage, including employer's liability coverage.

(6) Each member of Categories 1,3,4, and 6 shall have the following coverage: general liability insurance, specifically including premises and operations coverage with the following minimum amounts: \$300,000 per occurrence, with a \$300,000 policy aggregate; including completed operations and products liability coverage, \$300,000 aggregate.

(7) Each member of Categories 2,5,7,8, and 9 shall have the following coverage: general liability, including premises and operations coverage in limits not less than \$25,000 per occurrence, \$50,000 policy aggregate.

(b) As evidence that required insurance has been secured and is in force, certificates of insurance which are approved by the division shall be filed with the division before licensing, license renewal, and during the entire period that the license is in effect. Any document filed with the division in a timely manner which is not completed in accordance with the instructions indicated on the insurance certificate forms supplied by the division, but which complies with the substantive requirements of this section and with the rules adopted under this section, may be considered by the division to be evidence that required insurance has been secured and is in force for a temporary period not to exceed 45 days. During this temporary period, a licensee shall file with the division an amended certificate of insurance which complies with all procedural and substantive requirements of this section and the rules adopted hereunder.

(c) All certificates filed under this section shall be continuous in duration.

(d) Each certificate of insurance filed with this office must have one of the following endorsements attached to the policy, and may not be cancelled without cancellation of the policy to which it is attached.

(1) CNG Form 1996A, Insurance Filing Certifying Worker's Compensation Coverage, including Employer's Liability Coverage, certificate of insurance must have a Texas Notice of Material Change Endorsement number WC 420601 attached to the policy and any successor policies.

(2) CNG Form 1997A, Insurance Filing Certifying Motor Vehicle Bodily Injury Insurance and Property Damage Liability Insurance, certificate of insurance must have a cancellation provision or coverage change endorsement numbered TE0202A attached to the policy and any successor policies.

(3) CNG Form 1998A, Insurance Filing Certifying General Liability Insurance, certificate of insurance must have Texas Changes Amendment of Cancellation Provisions for Coverage Change Endorsement number CG 0205 attached to the policy and any successor policies.

(e) Each endorsement issued and attached to a certificate of insurance noted in subsection (a) of this section requires the insurance carrier, noted as company on the certificate of insurance to give the division 30 days written notice before the insurance cancellation. The 30 days notice com-

mences to run from the date the notice is actually received by the division.

(f) Cancellation of a certificate of insurance becomes effective on the occurrence of any of the following events and not before:

(1) division receipt of written notice stating the insurer's intent to cancel a policy of insurance and giving a minimum of 30 days notice before the insurance cancellation;

(2) receipt by the division of an acceptable replacement insurance certificate;

(3) voluntary surrender of a license and the rights and privileges conferred by the license;

(4) division receipt of a statement made by a licensee stating that the licensee is not actively engaging in any operations which require a particular type of insurance and will not engage in those operations unless and until all certificates of required insurance applicable to those operations are filed with the division; or

(5) commission's cancellation by order or after hearing.

§13.63. Qualification as Self-Insured.

(a) General qualifications. The commission will give consideration to and may approve the application of a compressed natural gas (CNG) licensee to qualify as a self-insurer if such licensee furnishes a true and accurate statement of its financial condition and other evidence which establishes to the satisfaction of the commission the ability of such licensee to satisfy its obligations for the applicable general liability, including premises and operations coverage, without affecting the stability or permanency of the business of such licensee. This section shall not apply to the subdivision's licensing requirements for worker's compensation insurance, including employer's liability coverage.

(b) Applicant guidelines. In addition to filing an application form as prescribed by the commission, an applicant for self-insurer status covering general liability, including premises and operations coverage, shall submit materials that will allow the commission to determine whether:

(1) the net worth of the applicant is adequate in relationship to the size of operations and the extent of its request for self-insurance authority. The applicant should demonstrate that it will maintain a net worth sufficient to ensure that it will be able to meet its statutory obligations to the public to pay all claims relating to general liability, including premises and operations coverage in the event of a claim;

(2) the applicant has a sound

self-insurance program. The applicant shall demonstrate that it has established, and will maintain an insurance program that will protect the public against all claims involving CNG activities to the same extent as the minimum limits applicable pursuant to §13.61(a)(6) and (7) of this title (relating to Licensing). Such a program may include, but not be limited to, one or more of the following: reserves, sinking funds, third party financial guarantees, parent company or affiliate sureties, excess insurance coverage, or other similar arrangements;

(3) evidence of motor vehicle self-insurability accepted by the Transportation Division of the Railroad Commission of Texas may be submitted to the CNG Subdivision for consideration in determining self-insurability.

(c) Other securities or agreements. The commission may consider applications for approval of other securities or agreements, or may require any other document(s) which may be necessary to ensure such application satisfies that the security or agreement offered will afford adequate security for protection of the public.

(d) Periodic reports. Semi-annual reports and annual statements reflecting the applicant's financial condition and status of its self-insurance program shall be filed with the commission during the period of its self-insurer status by March 10 and September 10 of each year.

(e) Duration of self-insurer status. The commission may approve the applicant as a self-insurer for any specific time period, or for an indefinite period until revoked by the commission.

(f) Revocation of a self-insurer status. The commission may at anytime, upon 10 days notice to the applicant, require the applicant to appear and demonstrate that it continues to have adequate financial resources to pay all general liability, including premises and operations coverage claims, and that it remains in compliance with the other requirements of this section. If the applicant fails to so demonstrate, its self-insurer status shall be revoked and it may be ineligible for self-insurance in the future.

§13.64. Qualification by Irrevocable Letter of Credit. Letters of Credit shall be subject to the following conditions.

(1) the letter may only be issued by a federally-chartered and federally-insured bank authorized to do business in the United States.

(2) Letters of credit must be irrevocable during their terms.

(3) The letter must be payable to the commission in part or in full upon demand and receipt from the commission of a notice of forfeiture.

(4) This section shall not apply to the subdivision's licensing requirements for worker's compensation insurance, including employer's liability coverage.

§13.65. Statements in Lieu of Insurance Certificates.

(a) A Category 3 or 6 licensee or applicant for license that does not operate or contemplate the operation of a CNG transport and does not transport or contemplate the delivery of CNG cylinders by vehicle in any manner, may make and file with the division a statement to that effect in lieu of filing a certificate of motor vehicle bodily injury and property damage liability insurance.

(b) A licensee or applicant for a license that does not engage in or contemplate engaging in any operations which would be covered by general liability insurance for a period of time may make and file with the division a statement to that effect in lieu of filing a certificate of general liability insurance.

(c) A licensee or applicant for license that does not employ or contemplate the hiring of an employee or employees to be engaged in CNG related activities in Texas may make and file with the division a statement to that effect in lieu of filing a certificate of worker's compensation insurance including employer's liability insurance.

(d) Any statement filed pursuant to subsections (a)-(c) of this section must further state that the licensee or applicant agrees to file a certificate of insurance evidencing appropriate coverage before engaging in any activities that require insurance coverage under this subchapter.

§13.66. Limitation/Avoidance of Licensee Liability.

(a) A compressed natural gas (CNG) licensee may not limit or avoid its liability or that of its insurer for damages proximately caused by any negligent act or acts of the licensee in handling CNG.

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

(c) This section does not apply to negotiations and/or settlements made subsequent to the recognition by the parties to a contract of the licensee's negligent act or acts.

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

(1) unauthorized, unsafe, or improper applications of CNG and/or CNG

systems or equipment by any user or other person;

(2) any use or operation of CNG and/or CNG systems or equipment contrary to the specific representations made by any user or other person to a CNG licensee during or preceding installations or servicing of such CNG systems or equipment and relied upon by such CNG licensee in selecting, designing, installing, or servicing such systems or equipment; or

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

§13.67. Changes in Ownership and/or Form of Dealership.

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

(1) Licensing. The purchaser, lessee, or donee of any dealership outlet or location shall apply for and be issued a notice of tentative CNG license approval, prior to engaging in the transfer of such an entity. Such tentative CNG license approval, when issued, shall be valid for a period not to exceed 90 days from the date of issue. During this 90-day period, the licensee and the recipient of the tentative CNG license approval shall be allowed to conduct business under this subchapter. Any applicable licensing fees shall be prorated to cover this period of tentative approval and shall be payable at the time of application for tentative approval. Any portion of the licensing fees unused during this 90-day period shall be applied on a prorated basis to the licensing fee required of the new purchaser, lessee, or donee of such dealership or outlet.

(2) Notice. The purchaser, lessee, or donee of any dealership outlet or location, or the authorized representative thereof, shall notify the CNG Subdivision of the completed transfer of such dealership by certified mail immediately upon the completion of said transfer, and shall cause to be filed with the CNG Subdivision all forms of application for licensing or registration required by this subchapter.

(b) Other changes in ownership.

(1) Licensing. Upon the death of a sole proprietor or partner, the dissolution of a corporation or partnership, any changes in the members of a partnership, or other changes in ownership not specifically provided for elsewhere in this section, the CNG operation shall continue for no longer than 30 days, unless a CNG license is issued to the successor in interest and the notice requirements of paragraph (2) of this subsection have been satisfied. This 30-day period shall be allowed only when the licensee meets all other pertinent requirements of this subchapter, specifically those regarding the licensee's representative.

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

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

(4) Transfer of stock. The provisions of paragraphs (1)-(3) of this subsection notwithstanding, a change in ownership does not occur, for the purpose of this section, when shares of stock in a corporation are transferred, exchanged, sold, or alienated, unless such action creates a new controlling interest in such corporation.

(c) Changes in dealership business form.

(1) Licensing. When a dealership converts from one business entity to a different kind of business entity, the newly formed entity shall apply for and be issued a notice of tentative CNG license approval, prior to engaging in the conversion. Such tentative CNG license approval, when issued, shall be valid for a period not to exceed 90 days from the date of issue. During this 90-day period, the licensee (regardless of form) shall be allowed to conduct business under this subchapter. Any applicable licensing fees shall be paid or maintained to cover this period of tentative approval and shall be paid or payable at the time of application for tentative approval. Any fees paid by this original entity shall be credited on a prorated basis to the account of the new entity.

(2) Notice. An authorized representative of the original entity or of the new entity shall notify the CNG Subdivision by certified mail of an accomplished change in business form immediately upon the completion of such conversion, and shall cause to be filed with the CNG Subdivision all forms of applications for licensing or registration required by this subchapter.

§13.68. Dealership Name Change.

(a) Duty to report. A licensee shall file the following forms evidencing any change in the licensee's name with the Compressed Natural Gas (CNG) Subdivision prior to engaging in operations that require a CNG license under a new business form:

(1) an amended application for license;

(2) certificates of insurance and/or statement in lieu of insurance (where

permitted); and

(3) any other forms required by the CNG Subdivision.

(b) Duty to register. A licensee operating under a changed name shall cause the re-registration of any CNG transport unit from the old name to the changed name of the license by filing an amended CNG Form 1007, Compressed Natural Gas Transport Registration, with the CNG Subdivision prior to the use of any such unit in the transport or delivery of CNG in the State of Texas.

§13.69. Registration of CNG Transport Units.

(a) A licensee who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this subchapter shall register each such unit with the Compressed Natural Gas (CNG) Subdivision in the name of the licensee, prior to the use of such unit for the transport or delivery of CNG in Texas.

(b) An ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this subchapter shall register each such unit with the CNG Subdivision in the name of the consumer, prior to the use of such unit for the transport of CNG on public highways in Texas.

§13.70. Examination and Notification Generally.

(a) Each individual wishing to submit to examination by the Compressed Natural Gas (CNG) Subdivision shall file a CNG Form 1016, Application for Examination, with the CNG Subdivision within any deadlines established by the CNG Subdivision.

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

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

(d) Failure of any examination shall immediately disqualify the individual from performing any CNG activities covered by the examination which is failed.

(e) Information regarding examinations may be acquired from the Austin office of the CNG Subdivision.

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

(g) A licensee shall notify the CNG Subdivision when a previously qualified

person is hired. Notification will include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, name of previous licensee-employer, and CNG related work to be performed.

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

(i) Any person required to pass an examination or participate in a seminar pursuant to these rules must renew certification by re-examination or by participation in a seminar every five years. The person must pay the current examination or seminar fee and pass the examination or participate in the seminar on or before the fifth anniversary date of that person's most recent certification.

§13.71. Examination of Representative.

(a) Each applicant for a license or license renewal shall file a CNG Form 1001, Application for License, with the Compressed Natural Gas (CNG) Subdivision designating a representative who shall be an owner or employee of the licensee, and shall be directly responsible for actively supervising CNG operations of the licensee. Sole proprietors licensed as retail and wholesale dealers under this subchapter must pass the management examination of the CNG Subdivision and be qualified as a representative.

(b) A licensee may not engage in CNG related activities governed by the Texas Natural Resources Code, Chapter 116, until its designated representative has passed the management examination administered by the CNG Subdivision. The CNG Subdivision shall not issue or renew a license unless the designated representative has passed this examination.

(c) The licensee shall notify the CNG Subdivision in writing upon termination of its representative of record and shall at the same time designate a replacement by submitting a new CNG Form 1001, Application for License.

(d) The licensee must cease operations if, at the termination of its representative, there is no other qualified representative of the licensee acknowledged and recorded by the CNG Subdivision at its Austin office. The licensee may not resume

operation until such time as it has a qualified representative.

(e) A licensee may have more than one representative.

§13.72. Designation and Testing of Operations Supervisors.

(a) The Compressed Natural Gas (CNG) Subdivision shall designate whether a site is an outlet for the purpose of this subchapter.

(b) A licensee maintaining more than one outlet shall designate a person as operations supervisor at each outlet. The operations of the licensee at the outlet may not commence or continue when the operations supervisor has not passed the management examination as administered by the CNG Subdivision.

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

(d) The operations supervisor shall be directly responsible for actively supervising CNG operations of the licensee at the designated outlet.

§13.73. Examination of Employees.

(a) No individual may work or be employed in any capacity which requires contact with compressed natural gas (CNG) or CNG systems, until that person has submitted to and passed a CNG Subdivision examination which measures the competency of that person to perform the CNG related activities anticipated. This section applies to all licensees and their employees who perform CNG related activities. This section also applies to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this chapter and includes any employee of such an ultimate consumer if that employee drives or in any way operates such a CNG transport. Driving a motor vehicle powered by CNG does not in itself constitute CNG related work. The fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees does not in itself constitute CNG related work.

(b) Notwithstanding the requirements of subsection (a) of this section, a licensee or consumer may employ an individual as a trainee for a period not to exceed 45 days, without that person having passed the necessary examination. During this training period, however, the trainee must be directly and individually supervised at all times by an individual who has passed the CNG Subdivision examination for the areas of work being performed by the trainee. In addition, the licensee or consumer is responsible for ensuring that a CNG Form 1016, Application for Examination, is on

file with the Compressed Natural Gas Subdivision for each employee in training. No trainee may perform any work while unsupervised, if such work involves CNG or CNG systems.

(c) A trainee who attempts to pass the CNG Subdivision examination, and who fails the examination, shall cease to perform any CNG related activities covered by the examination failed. A trainee who has been in training for a total period of 45 days, in any combination or for any number of employers, shall cease to perform any CNG related activities. A trainee who continues to work in violation of this section may be held responsible for its violation. An employer who employs an individual in violation of this section may be held responsible for its violation.

(d) Any employee of an ultimate consumer or public employee of the State of Texas, or state political subdivision must be properly supervised and trained in the maintenance and storage of CNG and CNG systems, and in the operation of equipment during the filling of and dispensing from storage containers, and in the protection of containers and equipment against mechanical injury or against tampering by unauthorized persons.

§13.74. Examination Fees.

(a) Each applicant shall pay to the Compressed Natural Gas (CNG) Subdivision in advance a nonrefundable examination fee for each required examination. The fee for all categories of management examination shall be \$25 per exam. The fee for all employee examinations shall be \$10 per exam. If an applicant fails an examination, the full examination fee shall be charged for each subsequent examination.

(b) Qualified employee status must be renewed on a yearly basis for those years in which reexamination or seminar participation is not required. In order for an individual who is qualified to maintain status as a qualified employee, a renewal fee of \$10 must be paid annually, on or before the day of the year on which the individual was qualified. Failure to timely renew qualified status will require the employee to pay another examination or seminar fee and to be reexamined or to participate in another seminar.

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

Issued in Austin, Texas on April 2, 1990.

TRD-9003593

Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: May 14, 1990

◆ ◆ ◆
Subchapter E. Classification,
Registration, and Examination

- 16 TAC §§13.81, 13.84, 13.86,
13.88-13.90, 13.95-13.99

(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 to repeal and replace Subchapters A-E of Chapter 13 concerning the regulations for compressed natural gas and proposes to add new Subchapter F. The commission proposes the repeal and replacement of these subchapters due to the extensive changes in the subchapter sequence and regapping of section numbers. The majority of the sections are changing to permit further clarification. However, the spirit and intent of the sections will remain the same.

Certain portions of the section were drafted in whole or in part from the 1988 Edition of National Fire Protection Association (NFPA) pamphlet Number 52, **Compressed Natural Gas (CNG) Vehicular Fuel Systems**.

The commission proposes the repeal of §§13.81, 13.84, 13.86, 13.88-13.90, 13.95-13.99 and proposes new §§13.131-13.142, concerning engine fuel systems and the temperature of system components in Subchapter E. Section 13.132 will establish a more reasonable and suitable range of temperatures for the service of components in engine compartments. Additionally, the new range in temperatures will assure uniformity with current national temperature requirements for compressed natural gas system components.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Petru also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals will be an increase in compliance due to the less stringent temperature requirements and the more clearly understandable rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the Texas Register.

The repeals are proposed under the Texas Natural Resources Code, §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards concerning the compressed natural gas industry and its operations which will protect the health, safety, and welfare of the general public.

§13.81. Licensing.

§13.84. Insurance Requirements.

§13.86. Limitation/Avoidance of Licensee Liability.

§13.88. Changes in Ownership and/or Form of Dealership.

§13.89. Dealership Name Change.

§13.90. Registration of CNG Transport Units.

§13.95. Examination and Notification Generally.

§13.96. Examination of Representative.

§13.97. Designation and Testing of Operations Supervisors.

§13.98. Examination of Employees.

§13.99. Examination Fees.

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

Issued in Austin, Texas on April 2, 1990.

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Crit Payne
Assistant Director, Legal
Division-General Law
Texas Railroad
Commission of Texas

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

◆ ◆ ◆
Subchapter D. CNG Compression, Storage, and Dispensing Systems

- 16 TAC §§13.91-13.107

The new sections are proposed under the Texas Natural Resources Code §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards concerning the compressed natural gas industry and its operations which will protect the health, safety, and welfare of the general public.

§13.91. Applicability. This subchapter

applies to the design, construction, installation, and operation of cylinders, pressure vessels, compression equipment, buildings and structures, and associated equipment used for storage and dispensing of compressed natural gas (CNG) as an engine fuel in fleet and public dispensing operations.

§13.92. System Component Qualification. System components shall comply with the appropriate provisions in Subchapter B of this title (relating to General Rules for Compressed Natural Gas and Equipment Identification).

§13.93. General.

(a) Equipment related to a compression, storage, or dispensing installation shall be protected to minimize the possibilities of unauthorized tampering by fencing and/or locks. Guardrails shall be used to protect such equipment from physical damage.

(1) Fencing.

(A) Fencing material shall be chain link type with wire no smaller than 12-1/2 American wire gauge 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 25 feet of the enclosed CNG transfer system(s) or compressed natural gas (CNG) cylinder(s).

(D) All fenced enclosures shall have at least one gate suitable for ingress and egress. All gates shall be locked whenever the area enclosed is unattended.

(E) A minimum clearance of two feet shall be maintained between the fencing and the compression equipment, cylinder cascade(s), or container(s), and the entire dispensing system(s).

(F) Fencing which is located more than 25 feet from any point of a CNG dispensing system(s), cylinder cascade(s), container(s), or compression equipment is designated as perimeter fencing. If a CNG dispensing system(s), cylinder cascade(s), container(s), or compression equipment is located inside perimeter fencing and is subject to vehicular traffic, it shall be protected against damage by the use of guardrails and guard posts, installed according to the specifications set forth in paragraph (2) of this subsection.

(G) The cylinder cascade containers, compression equipment, and the entire dispensing system must be completely enclosed by fencing.

(2) Guardrails.

(A) Where fencing is not used to protect the installation as provided in paragraph (1) of this subsection, then valve locks, electric control locks, or other suitable means shall be placed to prevent unauthorized withdrawal of CNG.

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

(C) Horizontal guardrailing shall be secured between the vertical guard posts. It shall be no less than three-inch Schedule 40 steel pipe, or material with equal or greater strength. The railing shall be welded or bolted to the guard posts.

(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 a CNG compression equipment, cylinder cascade(s), container(s), or dispensing equipment, or located at 45 degree angles to the corners of the bulkhead.

(F) Guardrail protection shall extend at least 24 inches beyond any part of the CNG compression equipment, cylinder cascade(s), container(s), or dispensing equipment which is exposed to vehicular traffic.

(G) The compression equipment, cylinder cascade(s), container(s), or dispensing equipment must be completely enclosed by guardrails.

(b) Control devices shall be installed so that internal or external icing or condensate formation will not cause malfunction.

(c) Vehicles shall not be considered a source of ignition with respect to the provisions in this chapter. Exception: Vehicles containing fuel-fired equipment (e.g., recreational vehicles and catering trucks) shall be considered a source of ignition unless this equipment is shut off completely before entering an area in which ignition sources are prohibited.

§13.94. Location of Installations.

(a) Compressed natural gas (CNG) compression, storage, and dispensing shall be located and conducted outdoors.

(b) A facility in which CNG compression, storage, and dispensing equipment is sheltered by a canopy-type structure constructed of noncombustible materials which has at least one side open and a roof designed for ventilation and dispersal of escaped gas shall be regarded as in compliance, provided that a ventilation space 12 inches wide is provided along the full length at the top of three sides.

(c) Compressed natural gas (CNG) storage cylinders charged with CNG not connected for use shall be located outdoors in a fenced, protected area. Each cylinder must be equipped with a valve cap or guard securely tightened.

(d) Compression, storage, and dispensing equipment shall be located aboveground, not beneath electric transmission lines, a minimum of 10 feet from the nearest building or line of adjoining property. Exception: Upon approval by the Railroad Commission of Texas, such equipment may be located at lesser distance from buildings or walls constructed of concrete or other noncombustible materials, but at least 10 feet from any building openings.

(e) Compression, storage, and dispensing equipment shall be located not less than 10 feet from the nearest public street or sidewalk line, and at least 50 feet from the nearest rail of any railroad main track.

(f) A clear space of at least three feet shall be provided for access to all valves and fittings of multiple groups of cylinders.

(g) Readily ignitable material shall not be permitted within 10 feet of any stationary cylinders.

(h) The minimum separation between cylinders and aboveground tanks containing flammable or combustible liquid shall be 20 feet.

(i) During fueling operations, the point of transfer shall be located at least 10 feet from any building, manufactured housing, public sidewalk, highway, street, or road, and at least 10 feet from storage cylinders or aboveground tanks containing flammable or combustible liquids. Exception: Upon approval by the Railroad Commission of Texas, the point of transfer may be located at a lesser distance from buildings or walls constructed of concrete or other noncombustible materials, but at least 10 feet from any building openings.

§13.95. Installation of Cylinders and Cylinder Appurtenances.

(a) Storage cylinders shall be installed aboveground on stable, noncombustible foundations.

Horizontal cylinders shall have no more than two points of support longitudinally. Where flooding may occur, they shall be securely anchored to prevent floating.

(b) Cylinders shall be protected by painting or other equivalent means where necessary to inhibit corrosion. Horizontally-installed cylinders shall not be in direct contact with each other.

(c) All cylinders other than composite cylinders shall be painted white.

(d) Adequate means shall be provided to prevent the flow or accumulation of flammable or combustible liquids under cylinders, such as by grading, pads, or diversion curbs.

§13.96. Installation of Pressure Relief Devices.

(a) Pressure relief valves shall be so arranged that they will discharge to a safe area, and so that escaping gas will not impinge upon buildings, other equipment, or areas that could be occupied by the public.

(b) A pressure relief device shall be provided in the transfer system to prevent overpressure in the vehicle.

§13.97. Installation of Pressure Regulators. Regulators shall be designed, installed, or protected so their operation will not be affected by the elements (freezing rain, sleet, snow, ice, mud, or debris). The protection may be integral with the regulator.

§13.98. Installation of Pressure Gauges. Gauges shall be installed to indicate compression discharge pressure, storage pressure, and fuel supply cylinder fill pressure.

§13.99. Installation of Piping and Hoses.

(a) Piping and tubing shall be installed with adequate provisions for expansion, contraction, jarring, vibration, and settling. Exterior piping may be either buried or installed aboveground and shall be well supported and protected against mechanical damage. Unless otherwise protected, underground piping shall be buried no less than 18 inches below the surface of the ground. Underground piping shall be protected from corrosion in compliance with presently recognized practices. Uncoated threaded or socket welded joints shall not be used in piping in contact with soil or where internal or external crevice corrosion may occur.

(b) Natural gas shall not be vented to the atmosphere unless the vent leads to a safe point of discharge. A vent pipe or stack shall have the open end suitably protected to prevent entrance of rain, snow, and solid

material. Vertical vent pipes and stacks shall have provisions for drainage.

(c) The use of hose in an installation is limited to:

- (1) a vehicle fueling hose;
- (2) an inlet connection to compression equipment;
- (3) a section of metallic hose not exceeding 36 inches in length in a pipeline to provide flexibility where necessary. Each section shall be so installed that it will be protected against mechanical damage and be readily visible for inspection. The manufacturer's identification shall be retained in each section.

§13.100. Testing.

(a) Piping, tubing, hoses, and hose assemblies shall be leak tested after assembly to prove free from leaks at a pressure equal to at least the normal operating pressure of that portion of the system.

(b) Pressure relief valves shall be tested at least every five years.

§13.101. Installation of Emergency Shutdown Equipment.

(a) Manually operated cylinder valves shall be provided for each cylinder.

(b) A manually operated shutoff valve shall be installed in a manifold as close to a cylinder or group of cylinders as practical.

(c) Where excess flow check valves are used, the closing flow shall be less than the flow rating of the piping system which would result from a pipeline rupture between the excess flow valve and the equipment downstream of the excess flow check valve.

(d) The fill line on storage cylinders shall be equipped with a back flow check valve to prevent discharge of natural gas from the cylinder in case of line, hose, or fittings rupture.

(e) A means for emergency manual gas shutdown of the compression equipment shall be provided at the dispensing area and also at a location remote from the dispensing area.

(f) Emergency gas shutdown devices shall be distinctly marked for easy recognition with a permanently affixed, legible sign with two inch red lettering on a white background.

(g) Break away protection shall be provided in a manner such that, in the event of a pull away, natural gas will cease to flow at any separation.

§13.102. Installation of Electrical Equipment.

(a) Electrical equipment located

within 15 feet of any compressor, cascade, or dispensing equipment shall be installed in accordance with the National Electrical Code (NEC) for Class 1, Group D, Division 1 locations. The classified area shall not extend beyond an unpierced wall, roof, or vapor tight partition.

(b) Electrical equipment installed on internal combustion engines for stationary installations shall comply with NEC for Class 1, Group D, Division 2 locations.

§13.103. Stray or Impressed Currents and Bonding.

(a) When stray or impressed currents are used or may be present on dispensing systems (such as cathodic protection), protective measures to prevent ignition shall be taken in accordance with **Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents, American Petroleum Institute RP 2003.**

(b) Static protection is not required when compressed natural gas (CNG) is loaded or unloaded by conductive or non-conductive hose, flexible metallic tubing, or pipe connections where both halves of the metallic couplings are in contact.

§13.104. Operation.

(a) A cylinder shall not be charged in excess of the maximum allowable working pressure at normal temperature for that container. Department of Transportation (DOT) cylinders shall be charged in accordance with DOT regulations. DOT cylinders shall not be subjected to pressure in excess of 125% of the marked service pressure even if cooling it settles to the marked service pressure.

(b) A fuel supply cylinder shall not have a settled pressure above the working pressure stamped on the cylinder and displayed on a label near the filling connection, corrected for the ambient temperature at time of filling.

(c) Compressed natural gas (CNG) dispensing systems shall be equipped to automatically stop fuel flow when a fuel supply cylinder reaches the temperature corrected fill pressure.

(d) The transfer of CNG into a fuel supply cylinder shall be performed by a person qualified as having performed the transfer operation at least three full cycles under supervision and having competence in initiating emergency procedures. This person shall be responsible for verifying working pressure and cylinder retest-date.

(e) When CNG is being transferred to or from a motor vehicle, the engine shall be stopped.

(f) During the transfer of CNG to or from cargo vehicles, the hand or emergency brake of the vehicle shall be set and chock blocks used to prevent rolling of

the vehicle.

(g) Bleed connections shall be provided in transfer systems to permit depressurizing before disconnecting the line. These bleed connections shall lead to a safe point of discharge.

(h) Compressed natural gas (CNG) shall not be used to operate any device or equipment which has not been designed or properly modified for CNG service.

(i) Sources of ignition shall not be permitted within 10 feet of any filling connection during a transfer operation.

(j) Readily visible warning signs with the words stop motor, no smoking, no open flames permitted, flammable gas shall be posted at the dispensing station and compressor areas. Lettering shall be at least 1/2 inch high. The location of signs shall be determined by on site conditions but shall be visible from each point of transfer.

(k) All retail CNG installations shall be lettered in letters not less than four inches high to indicate the name of the licensee operating the installation. Each retail dispensing area shall be lettered compressed natural gas with CNG as an acceptable substitute in letters not less than four inches in height.

§13.105. Fire Protection. A portable fire extinguisher having a rating not less than 20-B:C shall be provided at the dispensing area and at the compressor.

§13.106. Maintenance.

(a) Cylinders and their appurtenances, piping systems, compression equipment, controls, and devices shall be maintained in proper operating condition.

(b) After the original installation, vehicle fueling hoses shall be examined visually at such intervals as are necessary to assure that they are safe for use. Hoses shall be tested for leaks with non-ammonia soap solution or equivalent leak detection equipment at least annually and unsafe leakage shall be a reason for rejection.

(c) While in transit, fueling hose and flexible metal hose on a cargo vehicle to be used in a transfer operation, including their connections, shall be depressurized and protected from wear and injury.

(d) Pressure relief valves shall be maintained in proper operating condition.

(e) As a precaution to keep pressure relief devices in reliable operating condition, care shall be taken in the handling or storing of compressed natural gas (CNG) cylinders to avoid damage. Care shall also be exercised to avoid plugging by paint or other dirt accumulation of pressure relief device channels or other parts which could interfere with the functioning of the device.

§13.107. *Dispenser Accuracy.* Each retail compressed natural gas (CNG) dispenser shall comply with the applicable weights and measures requirements of the Texas Department of Agriculture, concerning dispensing accuracy.

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

Issued in Austin, Texas on April 2, 1990.

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Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

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

◆ ◆ ◆
• 16 TAC §§13.131-13.142

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards concerning the compressed natural gas industry and its operations which will protect the health, safety, and welfare of the general public.

§13.131. *Applicability.*

(a) This subchapter applies to the design, installation, inspection, and testing of compressed natural gas (CNG) fuel supply systems for vehicular internal combustion engines.

(b) Installation of each component of the system shall be made in conformance to the written instructions provided by the manufacturer.

§13.132. *System Component Qualification.*

(a) System components shall comply with the appropriate provisions in Subchapter B of this chapter (relating to General Rules for Compressed Natural Gas and Equipment Qualification).

(b) Components in the engine compartment shall be suitable for service over a range of temperatures of -40 degrees Fahrenheit to 250 degrees Fahrenheit. All other components shall be suitable for service over a range of -40 degrees Fahrenheit to 180 degrees Fahrenheit.

(c) Fuel-carrying components shall be labeled or stamped with the following:

- (1) the manufacturer's name or symbol;
- (2) the model designation;
- (3) the design working pressure;
- (4) direction of fuel flow when necessary for correct installation; and

(5) capacity or electrical rating as applicable. Exception: This subsection does not apply to service valves, tubing, and fittings.

§13.133. *Installation of Fuel Supply Cylinders.*

(a) Fuel supply cylinders on vehicles other than school buses or other vehicles used in public transportation, may be located within, below, or above the driver or passenger compartment, provided all connections to the cylinders are external to, or sealed and vented from these compartments.

(b) Fuel supply cylinders on school buses and other public transportation vehicles shall not be located above or within the driver or passenger compartment.

(c) Each fuel supply cylinder shall be mounted in a location to minimize damage from collision. No part of a cylinder or its appurtenances shall protrude beyond the sides or top of the vehicle at the point where it is installed.

(d) The fuel system shall be installed with as much road clearance as practical, but not less than the minimum road clearance of the vehicle when loaded to its gross vehicle weight rating. This minimum clearance shall be measured from the lowest part of the fuel system.

(e) No portion of a fuel supply cylinder or cylinder appurtenance shall be located ahead of the front axle or behind the rear bumper mounting face of a vehicle. Cylinder valve shall be protected from physical damage using the vehicle structure, valve protectors, or a suitable metal shield.

(f) Each cylinder bracket shall be secured to the vehicle body, bed, or frame with Grade A, 1/2 inch bolts (or better), three-inch diameter washers, or a solid back-up plate, and self-locking nuts to prevent damage from road hazards, slippage, loosening, or rotation and shall be capable of withstanding a static force in any direction of eight times the weight of a fully pressurized cylinder.

(g) Each fuel supply cylinder in the bracket shall be secured to its cradle with Grade 5, 1/2-inch bolts (or better), and self-locking nuts and shall be capable of withstanding a static force applied in any direction eight times the weight of the fully pressurized cylinder.

(h) The cylinder weight shall not be supported by the outlet, service valves, manifolds, or other fuel connections.

(i) Fuel supply cylinders located less than eight inches from the exhaust system shall be shielded against direct heat.

(j) The mounting system shall minimize fretting corrosion between the container and the mounting system by means of rubber insulators or other suitable

means.

(k) Fuel supply cylinders shall not be installed so as to adversely affect the driving characteristics of the vehicle.

§13.134. *Installation of Venting Systems.*

(a) All pressure relief devices and pressure-carrying components installed within a closed compartment shall be vented to the outside of the vehicle in a suitable location.

(b) The venting system for the discharge of pressure relief devices (pressure relief device channels) shall be constructed of metallic tubing with threaded, compression, or flare fittings and shall be secured at the outer end.

(c) The vent or vents for the venting system shall not exit into a wheel well.

(d) A vent shall not restrict the operation of a cylinder pressure relief device or pressure relief device channel.

§13.135. *Installation of Piping.*

(a) Manifolds connecting fuel cylinders shall be fabricated to minimize vibration and shall be installed in a protected location or shielded to prevent damage from unsecured objects.

(b) A pipe thread jointing material impervious to the action of the compressed natural gas (CNG) used in the system shall be applied to all male pipe threads prior to assembly.

(c) Piping and fittings shall be clear and free from cutting or threading burrs, scales, and the ends of all piping shall be reamed.

(d) Where necessary to prevent abrasion, supply line passing through a panel shall be protected by grommets or similar devices such as bulkhead fittings, which shall snugly fit both the supply lines and the holes in the panel.

(e) Supply lines shall have a minimum clearance of eight inches from the engine exhaust system or shall be shielded against direct heat.

(f) Supply lines shall be mounted, braced, and supported to minimize vibration and protected against damage, corrosion, or breakage due to strain or wear. A supply line shall be supported at least every 24 inches.

(g) A bend in piping or tubing is prohibited where such a bend weakens the pipe or tubing. Bends shall be made by bending tools designed for this purpose.

(h) A joint or connection shall be located only in an accessible location.

§13.136. *Installation of Valves.*

(a) A manually operated cylinder

service valve shall be installed on each fuel cylinder.

(b) In addition to the cylinder service valve, a manual shutoff valve shall be installed in an accessible location which will permit isolation of the cylinder(s) from the remainder of the fuel system. Manual shutoff valves on school buses shall be installed on the exterior and as near as possible to the front entrance for immediate accessibility to the driver in case of emergency.

(c) The valve shall be securely mounted and shielded or installed in a protected location to minimize damage from vibration and unsecured objects.

(d) The valve location shall be marked with the words Manual Shutoff Valve. Decals or stencils are acceptable.

(e) A means shall be provided in the system which automatically prevents the flow gaseous fuel to the engine when the engine is not running even if the ignition is in an on position.

(f) When multiple fuel systems are installed on the vehicle, automatic valves shall be provided, as necessary, to shut off the fuel not being used.

(g) The fueling system shall be equipped with a backflow check valve which will prevent the return of gas from the cylinder to the filling connection.

§13.137. Installation of Pressure Gauges.

(a) A pressure gauge located within a driver or passenger compartment shall be installed in such a manner that no gas will flow through the gauge in the event of failure. Such gauge when installed shall be readily visible from the driver's seat.

(b) A pressure gauge installed outside a driver or passenger compartment shall be equipped with a limiting orifice, a shatter-proof dial lens, and a body relief.

(c) Gauges shall be securely mounted, shielded, and installed in a protected location to prevent damage from vibration and unsecured objects.

§13.138. Installation of Pressure Regulators.

(a) An automatic pressure reducing regulator(s) shall be installed to reduce the fuel cylinder pressure to a level consistent with the working pressure required by the gas-air mixer.

(b) Means shall be provided to prevent regulator malfunctions due to refrigeration effects.

(c) Regulators shall be installed so that their weight is not placed on, or supported by, the attached gas lines.

§13.139. Installation of Fueling Connec-

tion. A fueling connection receptacle complying with §13.34 of this title (relating to Vehicle Fueling Connection) shall be installed in each vehicle.

§13.140. Labeling.

(a) A vehicle equipped with a compressed natural gas (CNG) fuel system shall bear a durable label, readily visible, and located at the fueling connection receptacle.

(b) The label shall include the following:

- (1) CNG fueled vehicle;
- (2) system working pressure;
- (3) installer's name or company;
- (4) cylinder retest date(s) (where applicable); and

(5) total cylinder water volume in cubic inches.

(c) Each vehicle shall be identified with a weather-resistant diamond-shaped label located on an exterior vertical or near vertical surface on the lower right rear of the vehicle (on the trunk lid of a vehicle so equipped, but not on the bumper of any vehicle), inboard from any other markings. The label shall be approximately 4-3/4 inches by 3-1/4 inches. The marking shall consist of a border and the letters CNG (one inch minimum height centered in the diamond) of silver or white reflective luminous material on a blue background.

§13.141. System Testing.

(a) The complete assembly shall be leak tested using natural gas or inert gas (carbon dioxide or nitrogen, or a mixture of these).

(b) After installation, every connection shall be checked with a non-ammonia soap solution or a leak detector instrument after the equipment is connected and pressurized to its working pressure.

(c) If the completed assembly is leak tested with natural gas, the testing shall be done under adequately ventilated conditions.

(d) When a CNG cylinder is involved in an accident or fire causing damage to the cylinder, the cylinder shall be replaced or removed and returned to a currently licensed Category 1 licensee (manufacturer) or Category 4 licensee (tester) to be inspected and retested in accordance with the originally manufactured specifications. Before being returned to service, a CNG Form 1008, Manufacturer's Report of Retest or Repair, shall be sent to the CNG Subdivision of the LP-Gas Division.

(e) When a vehicle is involved in an accident or fire causing damage to any part of the CNG fuel system, the system shall be retested before being returned to

service.

§13.142. Maintenance and Repair.

(a) Damaged supply lines shall be replaced, not repaired.

(b) The owner or user or both shall maintain all cylinders, cylinder appurtenances, piping systems, venting systems, and other components in a safe condition.

(c) As a precaution to keep pressure relief devices in reliable operating condition, care shall be taken in the handling or storing of compressed natural gas (CNG) cylinders to avoid damage. Care shall also be exercised to avoid plugging by paint or other dirt accumulation of pressure relief device channels or other parts which could interfere with the functioning of the device.

(d) No repair or alteration will be permitted on pressure relief 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 April 2, 1990.

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Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

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For further information, please call: (512) 463-7152

Subchapter F. Residential Fueling Facilities

• 16 TAC §§13.181-13.194

The Railroad Commission of Texas proposes to repeal and replace Subchapters A-E of Chapter 13 concerning the regulations for compressed natural gas and proposes to add new Subchapter F. The commission proposes the repeal and replacement of these subchapters due to the extensive changes in the subchapter sequence and regapping of section numbers. The majority of the rules are changing to permit further clarification. However, the spirit and intent of these rules will remain the same.

Certain portions of these rules were drafted in whole or in part from the 1988 Edition of National Fire Protection Association (NFPA), pamphlet Number 52, Compressed Natural Gas (CNG) Vehicular Fuel Systems.

The commission proposes new §§13.181-13.194 concerning residential fueling facilities in Subchapter F. The new sections proposed under this subchapter will establish the necessary safety requirements for residential fueling facilities.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implication for state or local government as a result of

enforcing or administering the sections.

Mr. Petru also has determined that for each year the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be an increase in safety afforded to the general public. There will be no effect on small businesses as a result of enforcing the section. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Compressed Natural Gas Subdivision, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*.

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the Compressed Natural Gas industry and its operations which will protect the health, safety, and welfare of the general public.

§13.181. Applicability.

(a) This subchapter applies to the design, construction, installation, and operation of a residential fueling facility as defined in §13.2 of this title (relating to Definitions).

(b) The provisions of this subchapter shall apply to all residential refueling installations.

§13.182. Scope.

(a) A residential fueling facility is an assembly used for the compression and delivery of natural gas into vehicles with its associated equipment and piping.

(b) The capacity of a residential fueling facility shall not exceed five surface cubic feet per minute (SCFM) of natural gas. Storage of compressed natural gas (CNG), except in the vehicle fuel supply cylinder, is prohibited.

§13.183. *System Component Qualifications.* System components shall comply with the appropriate provisions in Subchapter B of this chapter (relating to General Rules for Compressed Natural Gas Equipment Qualifications).

§13.184. General.

(a) All equipment related to a residential fueling facility installation shall be suitably packaged and located to protect from physical damage and vandalism. This requirement may be met by enclosing the compressor package in an enclosure, similar to a central air conditioner.

(b) All equipment related to a residential fueling facility installation shall

be designed for the pressure, temperature, and service expected.

(c) Vehicles shall be considered as unclassified electrically with respect to the National Electrical Code (NEC), Article 500.

(d) Compressed natural gas (CNG) shall not be vented to the atmosphere under normal operation.

§13.185. Installation.

(a) All such residential refueling installations shall be installed in accordance with the Regulations for Compressed Natural Gas (CNG).

(b) The primary concern for the location of the refueling system shall be based solely upon its safety. Compressed natural gas (CNG) compression and dispensing must be located and conducted outdoors.

(c) All residential fueling facility equipment shall be installed in accordance with the equipment manufacturer's instructions.

(d) The residential fueling facility shall have a nameplate marked with minimum and maximum gas inlet pressure and flow rate, gas outlet maximum pressure, and electrical requirements.

§13.186. *Outdoor Installations.* The residential fueling facility shall be installed on a firm noncombustible support to prevent undue stress on piping and conduit.

§13.187. *Installation of Pressure Relief Valves.* Pressure relief valves shall be vented upwards to a safe area so as not to impinge on buildings, other equipment, or areas that could be occupied by the public, i.e., sidewalks. The discharge vent line shall be able to withstand the pressure from the relief vapor discharge when the relief valve is in the full open position and shall permit sufficient pressure relief relieving capacity. A spring loaded or counter balanced rain cap shall be provided on the discharge vent line. The rain cap shall permit the pressure relief valve to operate at sufficient relieving capacity.

§13.188. *Installation of Pressure Gauges.* For measurement and test purposes, pressure gauges may be installed, but are not required.

§13.189. *Pressure Regulation.* A residential fueling facility shall be equipped to automatically stop fuel flow when container(s) reach temperature corrected fill pressure.

§13.190. Piping and Hose.

(a) All piping and hose from the

outlet of the compressor shall be supplied as part of the residential fueling facility.

(b) The use of hose in an installation is limited to:

(1) a vehicle refueling hose; the maximum length fueling hose is 12 feet and shall be supported;

(2) An inlet connection to compression equipment not exceeding 36 inches. This connector, if used, shall be supplied as part of the residential fueling facility;

(3) a section of metallic hose not exceeding 36 inches in length in a pipeline to provide flexibility where necessary. Each section shall be so installed that it will be protected against mechanical damage and be readily visible for inspection. The manufacturer's identification shall be retained in each section;

(4) hose used for pressure relief device channels may exceed 36 inches.

(c) The number of connections shall be minimized in order to minimize the possibility of leakage in the residential fueling facility.

(d) Bleed connections shall be provided in transfer systems to permit depressurizing the line before disconnection. These bleed connections shall be vented to a safe point of discharge.

§13.191. *Testing.* All piping and tubing shall be tested after assembly to prove free from leaks at a pressure equal to the maximum working pressure of that portion of the system.

§13.192. Installation of Emergency Shutdown Equipment.

(a) A residential fueling facility shall be equipped with emergency manual shutdown of the gas supply and electric power. The emergency electrical switch shall be at least five feet from the residential fueling facility and in view of the residential fueling facility.

(b) Break-away protection shall be provided in a manner such that, in the event of a pull-away, natural gas will cease to flow at any separation.

§13.193. Operation.

(a) A residential fueling facility shall be operated in accordance with the manufacturer's instructions.

(b) A fuel supply cylinder shall not be charged in excess of its maximum allowable working pressure at normal temperature. Department of Transportation (DOT) cylinders shall be charged in accordance with DOT regulations.

(c) When compressed natural gas is being transferred to a motor vehicle, the

engine shall be stopped.

§13.194. Maintenance and Inspection.

(a) All residential fueling facility equipment shall be inspected and maintained in accordance with the manufacturer's instructions.

(b) After installation, all hoses shall be examined visually. Hoses that are kinked or worn shall be replaced.

(c) All safety relief valves shall be maintained in proper operating condition, in accordance with manufacturer's recommendation.

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

Issued in Austin, Texas, on April 2, 1990.

TRD-9003588 Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 463-7152

◆ ◆ ◆
**Part II. Public Utility
Commission of Texas**
Chapter 23. Substantive Rules
Quality of Service

◆ ◆ ◆
• 16 TAC §23.61

The Public Utility Commission of Texas proposes an amendment to §23.61, concerning the availability of reseller credits. The amendment will ensure that the reseller credits will be available in those instances only when the reselling interexchange carrier obtains its MTS, MTS-type, WATS, or WATS-type service from an interexchange carrier that paid originating carrier common line charges and interexchange carrier access charges on the traffic that is to be resold. The grandfather provisions contained in subsection (m)(2) are being eliminated, pursuant to the commission's February 20, 1990, order in Docket Numbers 8218 and 8585.

Stephen F. Morris, assistant general counsel, 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. Morris 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 is uniformity in the assessment of access charges by local exchange carriers to interexchange carriers. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposal may be submitted to Mary Ross McDonald, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, within 30 days after publication.

The amendment is proposed 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.

§23.61. Telephone Utilities.

(a)-(1) (No change.)

(m) Reseller credits. No local exchange company shall grant or otherwise allow reseller credits to an interexchange carrier, including a specialized communication common carrier or a reseller of communications, unless the reselling interexchange carrier obtains its MTS, MTS-type, WATS, or WATS-type service from an interexchange carrier that paid originating carrier common line charges and interexchange carrier access charges on the traffic that is to be resold. To be eligible for reseller credits, an interexchange carrier that is a reseller of communications may not obtain its MTS, MTS-type, WATS, or WATS-type services from an affiliated company.

(1) (No change.)

[(2) An interexchange carrier that does not otherwise qualify to receive reseller credits under this subsection may nonetheless receive reseller credits in any one month in an amount no greater than the largest amount of such monthly credits obtained by that interexchange carrier during calendar year 1988.]

(2)[(3)] As used in this section, reseller credits shall include:

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

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

Issued in Austin, Texas, on April 4, 1990.

TRD-9003515 Mary Ross McDonald
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: May 14, 1990

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

**TITLE 22. EXAMINING
BOARDS**

**Part IX. Texas State
Board of Medical
Examinees**

**Chapter 175. Schedule of Fees
and Penalties**

• 22 TAC §175.1

The Texas State Board of Medical Examiners proposes an amendment to §175.1, concerning the schedule of fees. The amendment is proposed to reflect removal of the legislatively-imposed temporary fee which had been placed on certain professions, including physicians, during a special session. That temporary fee was not continued by the legislature.

Ivan Hurwitz, director of administrative services, 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 sections is in effect will be an estimated loss of \$4,620,000. There will be no effect on local government for the first five-year period the section is in effect.

There will be no local employment impact.

Jean Davis, administrative assistant, 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 the fee schedule as it relates to amounts to be charged. There will be no effect on small businesses as a result of enforcing the section. 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 Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing is expected 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.

§175.1. Fees. The board shall charge the following fees:

- (1) annual registration—\$92 [202];
- (2) (No change.)
- (3) processing an application for complete or partial licensure examination (includes one FLEX and jurisprudence examination fee)—\$500 [610];
- (4) processing an application for licensure by reciprocity (includes one jurisprudence examination fee)—\$500 [610];
- (5)-(8) (No change.)
- (9) reinstatement after

cancellation for cause—\$150 [260];

(10)-(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 April 4, 1990.

TRD-9003543

G. V. Brindley, Jr., M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 452-1078

Chapter 185. Physician Assistants

• 22 TAC §§185.1-185.12

(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 §§185.1-185.12, concerning physician assistants. The chapter is being reconstructed to reflect compliance with streamlining of the physician assistant application procedure and with recently enacted legislation.

Ivan Hurwitz, director of administrative services, 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.

Jean Davis, administrative assistant, 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 by omission. There will be no effect on small businesses as a result of enforcing the repeals. 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 Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held at a later date, probably in May.

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.

§185.1. Purpose.

§185.2. Definitions.

§185.3. Application for Approval to Super-

visé.

§185.4. Grounds for Denial or Revocation of Approval.

§185.5. Notification of Termination of Employment.

§185.6. Consent and Identification.

§185.7. Supervision of Performance.

§185.8. Tasks Permitted to be Delegated to a Physician Assistant.

§185.9. Tasks Not Permitted to be Delegated to a Physician Assistant.

§185.10. Employment Guidelines.

§185.11. Enforcement.

§185.12. Exceptions.

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

Issued in Austin, Texas, on April 4, 1990.

TRD-9003548

G. V. Brindley, Jr., M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 452-1078

• 22 TAC §§185.1-185.14

The Texas State Board of Medical Examiners proposes new §§185.1-185.14, concerning physician assistants. The proposed new sections replace those being simultaneously proposed for repeal and reflect streamlining of the physician assistant application procedure. Further, with the legislature's adoption of House Bill 18 last session, physician assistants and registered nurses have been authorized to complete presigned prescriptions for dangerous drugs under protocols or standing delegation orders. The board is required to adopt certain rules in that regard.

Ivan Hurwitz, director of administrative 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.

Jean Davis, administrative assistant, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the rules as they relate to the recently enacted legislation and its relation to health care provisions. There will be no effect on small businesses

as a result of enforcing the sections. 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 Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held at a future date.

The new sections are proposed under Texas Civil Statutes, Articles 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.

§185.1. Purpose. The purpose of these sections is to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified physician assistants where such delegation is consistent with the patient's health and welfare under standards of supervision which take into account the skill, training, and experience of the physician and physician assistant. The board recognizes that the delivery of quality health care requires expertise and assistance of many dedicated individuals in the allied health professions. These sections are not intended to, and shall not be construed to, restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of independent medical judgment to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. Nothing in these sections shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients.

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

Board—The Texas State Board of Medical Examiners.

Physician assistant, assistant, or P.A.—Refers specifically to a person who is a graduate of a physician assistant training program accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association or a person who has passed the examination given by the National Commission on the Certification of Physician's Assistants.

Supervising physician—Refers to the physician licensed by the board either as a doctor of medicine or doctor of osteopathic medicine who is assuming responsibility and legal liability for the services rendered by the physician assistant and who has been approved by the board to supervise a specific physician assistant.

§185.3. Application for Approval to Supervise. Approval by the board to supervise a particular physician assistant must be obtained by each proposed supervising physician by filing an application with the board on forms provided by said board, which shall include the following:

(1) the physician assistant's name, mailing address, date of birth, social security number, physician assistant's education, and certification by the National Commission on Certification of Physician's Assistants, if applicable;

(2) the supervising physician's name, practice address, and license number; the names and license numbers of alternate physicians who will supervise in the temporary absence of the primary supervising physician, if applicable; and the amount of time the physician assistant will be supervised (full time or part-time). The names of other physician assistants that are currently being supervised by the physician should also be included;

(3) a description by the said physician of his or her practice, including the nature thereof and the location and the way in which the assistant is to be utilized;

(4) a statement by the supervising physician that he or she has made adequate investigation of and is of the opinion that the proposed physician assistant is possessed of good moral character and is both mentally and physically able to perform as a physician assistant with competence; and that the supervising physician will exercise control and supervision of the physician assistant in accordance with these sections and retain professional responsibility for the care and treatment of his or her patients.

§185.4. Grounds for Denial or Revocation of Approval. The board may deny an application or withdraw its approval previously granted under §185.3 of this title (relating to Application for Approval to Supervise) for any of the following causes on the part of the physician assistant:

(1) conviction of a felony or any offense involving moral turpitude;

(2) use of drugs or any alcoholic beverage to the extent and in a manner dangerous to himself or herself, any other person, or the public, or to any extent that such use impairs his or her ability to perform the work of a physician assistant with safety to the public;

(3) impersonating a physician;

(4) allowing another person to use his or her certificate or letter of approval;

(5) using fraud, deception, or misrepresentation in the application for approval;

(6) willful, unauthorized communication of information received in personal confidence during his or her duties as a physician assistant;

(7) being grossly incompetent or grossly negligent in his or her duties as a physician assistant, or having demonstrated repeated and/or continuous negligence or irresponsibility in the performance of his or her duties;

(8) violating or aiding in the violation of any of these sections or of applicable provisions of §193.8 of this title (relating to Delegated Delivery of Health Care);

(9) working in the capacity of a physician assistant under a physician or other person who has not received the approval of the board to supervise a physician assistant, except as provided in §185.10 of this title (relating to Employment Guidelines);

(10) working as a physician assistant under the supervision of a physician whose approval to supervise has been suspended or revoked, or whose license to practice medicine has been revoked, canceled, or suspended by the board; or

(11) performing tasks beyond those permitted to be performed by a physician assistant as set forth in these sections or in §193.8 of this title (relating to Delegated Delivery of Health Care).

§185.5. Notification of Termination of Employment. If for any reason a physician assistant discontinues working for the supervising physician who has obtained board approval for such physician assistant, the supervising physician shall inform the board of such termination within 72 hours from the effective date thereof. Failure to notify the board of such termination may jeopardize future approvals by the board to such supervising physician.

§185.6. Consent and Identification.

(a) No physician assistant shall render general medical services nor any permitted tasks as hereinafter stated to any patient unless said patient has first been informed that such assistant is not a physician and that the patient has the right to insist at any time on seeing the supervising physician, and that services will be rendered by the physician assistant only after the patient has consented and documentation of said consent has been entered on the chart.

(b) In the locations of employment of the physician assistant (P.A.), patient education information must be plainly visible and easily available to all patients. This information should explain the meaning of the term "physician assistant" and the functions delegated to the physician

assistant.

(c) The physician assistant must wear an appropriate name tag, clearly visible, with the designation of Mr., Miss, Mrs., Ms., and the surname plus the term "physician assistant" so that he or she is not mistaken for a licensed physician.

§185.7. Supervision of Performance.

(a) The physician assistant augments the physician's data gathering abilities necessary to reach decisions and institute patient care plans. The physician assistant will not independently supplant the physician in the integration of medical data or in the decision-making process required to establish a final diagnosis and formulate a therapeutic plan.

(b) Generally, the adequacy of the physician's supervision of the physician assistant's performance shall be reckoned by standards which take into account the skill, training, and experience of both the supervising physician and the physician assistant. While not requiring continuous and constant physical presence of the supervising physician, the physician must make a personal review of historical and physical data on all patients and their problems. Supervision of the physician assistant's performance at a site serving a medically underserved population as that term is defined in the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) shall conform, at a minimum, to the requirements of §193.8 of this title (relating to Delegated Delivery of Health Care).

(c) On follow-up care, hospital visits, nursing home visits, attendance of the chronically ill at home, or in similar instances where a therapeutic regimen or other written protocol has been established by the physician, and in instances covered under standing delegation orders as authorized by §§193.1-193.5 of this title (relating to Purpose: Definitions; Exclusion from the Provisions of this Chapter; Scope of Standing Delegation Orders; and Enforcement), the physician assistant may check and record that patient's progress within the confines of the established regimen or protocol and report the patient's progress to the physician. After the physician assistant has consulted with the supervising physician, the physician assistant may initiate or change orders at the supervising physician's verifiable direction when a new problem arises or established parameters are exceeded. If the supervising physician orders treatment for a new problem or outside established parameters without seeing the patient, the supervising physician must undertake a personal review of the patient and his or her problem as soon as possible after ordering such treatment.

(d) The physician assistant may render emergency medical services without

supervision, pending the arrival of a responsible physician, in cases where immediate evaluation and treatment are necessary to avoid disability or death.

(e) Physician assistants may serve as assistants in surgery at the discretion of the supervising physician and when such duties are not in conflict with hospital by-laws or rules.

§185.8. Tasks Permitted to be Delegated to a Physician Assistant. Providing the supervising physician has satisfied himself or herself as to the ability and competence of the physician assistant, and with due regard for the safety of the patient and in keeping with sound medical practice, the physician assistant may perform such duties, which do not require the exercise of independent medical judgment, as are assigned by his or her supervising physician who is responsible for the performance of such tasks and who retains direct control and supervision of the physician assistant. At a site serving a medically underserved population, a physician may delegate authority to a physician assistant to perform acts permitted by and pursuant to the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) and §193.8 of this title (relating to Delegated Delivery of Health Care).

§185.9. Tasks Not Permitted to be Delegated to a Physician Assistant. The supervising physician shall neither delegate to nor allow a physician assistant to:

(1) prescribe, order or dispense medication, or sign prescriptions on behalf of the supervising physician, or have prescription blanks available that have been presigned or stamped by the physician, or order the refilling of a prescription, except as authorized by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) and §193.8 of this title (relating to Delegated Delivery of Health Care) or other applicable law;

(2) independently delegate a task assigned to him or her by the supervising physician.

§185.10. Employment Guidelines. Except as otherwise provided in this section, or as authorized by §193.8 of this title (relating to Delegated Delivery of Health Care), two full-time equivalent physician assistant positions shall be allowed for each supervising physician. A supervising physician may utilize more than two physician assistants to allow part-time employment or the employment of a substitute during the temporary absence of a supervising physician's primary physician assistant provided the supervising physician has obtained approval to supervise each part-time and substitute physician assistant as provided in §185.3 of this title (relating to Application for Approval to Supervise).

Part-time or substitute physician assistants supervised by a particular physician shall not work during the same hours for that supervising physician, and a supervising physician shall not utilize more than two physician assistants during the same hours.

(1) The services of the physician assistant shall be considered as part of the global services provided by the supervising physician and there shall be no separate billing for services rendered by the physician assistant (P.A.) except where provided by law.

(2) The physician assistant shall not be maintained in an office practice setting separate from that of his or her supervising physician, except as authorized by §193.8 of this title (relating to Delegated Delivery of Health Care).

§185.11. Qualifications for Carrying Out Prescription Drug Orders. All physician assistants who have either graduated from a training program accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association or who have passed the examination given by the National Commission on the Certification of Physician Assistants, are presumed to possess the education and training necessary to carry out a prescription drug order pursuant to the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5).

§185.12. Identification Number. The board shall assign to each physician assistant whose supervision application has been approved a permanent identification number.

§185.13. Enforcement. Any supervising physician who violates Texas Civil Statutes, Article 4495b, §3.08(4)(H), (12), and (15), and §4.01 shall be subject to disciplinary action by the board, including withdrawal of his or her authority to utilize a physician assistant and/or revocation or suspension of his or her license to practice medicine in Texas.

§185.14. Exceptions. Upon written application to the board, the board may grant exceptions to the rules in §185.6 of this title (relating to Consent and Identification) and in §185.10 of this title (relating to Employment Guidelines) for physicians and physician assistants employed by facilities or institutions owned or operated by state agencies that have established programs of health care or institutions funded by public money. In addition to the information required in §185.3 of this title (relating to Application for Approval to Supervise) and any other information the board may require, the application for exceptions shall explain the specific exceptions requested, the reasons the exceptions are needed, the

tasks that will be delegated to physician assistants covered by the exceptions, and the manner in which those physician assistants will be supervised.

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

Issued in Austin, Texas, on April 4, 1990.

TRD-9003546

G. V. Brindley, Jr., M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 452-1078

Chapter 193. Standing Delegation Orders

• 22 TAC §§193.1-193.6

The Texas State Board of Medical Examiners proposes amendments to §§193.1-193.6, concerning standing delegation orders. With the legislature's adoption of House Bill 18, physician assistants and registered nurses have been authorized to complete presigned prescriptions for dangerous drugs under protocols or standing delegation orders. The board is required under House Bill 18, whose provisions were added to the Medical Practice Act, to adopt certain rules. The law change provided the impetus to review rule chapters to harmonize the new and existing rules.

Ivan Hurwitz, director of administrative 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.

Jean Davis, administrative assistant, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the rules and carrying out the intent of the new legislation. 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 Jean Davis, P.O. Box 13562, Austin, Texas 78711. The board will hold a public hearing 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.

§193.1. Purpose. The purpose of this chapter is to encourage the more effective utilization of the skills of physicians by establishing guidelines for the delegation of

health care tasks to qualified nonphysicians providing services under reasonable physician control and supervision where such delegation is consistent with the patient's health and welfare; and to provide guidelines for physicians in order that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services. Texas Civil Statutes, Article 4495b, §§3.08(4)(H), 3.08(12), and 3.08(15), [Article 4505§(12), and §(15), and Article 4506, as amended] empower the Texas State Board of Medical Examiners to cancel, revoke, or suspend the license of any practitioner of medicine upon proof that such practitioner is guilty of failing to supervise adequately the activities of persons acting under the physician's supervision, allowing another person to use his license for the purpose of practicing medicine, or of aiding or abetting, directly or indirectly, the practice of medicine by a person or entity not licensed to do so by the board [lending his license to practice medicine or aiding or abetting, directly or indirectly, the practice of medicine by any person not duly licensed to practice medicine by such board]. The board recognizes that the delivery of quality health care requires expertise and assistance of many dedicated individuals in the allied health profession. The provisions of this chapter are not intended to, and shall not be construed to, restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of medical judgment, to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. The board recognizes that statutory law shall prevail over any rules adopted and that the practice of medicine is, by statute, defined as follows: "A [Any] person shall be considered to be [regarded as] practicing medicine within [the meaning of] this Act [law]:

(A) [(1)] who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; or (B) [(2)] [or] who shall diagnose, treat, or offer to treat any disease or disorder, mental or physical or any physical deformity or injury by any system or method and to effect cures thereof and charge therefore, directly or indirectly, money or other compensation." Likewise, nothing in this chapter shall be construed as to prohibit a physician from instructing a technician, assistant, or nurse to perform delegated tasks so long as the physician retains supervision and control of the technician, assistant, or employee. Nothing in this chapter should be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of those persons with whom the delegating physician has

established a physician-patient relationship. Nothing in this chapter shall enlarge or extend the applicable statutory law relating to the practice of medicine, or other rules and regulations previously promulgated by the board.

§193.2. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

Carrying out a prescription drug order—To complete a prescription drug order prescribed by the delegating physician by providing the following information: the patient's name and address; the drug to be dispensed; directions to the patient for taking the drug; dosage; the name, address, and telephone number of the physician; the name, address, telephone number, identification number, and signature of the physician assistant or registered nurse completing the prescription drug order; the date; and the number of refills permitted.

Dangerous drug—A device or a drug that is unsafe for self medication and that is not included in the Texas Health and Safety Code, Schedules I-V or Penalty Groups I-IV of chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription."

Health manpower shortage area (HMSA)—An area, population group, or facility designated by the United States Department of Health and Human Services (USDHHS) as having a shortage of primary care physicians.

Medically underserved area (MUA)—An area or population group designated by the USDHHS as an area with a shortage of personal health services.

Protocols—Written strategies for management of medical aspects of patient care which are directed to specific diagnoses, for which a history is required and specific physical findings are listed, and which indicate those findings that require immediate referral of the patient to a physician, and those findings under which treatment will be authorized pursuant to the protocol. If a physician assistant or registered nurse will be authorized to carry out a prescription drug order pursuant to the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) and §193.8 of this title (relating to Delegated Delivery of Health Care). The authorizing protocol shall contain a list of dangerous drugs available for prescription, limitations on the number of dosage units and refills permitted, and instructions to be given the patient for follow-up monitoring. Protocols shall be agreed upon and signed by the physician, the physician assistant, and/or registered

nurse and reviewed and signed at least annually, and shall be maintained at the site serving a medically underserved population.

Site serving a medically underserved population—A site located in a medically underserved area; a site located in a health manpower shortage area; a rural health clinic designated under Public Law 95-210, the Rural Health Clinic Services Act of 1977; a public health clinic or a family planning clinic operating under contract with the Texas Department of Human Services or the Texas Department of Health; a site located in an area in which there exists an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs, as determined by the Texas Department of Health; or a site that serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs, as determined by the Texas Department of Health.

Standing delegation order—Written instructions, orders, rules, regulations, or procedures prepared by a physician and designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms. Such written instructions, orders, rules, regulations, or procedures shall delineate under what set of conditions and circumstances action should be instituted. These instructions, orders, rules, regulations, or procedures are to provide authority for and a plan for use with patients presenting themselves prior to being examined or evaluated by a physician to assure that such acts are carried out correctly and are distinct from specific orders written for a particular patient, and shall be limited in scope of authority to be delegated as provided in §193.4 of this title (relating to Scope of Standing Delegation Orders). As used in this chapter, standing delegation orders do not refer to treatment programs ordered by a physician following examination or evaluation by a physician, nor to established procedures for providing of care by personnel under direct, personal supervision of a physician who is directly supervising or overseeing the delivery of medical or health care. Such standing delegation orders should be developed and approved by the physician who is responsible for the delivery of medical care covered by the orders. Such standing delegation orders, at [as] a minimum, should:

(A)-(L) (No change.)

§193.3. Exclusion from the Provisions of this Chapter. The provisions of this chapter shall not be applicable, nor shall they restrict the use of pre-established programs of health care, nor shall they restrict physicians from authorizing the provision of patient care by use of pre-

established programs under the following circumstances.

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

(4) Where limitation from civil liability is provided under the Texas Civil Practice and Remedies Code, §74.001, [Statutes, Article 1a].

(5)-(7) (No change.)

(8) Where care is to be delivered as authorized by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) or by §193.8 of this title (relating to Delegated Delivery of Health Care).

§193.4. *Scope of Standing Delegation Orders.* Providing the authorizing physician is satisfied as to the ability and competence of those for whom the physician is assuming responsibility, and with due regard for the safety of the patient and in keeping with sound medical practice, standing delegation orders may be authorized for the performance of acts and duties which do not require the exercise of independent medical judgment. Limitations on the physician's use of standing delegation orders which are stated in this section shall not apply to patient care delivered as authorized by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) or §193.8 of this title (relating to Delegated Delivery of Health Care). When care is delivered under other circumstances, standing delegation orders [and] may include authority to undertake the following:

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

(4) the administration or providing of drugs ordered by direct personal or voice communication by the authorizing physician who shall assume responsibility for the patient's welfare, providing such administration or provision of drugs shall be in compliance with other state or federal laws and providing further that pre-signed prescriptions shall not be utilized by the authorizing physician except under the following conditions.

(A) The prescription shall be prepared in full compliance with the Texas Health and Safety Code, §483.001(13) [Civil Statutes, Article 4476-14, §2(g) (the Texas Dangerous Drug Law)] except for the inclusion of the name of the patient and the date of issuance.

(B)-(D) (No change.)

(5)-(8) (No change.)

§193.5. *Enforcement.* Any physician authorizing standing delegation orders or standing medical orders which authorize the exercise of independent medical judgment or treatment shall be subject to having his

or her license to practice medicine in the State of Texas revoked or suspended under Texas Civil Statutes, [Article 4505 (12) and (15), Article 4506, Article 4509.] Article 4495b, §§3.08(4)(H), 3.08(12), and 3.08(15).

§193.6. *Special Standing Delegation Orders for Optometrists under §3.06(d)(6)[(5)].*

(a) The purpose of this section is to implement the provisions of the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(6)[(5)]. Section 3.06(d)(6)[(5)] requires a physician, in certain circumstances, to issue a standing delegation order to an optometrist which authorizes the optometrist to use topical ocular pharmaceutical agents for nontherapeutic purposes in the practice of optometry. Section 3.06(d)(6)[(5)] further provides that a physician who has issued a standing delegation order in compliance with that section shall be immune from liability in connection with acts performed pursuant to the standing delegation order so long as the physician has used prudent judgment in the issuance of the standing delegation order or in the continuances of the standing delegation order. These sections are not intended to limit or restrict a physician's authority to issue a standing delegation order to an optometrist or to any other person which would otherwise be valid under this chapter or any other provision of these sections and regulations, or under the laws of the State of Texas.

(b)-(e) (No change.)

(f) The optometrist is required to:

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

(3) certify to the board upon the initial delegation that the optometrist is familiar with the Texas Medical Practice Act, §3.06(d)(6)[(5)], and with the duties and obligations imposed upon him by this chapter;

(4) (No change.)

(g) The authorizing physician is required to:

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

(3) certify to the board upon the initial delegation that the optometrist is familiar with the Texas Medical Practice Act, §3.06(d)(6)[(5)], and with the duties and obligations imposed upon him by this chapter.

(h) The Board of Medical Examiners may cancel the standing delegation order if it determines that the optometrist possessing the standing delegation order has violated either the standing delegation order or the Texas Medical Practice Act, §3.06(d)(6)[(5)]. The secretary or executive director of the board is authorized to make the determination to cancel a standing delegation order. The secretary or executive director shall give

notice of his or her intent to cancel in writing to both the physician and the optometrist stating the reasons for the cancellation and affording the physician and the optometrist an opportunity to respond in writing within the 30-day period. The decision of the secretary or executive director shall be final within the board.

(i)-(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.

Issued in Austin, Texas on April 6, 1990.

TRD-9003545

G. V. Brindley, Jr. M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 452-1078

◆ ◆ ◆
• 22 TAC §193.8

The Texas State Board of Medical Examiners proposes new §193.8, concerning standing delegation orders and delegated delivery of health care under the provisions of the Medical Practice Act, §3.06(d)(5). The new section comes as the result of recently passed legislation (House Bill 18) wherein physician assistants and registered nurses have been authorized to complete prescribed prescriptions for dangerous drugs under protocols or standing delegation orders.

Ivan Hurwitz, director of administrative services, 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.

There will be no local employment impact.

Jean Davis, administrative assistant, 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 the rules and carrying out the intent of the new legislation. There will be no effect on small businesses as a result of enforcing the section. 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 Jean Davis, P.O. Box 13562, Austin, Texas 78711. The board will hold a public hearing at a later date.

The new section is proposed under Texas Civil Statutes, Article 4495b, which provides 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.

§193.8. *Delegated Delivery of Health Care.*

(a) The purpose of this section is to provide guidelines for implementation of the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5), which provides for the use by physicians of standing delegation orders, standing medical orders, physician's orders, or other orders or protocols in delegating authority to physician assistants or registered nurses at sites serving medically underserved populations. For purposes of this section, the term "registered nurse" means a licensee of the Texas Board of Nurse Examiners who is approved to carry out a prescription drug order by that board. In accord with Texas Civil Statutes, Article 4495b, §3.06(d)(5), this section establishes minimum standards for supervision by physicians of physician assistants and registered nurses for provision of services at such sites. This section also provides for the use of prescriptions presigned by the supervising physician which may be carried out by a physician assistant or registered nurse according to protocols or standing delegation orders. At sites serving medically underserved populations, such protocols or standing delegation orders may authorize diagnosis of the patient's condition and treatment, including prescription of dangerous drugs. Proper use of protocols and standing delegation orders requires integration of clinical data gathered by the physician assistant or registered nurse by means of the supervising physician's pre-existing written plan for determining a diagnosis and appropriate treatment. Neither the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) nor these rules authorize the exercise of independent medical judgment by physician assistants or registered nurses, and the supervising physician remains responsible to the board and to his or her patients for acts performed under the physician's delegated authority. Registered nurses remain professionally responsible for acts performed under the scope and authority of their own licenses.

(b) All protocols or standing delegation orders shall be formulated or approved by the supervising physician and shall be maintained on file at the clinic or site where care will be provided. Such protocols or standing delegation orders shall be subject to inspection and copying by representatives of the board during normal business hours. Protocols or standing delegation orders shall be reviewed at least annually by the supervising physician, and shall be signed and dated at least annually by the physician as well as by the physician assistant and/or the registered nurse to affirm their current applicability.

(c) Physician supervision of the activities of a physician assistant or registered nurse at a site serving a medically underserved population will be adequate if the physician:

(1) supervises no more than two

clinics or sites serving medically underserved populations;

(2) receives a daily status report to be conveyed in person, by telephone, by facsimile transmission, or by radio to the supervising physician by the registered nurse or physician assistant, which will include at least the following information:

(A) the number of patient encounters during that day;

(B) changes in status or condition of any returning patients;

(C) changes in medications prescribed or administered for current patients;

(D) the number of presigned prescriptions issued; and

(E) problems or complications encountered.

(3) visits the clinic in person at least once a week during regular business hours, and remains on site for a period of time equal to at least two hours per 100 patients (or fraction thereof) seen at the site during the previous week, not to exceed eight hours total. During clinic visits, the supervising physician shall provide medical direction and consultation to include but not be limited to:

(A) review of patient charts and co-signature of patient encounter notes;

(B) direct observation of the physician assistant or registered nurse evaluating and treating patients with provision of appropriate advice and counsel;

(C) personal diagnosis or treatment of patients with acute or unusual problems or those who require physician follow-up; and

(D) review of the supply of presigned prescriptions and the security measures for their use and storage.

(4) requires that all cases discussed individually during the daily status report shall be summarized and retained in a master file; and

(5) is available by telephone for consultation at all times the clinic is open for medical emergencies or patient referrals.

(d) If a supervising physician arranges for coverage of the clinic by an alternate supervising physician while he or she is unavailable, the alternate supervisor shall affirm in writing that he or she approves of the clinic's protocols and acknowledges that he or she will be legally

and professionally responsible for care provided pursuant to said protocols.

(e) A physician assistant or registered nurse may complete and issue prescriptions presigned by the supervising physician in treating patients at a site serving a medically underserved population. In carrying out a prescription drug order, the prescription form itself shall comply with applicable rules adopted by the Texas State Board of Pharmacy, shall be printed in duplicate, and shall be prenumbered. After a presigned prescription is completed and issued by a physician assistant or registered nurse, one copy shall be maintained at the clinic site, filed in numerical order, and shall be available for inspection and copying by representatives of the board during normal business hours. Pertinent information from the prescription shall be recorded in the patient's chart as required in this section. Presigned prescriptions issued pursuant to this section may only be written for dangerous drugs. No prescriptions for controlled substances may be authorized or issued. A physician's signature on one of the two signature lines on the prescription shall convey his or her instructions to a pharmacist regarding the pharmacist's authority to dispense a generically equivalent drug, if available. If a supervising physician proposes to authorize generic substitution, the protocol shall provide direction to the physician assistant or registered nurse as to whether and under what circumstances product selection will be permitted by a pharmacist. The supervising physician is responsible for devising and enforcing a system reasonably designed to ensure the security of presigned prescriptions.

(f) Violation of these rules by the supervising physician may result in cancellation of the physician's authority to supervise a physician assistant or registered nurse under this section. Violation of these rules may also subject the physician to disciplinary action as provided by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §4.12 for violation of that Act, §3.08. If a registered nurse violates these rules or the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5), the board shall promptly notify the Texas Board of Nurse Examiners of the alleged violation.

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

Issued in Austin, Texas, on April 4, 1990.

TRD-9003544

G. V. Brindley, Jr., M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 452-1078



Part X. Texas Funeral Service Commission

Chapter 203. Licensing and Enforcement-Specific Substantive Rules

• 22 TAC §203.6

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

The Texas Funeral Service Commission proposes the repeal of §203.6, concerning apprenticeships. The section is being repealed and resubmitted as a new section due to a large number of changes brought about by a change in the law.

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

Mr. Farrow, also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a new rule which will better ensure properly trained licensees. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Larry A. Farrow, Executive Director, Texas Funeral Service Commission, 8100 Cameron Road, Building B, Suite 550, Austin, Texas 78753.

The repeal is proposed under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

§203.6. Apprenticeships.

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

Issued in Austin, Texas; on April 3, 1990.

TRD-9003486

Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 834-9992

The Texas Funeral Service Commission proposes new §203.6, concerning apprenticeships. The new section sets the guidelines for funeral director and embalmer apprenticeships as required by Texas Civil Statutes, Article 4582b.

Larry A. Farrow, executive director, has determined that for the first five-year period

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

Mr. Farrow 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 ensure properly trained funeral directors and embalmers. There will be no effect on small businesses as a result of enforcing the section. 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 Larry A. Farrow, Executive Director, Texas Funeral Service Commission, 8100 Cameron Road, Building B, Suite 550, Austin, Texas 78753.

The new section is proposed under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

§203.6. Apprenticeships.

(a) All apprenticeships will be served only in funeral establishments and/or commercial embalming establishments licensed by the State of Texas and under the direct and personal supervision of a funeral director and/or embalmer licensed by the State of Texas.

(b) Regular employment is defined as the performance of a minimum of 40 working hours per week which must be cumulated under actual working conditions and directly related to the science of funeral directing and/or embalming.

(c) Case reports must be filed by the apprentice for each month of the apprenticeship. Penalties for failure to file these case reports in a timely manner will lie against the apprentice.

(d) Each case report submitted will be certified by the licensee under whom the apprentice performed the work. The supervising licensee as well as the apprentice is subject to disciplinary action if the information submitted is misrepresented.

(e) The funeral director's and embalmer's apprenticeship must be served in 12 consecutive months.

(f) A student may register as a funeral director apprentice upon completion of a minimum of 60 quarter hours or 40 semester hours in an accredited college of mortuary science and achieving a minimum cumulative grade point average of 3.0. The student must be engaged in learning the practice of funeral directing in a licensed funeral establishment during regular employment, such employment consisting of a minimum of 20 hours per week. Upon completion of this required study, the student will receive credit not to exceed 15 required case reports and three months required apprenticeship.

(g) Any funeral director apprentice

that begins his apprenticeship during attendance at mortuary school will apply for and take the written examination given by the commission upon graduation from mortuary school unless that individual petitions the commission for authorization to delay taking the examination.

(h) The commission may hear testimony or receive evidence as to why standard or requirements of apprenticeship cannot be met by an apprentice. Where, because of hardship, the applicant has been unable to meet such standards in spite of diligent effort, the commission can make a finding of substantial compliance by such apprentice.

(i) An embalmer apprentice shall be required to assist in the embalming of six autopsied remains during the course of the embalming apprenticeship, with the provisions that a certificate from mortuary college stating a number of autopsied cases had been completed during the course of the college program, would count towards the six required cases. However, any autopsied cases completed during the course of mortuary college, would not count towards the stated 60 cases required to complete the embalmer apprenticeship.

(j) In order to ensure the maximum exposure possible to all aspects of funeral directing, the one year funeral director apprenticeship will not be served in a commercial embalming establishment.

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

Issued in Austin, Texas, on April 3, 1990.

TRD-9003485

Larry A. Farrow
Executive Director
Texas Funeral Service
Commission

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 834-9992

Part I. Structured Pest Control Board

Chapter 591. General Provisions

• 22 TAC §591.10

The Structural Pest Control Board proposes an amendment to §591.10, concerning acceptance of administrative penalties by the board. The proposed amendment provides a process by which the members of the board may approve of a proposed penalty which has been accepted by the person charged or require a hearing on the matter before a hearings examiner.

Benny M. Mathis, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as

a result of enforcing or administering the section.

Mr. Mathis also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be greater involvement in the administrative penalty decision-making process by the appointed members of the Structural Pest Control Board. There will be no effect on small businesses as a result of enforcing the section. 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 Roger B. Borgeit, General Counsel, Structural Pest Control Board, 9101 Burnet Road, Suite 201, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 135b-6, which provide

the Structural Pest Control Board with the authority to promulgate rules and regulations governing the methods and practices of structural pest control when it determines that the public's health and welfare necessitates such regulations in order to prevent adverse effects on human life and the environment.

§591.10. Administrative Penalties.

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

(d) If the person charged with the violation accepts the determination of the executive director, the board **may** [shall] issue an order approving the determination and ordering payment of the recommended penalty, **or it may direct the executive director to set a hearing to be conducted**

In the manner described in the Act, Section 10B.

(e) (No change.)

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

Issued in Austin, Texas, on April 4, 1990.

TRD-9003535

Benny M. Mathis, Jr.
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 835-4066

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 143. Medical Radiologic Technologists

• 25 TAC §§143.1-143.11, 143.15

The Texas Board of Health proposes amendments to §§143.1-143.11 and new §143.15, concerning medical radiologic technologists. The sections cover purpose and scope; definitions; the advisory board's operation; fees; applicability; application requirements and procedures; types of certificates and applicant eligibility; examinations; standards for the approval of curricula and instructors; certificate issuance, renewals, late renewals; continuing education requirements; and alternate eligibility requirements.

The amendments exempt students and certain participants in continuing education activities from the provisions of Texas Civil Statutes, Article 4512m; change the continuing education requirements by allowing courses indirectly related to medical radiologic technology to count toward recertification; delete the language pertaining to applications under the grandfather clause which were to be postmarked on or before January 1, 1990; and make a number of minor wording changes throughout the sections to assure consistent terminology, clarify meaning without substantial change, and improve grammar and style. New §143.15 adds provisions concerning alternate eligibility requirements which establish an administrative procedure whereby technologists who have completed education and training in radiologic technology but do not qualify under §143.7 may apply for and be approved for the examination under §143.8.

Stephen Seale, Chief Accountant III, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

There is no anticipated impact on local employment.

Mr. Seale 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 assure that the certification and regulation of Medical Radiologic Technologists continues to identify competent technologists by updating and clarifying the rules. There will be no effect on small businesses as a result of enforcing the sections. The anticipated economic cost to persons who are required to comply with the sections as proposed is the expense of submitting their application materials, \$20 for the application fee and \$25 for the examination fee.

Comments on the proposal may be submitted to Donna S. Hardin, Program Administrator, Medical Radiologic Technology Certification

Program, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7275. Comments will be accepted for 30 days after publication of these sections in the *Texas Register*.

The amendments and new section are proposed under Texas Civil Statutes, Article 4512m, §2.05, which provide the Texas Board of Health with the authority to adopt rules establishing the minimum standards for the certification of medical radiologic technologists; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§143.1. Purpose and Scope.

(a) Purpose. These sections are intended to implement the provisions of the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m and Acts 1987, 70th Legislature, Chapter 1096, §3.01 [(Article II and Article III, §3.01 (a), (c), (d), and (e) of Senate Bill 1439, 70th Legislature, 1987)].

(b) (No change.)

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

ACRRT—American Chiropractic Registry of Radiologic Technologists and its successor organizations [Technologist].

Act—The Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, and Acts 1987, 70th Legislature, Chapter 1096, §3.01 [(Article II and §3.01 (a), (c), (d), and (e) of Article III, Senate Bill 1439, 70th Legislature)].

ARCRT—American Registry of Clinical Radiography Technologists [Technologist] and its successor organizations.

CCE—Council on Chiropractic Education and its successor organizations [Council on Education].

Certificate—A medical radiologic technologist certificate, general or limited, unless the wording specifically refers to one or the other, issued by the Texas Department of Health.

Limited Medical Radiologic Technologist (LMRT)—A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for medical reasons. The limited categories are the skull, chest, spine, extremities, dental, podiatric, and chiropractic.

§143.3. The Advisory Board's Operation.

(a) (No change.)

(b) Officers.

(1) The chairperson shall preside at all advisory board meetings at which he or she is in attendance and perform all duties prescribed by this chapter [these sections]. The chairperson may serve as an ex-officio member of any committee.

(2) (No change.)

(c)-(f) (No change.)

(g) Transaction of official business.

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

(3) Roberts Rules of Order Revised shall be the basis of parliamentary decisions except where otherwise provided by this chapter [these sections].

(h)-(l) (No change.)

§143.4. Fees.

(a) Unless otherwise specified, the [The] fees established in this section [subsection] must be paid to the department before any certificate is issued. All fees shall be submitted in the form of a certified check for guaranteed funds or a money order if paid by mail. If submitted in person, cash may be accepted by the department's cashier. All fees [and] are non-refundable.

(b) The schedule of fees for general or limited certification as a medical radiologic technologist is [are] as follows:

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

(c) (No change.)

(d) The schedule of examination fees is as follows.

(1) The general examination fee is \$25 [the fee that will be determined by the ARRT or other agency approved by the department to administer the examination at the time the applicant is to be scheduled or rescheduled for an examination. If the exam applicant is ARRT eligible, the fee shall be paid to the ARRT].

(2) The limited examination [examinations] fees [are] by category are as follows:

(A) dental—\$25 (which shall be paid directly to DANB);

(B) chiropractic—\$25; and

(C) skull, chest, spine, extremities, or podiatric—\$25 for the first examination and \$20 for each additional examination taken on the same day [the fees determined by the ARRT and/or other agencies and organizations approved by the

department to administer the examination(s) for the specific limited category or categories].

(3) If ARRT, NMTCB, or ACRRT has approved a person as exam eligible, that person shall be considered an examinee of that agency or organization and shall not be required to pay an examination fee to the department.

(e) The fees for upgrading a temporary certificate to a renewable certificate, limited or general, will be \$30 (prorated at \$2.50 per month).

(f) (No change.)

(g) The limited curriculum application [and] approval fees are as follows:

(1) institutional or independent sponsor—\$100 per year per course of study; and

(2) (No change.)

§143.5. Applicability.

(a) (No change.)

(b) Except as specifically exempted by subsection (c) of this section, the provisions of the Medical Radiologic Technologist Certification Act 9the Act) and this chapter [these sections] apply to any person representing that he or she performs medical radiologic procedures [, including students outside of an academic setting].

(c) This chapter does [These sections do] not prohibit the performance of a radiologic procedure by the following:

(1) (No change.)

(2) a person who performs the procedure under the instruction or direction of a practitioner if the person and the practitioner are in compliance with rules adopted under the Act, §2.08, [adopted] by the BCE, BDE, BME, BNE, or BPE, so long as the procedure has not been identified as hazardous and dangerous under the Act, §2.08(c)(4);

(3) (No change.)

(4) students of medicine, dentistry, podiatry, or chiropractic when under instruction or direction of a practitioner and if the student and the practitioner are in compliance with subsection (c)(2) of this section [the rules adopted under the Act];

(5) a person who performs only in-vitro clinical or laboratory testing procedures as described in the TRCR; [.]

(6) a student enrolled in a radiologic technology program which meets the requirements of §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) who is performing radiologic procedures in an academic or clinical setting as part of the program; or

(7) a person who performs radiologic procedures for a period of not more than 10 days, while enrolled in and as a part of continuing education activities which meet the minimum standards set out in §143.11 of this title (relating to Continuing Education Requirements) and who is licensed or otherwise registered as a medical radiologic technologist in or by another state, District of Columbia, a territory of the United States, the ARRT, the ARCRT, the NMTCB, the Board of Registry of the American Society of Clinical Pathologists, the Canadian Association of Medical Radiologic Technologists, the British Society of Radiographers, the Australian Institute of Radiography, or the Society of Radiographers of South Africa.

[(d) Effective January 1, 1988, the following provisions apply to all persons who apply to become certified or temporarily certified as a medical radiologic technologist, all persons who believe they are exempt under the Act and these sections, and all other persons interested in performing radiologic procedures:

[(1) any person who knowingly or intentionally violates a provision of the Act commits a Class B misdemeanor; and

[(2) persons who are not certified under the Act may not use in connection with their practice or employment any titles, words, letters, abbreviations or insignia indicating or implying that the person is a medical radiologic technologist certified by the Texas Department of Health.]

§143.6. Application Requirements and Procedures.

(a) (No change.)

(b) General.

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

(3) Within 21 [30] days of receipt of the application forms and application fee, the department shall send a notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(4) Applications will be accepted for a temporary certificate from students not more than 10 [45] days prior to the date of graduation from an approved medical radiologic technologist education program.

(c) Required application materials.

(1) The application form shall contain the following items:

(A) specific information regarding personal data, social security

number (optional), birth date, current and previous places [place] of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Medical Radiologic Technologist Certification Act and this chapter [these sections] and agrees to abide by them;

(C) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;

(D) (No change.)

(E) a statement that the applicant understands that the fees submitted are nonrefundable unless [if] the processing time is [not] exceeded without good [just] cause as set out in §113.1 of this title (relating to Processing Permits for Special Health Services Professionals);

(F)-(G) (No change.)

(H) a statement that [if issued any certificate] the applicant shall advise the department of his or her current mailing address within 30 [60] days of any change of address;

(I)-(J) (No change.)

(2) Applicants for a certificate who do not qualify under the provisions of §143.7(b) [or (c)] of this title (relating to Types of Certificates and Applicant Eligibility) must submit the following additional documents or qualify under the provisions of §143.15 of this title (relating to Alternate Eligibility Requirements):

(A) (No change.)

(B) at least one of the items set out as follows:

(i) (No change.)

(ii) if applying [up to 45 days] prior to graduation from an approved medical radiologic program in accordance with §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors), an expected graduation statement signed by the program director or registrar. Within 30 days of the completion date noted in the graduation statement, the department must receive:

(I)-(III) (No change.)

(3) The policy for examination results is as follows.

(A) If the applicant is making application for a temporary certificate, an examination score release form shall be signed, allowing the department to obtain the applicant's examination results from the agency or organization administering the examination approved by the board.

(B) If an applicant for a general certificate is:

(i) registered by the ARRT or the ARCRT or certified by the NMTCB on September 1, 1987, or registered by the ARRT or NMTCB at the time of application, a photocopy of the certificate issued by that agency or organization shall be submitted by the applicant in lieu of examination results; or

(ii) unable to show proof of successful completion or otherwise provide documentation acceptable to the department of the applicant's examination results, the applicant shall sign an examination score release form allowing the department to obtain the applicant's examination results from the ARRT, NMTCB, or other agency administering the examination approved by the department.

(4) Employment/experience documentation report form requirements are as follows. Persons applying for a general or limited certificate under the special provisions in accordance with §143.7(c) of this title (relating to Types of Certificates and Applicant Eligibility) must submit with their applications a properly completed employment/experience documentation report form(s) signed by a practitioner who has supervised or directed the applicant's practice or by an employer attesting that the applicant has the required experience during the period September 1, 1982-August 31, 1987.]

(3) [(5) Other license/registration documentation report form requirements are as follows.] Persons applying under the provision of §143.7(e) (1)(E) of this title (relating to Types of Certificates and Applicant Eligibility) must submit to the department a properly completed other license/registration documentation report form which has been completed and signed by an authorized representative of the governmental agency which issued the license or other form of registration, accompanied by a copy of the state law and regulations. A photocopy of the license or other form of registration in medical radiologic technology issued by the government of another state, District of Columbia, or territory of the United States shall be submitted by the applicant.

(d) Application approval.

(1) (No change.)

(2) Within 21 [30] days after an application is considered complete, the administrator shall approve any application which is in compliance with subsections (b) and (c) of this section and which properly documents [document] applicant eligibility, unless the application is disapproved under the provisions of subsection (e) of this section.

(3) Applicants approved for a general or limited certificate who fail to pay the prorated certificate fee, as set out in §143.10(b) of this title (relating to Certificate Issuance, Renewals, and Late Renewals) must reapply in order to become certified as a medical radiologic technologist or limited medical radiologic technologist.

(e) Disapproved applications.

(1) The department shall disapprove the application if the applicant [person]:

(A) has not met the eligibility and application requirements set out in this section and §143.7 of this title (relating to Types of Certificates and Applicant Eligibility) [completed the requirements in subsection (c) of this section];

(B) (No change.)

(C) [was not recognized on September 1, 1987 by the ARRT, or the NMTCB, the ARCRT, or other national credentialing agency or organization acceptable to the department for waiving the examination or limited examination requirements, as set out in §143.7(c) of this title (relating to Types of Certificates and Applicant Eligibility);

(D)] has failed to remit any required [applicable] fees [required];

(D)[(E)] has failed or refused to properly complete or submit any application form(s) or endorsement(s) or has[,] knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification;

(E)[(F)]] has been in violation of the Act[, as set out in §143.14 of this title (relating to Violations and Subsequent Actions)] or any other applicable provision of this chapter;

(F)[(G)] has been finally convicted of a felony or misdemeanor [if the crime directly relates to the duties and responsibilities of a medical radiologic technologist] as set out in §143.13 of this title (relating to Certifying Persons with

Criminal Background to be Medical Radiologic Technologist);

(G)[(H)] is under restriction in another state, country, or territory; or

(H)[(I)] has been disciplined or restricted by the uniformed services of the United States of America if the violation or activity for which the discipline or restriction was imposed directly relates to the duties and responsibilities of a medical radiologic technologist.[]

(J) is unable to document the experience required during the period September 1, 1982-August 31, 1987, in accordance with the special provisions of §143.7(d) of this title (relating to Types of Certificates and Applicant Eligibility); or

(K) fails to postmark on or before January 1, 1990 an application as set in §143.7(d) of this title (relating to Types of Certificates and Applicant Eligibility).]

(2) If [after review] the administrator determines that the application should not be approved, the administrator shall ask the Credentialing Committee to review the application within 180 days after the application is considered complete. The committee shall take [either] one of the following actions.

(A) If the committee concurs that the application should not be approved, [the committee shall instruct] the administrator shall [to] give the applicant written notice of the reason for the disapproval and of the opportunity for a formal hearing in accordance with the department's formal hearing procedures in Chapter 1 [§§1.21-1.32] of this title (relating to Texas Board of Health [Formal Hearing Procedures]). Within 10 days after receipt of the written notice, the applicant shall give written notice to the administrator to waive or request the hearing. If the applicant fails to respond within 10 days after receipt of the notice of opportunity[,] or if the applicant notifies the administrator that the hearing be waived, the department shall disapprove the application.

(B)-(C) (No change.)

(3) An applicant whose application has been disapproved under paragraph (1)(D) and (E) [and (F)] of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication proof satisfactory to the department of compliance with this chapter [all rules of the board] and the provisions of the Act in effect at the time of reapplication.

§143.7. Types of Certificates and Applicant Eligibility.

(a) General. The purpose of this section is to set out the types of certificates issued[,] and the qualifications of applicants for certification as a medical radiologic technologist or limited medical radiologic technologist.

(1) The department shall prepare and provide a general certificate, limited certificate, or temporary certificate (general or limited), with an identification card(s) which contain the applicant's name, certificate number, and date of certificate issue. [The temporary certificate and all identification cards shall indicate an expiration date.]

(2) (No change.)

(3) Any certificate or [and] identification card(s) issued by the department remains [remain] the property of the department and shall be surrendered to the department on demand.

(4) (No change.)

[(5) Employers shall keep on file a certified or notarized photocopy of the applicant's original certificate and current identification card.]

(5)[(6)] No one shall display or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(6)[(7)] No one shall make any alteration on any certificate or identification card issued by the department.

(b) Special provisions for persons who were nationally certified on September 1, 1987. Upon payment of the application fee, submission of the application forms and approval by the department, the department shall issue an approval letter for a general certificate to a person who was registered [certified] by the ARRT or ARCRT as a radiographer, [or] was registered [certified] by the ARRT as a radiation therapy technologist, or was registered [certified] by the ARRT or certified by the NMTCB as a nuclear medicine technologist.

(c) Special provisions for persons who have performed radiologic procedures during the five-year period, September 1, 1982-August 31, 1987, and when the application is postmarked on or before January 1, 1990. Upon payment of the application fee, submission of the application forms, and approval by the department, the department shall issue an approval letter for either:

(1) (No change.)

(2) a limited certificate to a person who has performed radiologic procedures for not less than one year, as documented on forms prescribed by the department. The category or categories of the limited certificate shall be based upon

the type of documented radiologic procedures performed by the applicant. However, an approval letter for a limited certificate in the dental, chiropractic, or podiatric categories may be issued provided the applicant submits written evidence satisfactory to the department of at least one of the following items:

(A) for the dental limited certificate, [that on September 1, 1987,] the applicant:

(i) had passed the examination administered by the Dental Hygiene National Board on or before September 1, 1987;

(ii)-(iii) (No change.)

(iv) was licensed on September 1, 1987, as a dental hygienist by the BDE or the appropriate regulatory agency in another state or territory; [.]

(B) for [For] the chiropractic limited certificate, that the applicant was certified by the ACRRT on September 1, 1987; and [.]

(C) for [For] the podiatry limited certificate, that the applicant was certified by the ASPA on September 1, 1987.

(d) Minimum eligibility requirements for certification. The following requirements apply to all individuals applying for certification [under these sections] who do not meet the requirements of subsections (b) or (c) of this section:

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

(4) submission of a satisfactorily completed application on a form supplied by the department [Board];

(5) payment of the appropriate fees [designated application fee, and examination fee when appropriate]; and

(6) eligibility for the specific certificate requested as set out in subsection (e), (f), or (g) of this section.

(e) [Specific licensing requirements.

[(1)] Medical radiologic technologist. To qualify for a general certificate [as an MRT], an applicant shall meet at least one of the following requirements in addition to those listed in subsection (d) of this section [and such applicants are not required to be examined or reexamined under §143.8 of this title (relating to Examinations)]:

(1)[(A) the applicant must] possess current national certification as a registered technologist by the ARRT;

(2) [(B)] have [the applicant must] successfully completed [complete]

the ARRT's examination in [either] radiography, radiation therapy technology, or nuclear medicine technology;

(3)[(C) the applicant must] possess current national certification as a certified nuclear medicine technologist by the NMTCB;

(4)[(D)] have [the applicant must] successfully completed [complete] the NMTCB's examination in nuclear medicine technology; or

(5)[(E) the applicant must] be currently licensed or otherwise registered as a medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are more stringent than or are substantially equal to the requirements for Texas certification.

(f) [(2)] Limited medical radiologic technologist. To qualify for a

[(A) A] limited certificate, an [shall be issued to an applicant to practice in a limited area of radiologic technology if the] applicant shall meet [meets] the requirements in paragraph (4) of this subsection and [subparagraph (E) of this paragraph in addition to those listed in] subsection (d) of this section.

(1)[(B)] The limited categories [of limited radiography] shall be as follows: skull; chest; spine; extremities; dental; chiropractic; and podiatry.

(2) [(C)] Holding a limited certificate in all categories shall not be construed to mean that the holder of the limited certificate has the rights, duties, and privileges of a general certificate holder.

(3)[(D)] Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, bedside radiography, and nuclear medicine or radiation therapy procedures.

(4)[(E)] To qualify for a certificate as a limited medical radiologic technologist an applicant must provide documentary evidence satisfactory to the department of:

(A)[

(i) the successful completion of a limited course of study [approved by the board which includes a clinical practicum,] as set out in the §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) and the successful completion of the appropriate limited examination[,] in accordance with §143.8 of this title (relating to Examinations); or

(B)[

(ii) current licensure or registration as a limited medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are more stringent than or substantially equal [equivalent] to the requirements for the Texas limited certificate at the time of application to the department.

(g) **Alternate eligibility.** An individual who does not qualify under §143.7 (b), (c), or (e) of this section may qualify under §143.15 of this title (relating to Alternate Eligibility Requirements).

(h)[(3)] Temporary medical radiologic technologist (general or limited). [Prior to successful completion of the required examination, a person who performs radiologic procedures shall be certified as a temporary medical radiologic technologist.] To qualify as a temporary medical radiologic technologist (general or limited), an applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (d) of this section.

(1)[(A)] For the general temporary certificate, an applicant must:

(A)[

(i)] have successfully completed or be within 10 [up to 45] days of successful completion of a course of study in radiography, radiation therapy technology, or nuclear medicine technology which is accredited by CAHEA;

(B)[

(ii) be approved by the ARRT as examination eligible;

(C)[

(iii) be approved by the NMTCB as examination eligible; or

(D)[

(iv) be currently licensed or otherwise registered as a medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal to the Texas requirements for certification at the time of application to the department.

(2)[(B)] For the temporary limited certificate, the applicant must have successfully completed or be within up to 10 [45] days of successful completion of a course of study in limited practice which is accredited by the Commission on Dental Accreditation of the American Dental Association, the CCE, or approved by the department; or be licensed or registered as a

limited medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal [equivalent] to the Texas requirements of certification at the time of application to the department.

§143.8. Examinations.

(a) (No change.)

(b) Examination eligibility.

(1) Holders of temporary certificates, limited or general, and persons approved by the department under the provisions of §143.15 of this title (relating to Alternate Eligibility Requirements) may [are allowed to] take the appropriate examination provided the person [holder] complies with the requirements of the Medical Radiologic Technologist Certification Act and this chapter [these sections]. Persons who qualify under §143.7(e) of this title (relating to Types of Certificates and Applicant Eligibility) [are certified as registered technologists by the ARRT at the time of application to the department] are not required to be reexamined for state certification.

(2) **Persons** [Additionally, persons] who qualify under §143.7(b) and (c) of this title (relating to Types of Certificates and Applicant Eligibility) are not required to be reexamined for state certification [as an MRT].

(c) Approved examination for the general certificate. A general certificate shall be issued upon successful completion of the NMTCB examination or the appropriate examination of the ARRT. The three disciplines are radiography, nuclear medicine technology, and radiation therapy technology. Determination of the appropriate examination shall be made on the basis of the type of educational program completed by the general temporary certificate holder.

(d) Approved examination for the limited certificate. A limited certificate shall be issued upon successful completion of the appropriate examination, as follows: [.]

(1) **skull—the** [Skull. The] ARRT examination for the limited scope of practice in radiography (skull); [must be successfully completed.]

(2) **chest—the** [Chest. The] ARRT examination for the limited scope of practice in radiography (chest); [must be successfully completed.]

(3) **spine—the** [Spine. The] ARRT examination for the limited scope of practice in radiography (spine); [must be successfully completed.]

(4) **extremities—the** [Extremities. The] ARRT examination for the limited scope of practice in radiography (extremities); [must be successfully completed.]

(5) **dental—the** [Dental. The] DANB examination on dental radiation health and safety [examination] or the certified dental assistant examination administered by the DANB; [must be successfully completed.]

(6) **chiropractic—the** [Chiropractic. The] ACRRT examination; or [must be successfully completed.]

(7) **podiatric—the** [Podiatric. The] ARRT examination for the limited scope of practice in radiography (lower extremities/podiatry) [must be successfully completed].

(e) Examination schedules. A schedule of examinations indicating the date(s), location(s), fee(s), and application procedures shall be provided by the department to each person issued any temporary certificate or approved under the provisions of §143.15 of this title (relating to Alternate Eligibility Requirements).

(f) Standards of acceptable performance. The cut-score [set by the advisory board and utilized by the department] to determine pass or fail performance shall be 75.

(g) (No change.)

(h) Results.

(1) Notification of examinees. Results of an examination prescribed by the department [board] but administered under the auspices of another agency will be communicated to the applicant by the department, unless the contract between the department and that agency provides otherwise.

(2) Score release. The applicant is responsible for submitting a signed score release to the examining agency or [of] organization or otherwise arranging to have examination scores forwarded to the department. If the score report does not come directly from the examining agency in writing or on data tape, the results shall be in the form of a photocopy which has been notarized as a true and exact copy of [the original of either]:

(A) an original [a] letter, or other official notification from the approved examining agency to the examinee; or

(B) (No change.)

(3) (No change.)

(i) Refunds. Examination fee refunds will be in accordance with policies and procedures of the department or the agency or organization prescribed by the department [approved by the board] to administer an examination [prescribed in this section]. No refunds will be made to examination candidates who fail to appear for an examination.

§143.9. Standards for the Approval of Curricula and Instructors.

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

(c) Limited certificate programs. All curricula and programs to train individuals to perform limited radiologic procedures must either:

(1) be accredited by the CAHEA to offer a limited curriculum in radiologic technology, the Commission on Dental Accreditation of the American Dental Association, or the Chiropractic Council on Education; or

(2) (No change.)

(d) Application procedures for limited certificate programs. An application shall be submitted to the department at least six weeks prior to the starting date of the program to be offered by a sponsoring institution or the course of study to be offered by an independent sponsor. Official application forms are available from the department and must be completed and signed by the program director of the sponsoring institution's program or by the independent sponsor. Program directors and independent sponsors shall be responsible for the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

(1) (No change.)

(2) An original and **four** [three] copies of the entire application and supporting documentation must be submitted in three-ring binders with all pages clearly legible and consecutively numbered. Each application binder must contain a table of contents and must be divided with tabs identified to correspond with the items listed in this section. If any item is inapplicable a page shall be included behind the tab for that item with a statement explaining the inapplicability.

(3)-(4) (No change.)

(5) If the application is revised or supplemented during the review process, the applicant shall submit an original and **four** [three] copies of a transmittal letter plus an original and three copies of the revision or supplement. If a page is to be revised, the complete new page must be submitted with the changed item/information clearly marked on **five** [four] copies.

(6) The application shall include:

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

(D) a list of instructors approved by the department, in accordance with subsection (g) of this section, and any other persons responsible for the conduct of the program or course of study including management and **administrative** [administration] personnel. The list must indicate what courses each will teach or instruct or the **area(s) of responsibility**;

(E) a list of clinical facilities, letters of agreement from clinical facilities signed by the chief executive **officer(s)** [office(s)] of each facility, and clinical schedules, including the following items identified for each clinical site utilized:

(i) (No change.)

(ii) a copy of the **current** registration(s) for the radiologic equipment from the Texas Department of Health, Bureau of Radiation Control;

(iii) (No change.)

(iv) whether or not the clinical facility is accredited by the JCAHO or certified to participate in the federal Medicare program, and if required, is licensed by the appropriate statutory authority. For example, if the facility is an ambulatory surgical center, licensure by the department is required;

(F)-(I) (No change.)

(7) All applications must identify the type of curriculum according to the limited categories in accordance with §143.7(f) [(e)] of this title (relating to Types of Certificates and Applicant Eligibility). Each application must be accompanied by an outline of the curriculum and course content which clearly indicates that students must complete a structured curriculum in proper sequence according to subsection (e) of this section.

(8)-(9) (No change.)

(e) Curricula requirements. Each student must complete a curriculum which meets or exceeds the following requirements:

(1) at least 120 clock hours of basic theory or classroom instruction in the categories of skull, chest, extremities, spine, dental, and chiropractic, and not less than 60 clock hours of basic theory instruction for podiatric is required. The required clock hours of basic theory/classroom instruction need not be repeated if two or more categories of curriculum are completed simultaneously or to add a category to a temporary limited or limited certificate provided;[,] however, a person who received a limited certificate under §143.7(c)(2) of this title (relating to Types of Certificates and Applicant Eligibility) must complete the required clock hours of basic theory/classroom instruction in order to add a category to the temporary limited or limited certificate. The following subject areas and minimum number of hours (in parentheses) must be included in all programs or courses of study and must be instructor directed. The [and the] recommended clock hours for each shall be:

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

(2) a clinical practicum for each category of limited curriculum is required. The practicum must include clinical instruction and clinical experience under the instruction or direction of a practitioner or certified MRT or LMRT in accordance with the following chart.

<u>Type of Limited Certificate</u>	<u>Clinical Instruction (# of clock hours)</u>	<u>Clinical Experience (# of clock hours)</u>
Skull	50	100
Chest	6	100
Spine	25	100
Extremities	30	100
Dental	10	100
Chiropractic	60	100
Podiatric	4	50

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

(D) The program director or independent sponsor shall be responsible for supervising and directing the evaluation of the students' clinical experience and shall certify in writing that the student has or has not successfully completed the required clinical instruction and clinical experience. Such written documentation must be provided to each student within 14 days of completion of the clinical experience. Students who successfully complete the required clinical experience may be required to submit such documentation to the department if applying for a temporary limited certificate with an expected graduation statement, as set out in §143.6(c)(2)(B)(ii) [§143.7(e)(3)(B)] of this title (relating to **Application Requirements and Procedures** [Types of Certificates and Applicant Eligibility]). Persons who participate in the evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing radiologic procedures.

(f) Limited certificate educational program approval.

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

(3) If approval is proposed to be denied, the applicant shall be notified in writing of the proposed denial and shall be given an opportunity to request a formal hearing within 10 days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's

formal hearing procedures in Chapter 1 [§§1. 21-1.34] of this title (relating to Texas Board of Health [Formal Hearing Procedures]). **If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.**

(g) Instructor approval for limited certificate programs.

(1) All persons who plan to or who provide instruction and training in the limited certificate courses of study or programs shall:

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

(C) document the appropriate instructor qualifications, in accordance with subsection (h) of this section. [; and]

[(D) be eligible for instructor approval in accordance with subsection (g) of this section.]

(2)-(3) (No change.)

(4) **An applicant** [Applicants] who is [are] not approved by the department shall be given an opportunity to request a formal hearing within 10 days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 [§§1. 21-1.34] of this title (relating to Texas Board of Health [Formal Hearing Procedures]). **If no hearing is requested, the right to a hearing is waived and the proposal action shall be taken.**

(h) Instructor qualifications for limited certificate programs.

(1) An instructor(s) shall have education and experience in teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications:

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

(C) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, the department, the BCE, BDE, BME or BPE, the Texas Department of Human Services, and the United States Department of Health and Human Services.

(2) A limited [certified] medical radiologic technologist may not teach, train, or provide clinical instruction in a program or course of study different from the technologist's current level of certification. For example, an LMRT who holds a limited certificate in dental radiography may not teach, train, or provide clinical instruction in a limited course of study for chest radiography.

§143.10. Certificate Issuance, Renewals, Late Renewals.

(a) (No change.)

(b) Issuance of certificates.

(1) (No change.)

(2) Upon receiving the applicant's form and fee, the department shall issue the person a general certificate or limited certificate [and identification card(s)] with an expiration date and a

certificate number. An identification card shall be included with the general certificate.

(3) The department shall send each applicant whose application has been approved for the temporary certificate (either general or limited) an appropriate temporary certificate and temporary identification card expiring from the date of issue.]

(3)(4) The department shall replace a lost, damaged, or destroyed certificate, limited certificate, [or] temporary certificate, [(general) or [limited and/or] identification card(s) upon a written request [from the applicant] and payment of the replacement fee. Requests shall include a [statement] detailing of the loss or destruction of the original certificate and/or identification card(s), or be accompanied by the damaged certificate or card(s).

(c) Temporary certificates.

(1) The department shall send each applicant whose application has been approved for the temporary certificate (general or limited) an appropriate temporary certificate expiring one year from the date of issue.

(2)(1) The department shall send with the temporary certificate information regarding examinations and application deadlines.

(3)(2) All temporary certificates[, either general or limited, expire one year from the date of issue] and are not subject to renewals or extensions for any reason. A person whose temporary certificate has expired is not eligible to reapply for another temporary certificate.

(3) A person whose temporary limited certificate has expired is not eligible to reapply for another temporary certificate in the same category or categories.]

(d) Certificates. The initial [When issued, a] certificate is valid through the MRT's or LMRT's next birth month; however, when the next birth month occurs within six months, the certificate shall be issued for that period plus the next full year in order to establish a staggered renewal system. Fees shall be prorated and must be paid before a certificate will be issued by the department [except as provided by subsection (e)(3) of this section].

(e) Staggered renewals. The department shall use a staggered system for certificate renewals. Temporary certificates shall not be renewed or extended for any reason.

(1) The renewal date of a certificate shall be on the last day of the MRT's or LMRT's birth month.

(2) Fees shall be prorated when the MRT's or LMRT's initial renewal date

occurs less than 12 months after the original date of certification.

(3) Certificates issued within six months of an MRT's or LMRT's birth month shall be issued for that period of time plus the next full year.]

(e)(f) Certificate renewal.

(1)] Each MRT or LMRT shall renew the certificate biennially on or before the last day of the MRT's or LMRT's birth month.

(1)(2) Each MRT is responsible for renewing the certificate before the expiration date and shall not be excused from paying late fees. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal or late renewal.

(2)(3) The department may not renew the certificate of an MRT or LMRT who is in violation of the Act or this chapter [these sections] at the time of renewal.

(3)(4) At least 60 days prior to the expiration of an MRT's or LMRT's certificate, the department shall send notice to the MRT or LMRT at the address in the department's records at the time the notice is sent, of the expiration date of the certificate, the amount of renewal fee due, and a renewal form which the MRT or LMRT must complete and return to the department with the required renewal fee.

(4)(5) The renewal form shall require the provision of the MRT's or LMRT's preferred mailing address, primary employment address and phone number, category of employment, information regarding misdemeanor and felony convictions (if any since initial certification or last renewal), and continuing education completed[,] in accordance with §143.11 of this title (relating to Continuing Education Requirements). The renewal form must be signed and dated by the renewal applicant.

(5)(6) The MRT or LMRT has renewed the certificate when the renewal form and required renewal fee are mailed on or before the expiration date of the certificate and received by the administrator. The postmark date shall be considered the date of mailing.

(6)(7) The department is not responsible for lost, misdirected, or undelivered renewal application forms, [and] fees, renewal certificates, or renewal identification cards.

(7)(8) The department shall issue renewal identification cards for the current renewal period to an MRT or LMRT who has met all the requirements for renewal. The cards shall be sent to the preferred mailing address provided on the renewal application form [The department is not responsible for lost or undelivered cards which are not returned to the

department by the United States Postal Service or any other mail carriers].

(8)(9) The department shall issue renewal identification cards to an MRT or LMRT who fails to complete the continuing education requirements for recertification as set out in §143.11 of this title (relating to Continuing Education Requirements). The renewal identification cards shall expire 120 days after the last day of the MRT's or LMRT's birth month. If the deficiency is corrected within the 120-day period, the department shall issue a renewal identification card which expires on the last day of the MRT's or LMRT's next birth month plus one year. An MRT or LMRT who does not correct the deficiency within 120 days shall not be allowed to extend or renew the certificate [Any certificate not renewed by the expiration date shall be subject to the provisions for late renewal. A certificate not renewed within 60 days after expiration shall not be renewed].

(f)(g) Late renewals.

(1) A person whose certificate has expired for not more than 60 days may renew the certificate by submitting to the department the completed renewal form, continuing education report forms (if required), and the late renewal fee [Payment must be in the form of a certified check or money order if sent by mail. If submitted in person, cash may also be accepted by the department's cashier].

(2) The late renewal is effective if it is mailed to the department or personally delivered by the MRT or LMRT or his/her agent to the department not more than 60 days after certificate expiration. If mailed, the postmark date shall be considered the date of mailing. A postage metered date is not considered as a postmark. A certificate not renewed within 60 days after expiration cannot be renewed.

(g) [(h)] Expired certificates.

(1)] The department, by certified mail using the last address known, shall attempt to inform each MRT or LMRT who has not renewed a certificate after a period of more than 60 days after the expiration of the certificate that the certificate has automatically expired. A person whose certificate automatically expires is required to surrender the certificate and identification cards to the department.

(2) A person whose certificate has expired may not use the title or represent or imply that he or she has the title of certified medical radiologic technologist, or use the letters MRT or LMRT or any facsimile thereof in any manner. Any person required to be certified under the Medical Radiologic Technologist Certification Act (the Act) who performs medical radiologic procedures without a certificate or with an expired certificate is in violation of the Act.

An offense under the Act is a Class B misdemeanor, punishable by up to 180 days in jail or up to \$1,000 fine, or both.]

§143.11. Continuing Education Requirements.

(a) (No change.)

(b) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period beginning on the first day of the month following each MRT's or LMRT's birth month and ending on the last day of each MRT's or LMRT's birth month two years hence.

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

(5) No more than 50% of the required number of hours may be satisfied through home or self-study. These activities must include audiovisual materials or reading(s) plus audio or audiovisual materials. The reading of written materials without accompanying audio or audiovisual materials shall not qualify for home or self-study hours.

(6) At least 50% of the required number of hours must be activities which are directly related to the use and application of ionizing forms of radiation to human beings for medical purposes.

(7) No more than 25% of the required number of hours may be satisfied by completing or participating in learning activities which are indirectly related to radiologic technology. For the purposes of this section, indirectly related topics include, but are not limited to, computer science, computer literacy, introduction to computers or computer software, physics, human behavioral sciences, mathematics, communication skills, public speaking, technical writing, management, administration, accounting, ethics, adult education, medical sciences, and health sciences. Other courses may be accepted for credit provided there is a demonstrated benefit to patient care.

(8)[(6)] Persons who hold temporary certificates, either general or limited, are not subject to these continuing education requirements.

(9)[(7)] An MRT or LMRT who also holds a current Texas license/registration/certification in another health profession may satisfy the continuing education requirement for renewal of the MRT or [of] LMRT with hours counted toward renewal of the other license, registration, or certification provided [as long as] the hours meet all the requirements of this section.

(c) Types of acceptable continuing education. Continuing education [undertaken by an MRT or LMRT] shall be acceptable if the experience or activity:

(1) is offered for semester hour or quarter hour credit by an institution

accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools and is directly or indirectly related to the disciplines of radiologic technology; or

(2) is offered for continuing education credit by an institution accredited by CAHEA or the Commission on Dental Accreditation of the American Dental Association or the CCE and is directly or indirectly related to the disciplines of radiologic technology; or [meets the following criteria:]

(3)[(A)] is an educational activity which meets the following criteria:

(A) [in which] the content applies directly or indirectly to the disciplines of radiologic technology or is specific to the category of the limited certificate held by the LMRT; and

(B) is approved, recognized, accepted, or assigned continuing education credits by professional organizations or associations such as the American Society of Radiologic Technologists, the ARCRT, the American Healthcare Radiology Administrators, the American Society of Podiatric Assistants, the Society of Nuclear Medicine, the CCE [Chiropractic Council on Education], the Texas Society for Radiologic Technologists, the Texas Society of the ARCRT, the American Podiatric Medical Association, the American Dental Hygiene Association, the American Medical Association (Category I Continuing Medical Education only), the American Osteopathic Association (Category I Continuing Medical Education only), or the American Dental Association.

(d) Additional acceptable activities. The additional activities for which continuing education credit will be awarded are as follows:

(1) successful completion or recertification in a cardio-pulmonary resuscitation course, basic cardiac life support course, or advanced cardiac life support course during the continuing education period. Such successful completion or recertification shall be limited to [awarded] not more than three hours credit [for each course completed] during a renewal period; or

(2) attendance and participation in inservice education and training offered or sponsored by JCAHO-accredited or Medicare certified hospitals, provided the education/training is properly documented and is germane to the profession of radiologic technology.[:]

(e) (No change.)

(f) Determination of clock hour credits. The department shall credit continuing education experiences and activities as follows.

(1) Semester hour or quarter hour credits as set out in subsection (c)(1) of this section shall be credited [for continuing education] on the basis of 15 clock hour credits for each semester hour and 10 clock hour credits for each quarter hour successfully completed with a grade of "C" or better, evidenced by an official transcript.

(2) (No change.)

(g) Activities unacceptable as continuing education. The department shall not grant credit for:

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

(4) home-study or self-study activities which have no audio or audiovisual component or no post-test or other measurement or evaluation instrument provided;

(5) home-study or self-study activities which exceed 50% of the clock-hour requirements as set out in subsection (b)(2) and (3) of this section;

(6) learning activities indirectly related to radiologic technology which exceed 25% of the clock hour requirements as set out in subsection (b)(2) and (3) of this section;

(7) learning activities which are germane to non-ionizing forms of radiation in excess of the 50% of the clock hour requirement as set out in subsection (b)(2) and (3) of this section;

(8)[(5)] any activities or experiences which do not meet the criteria set out in subsection (c) of this section; or

(9)[(6)] activities in accordance with subsection (d)(1) of this section which are repeated during the renewal period or hours in excess of three hours per renewal period.

(h) Failure to complete the required continuing education.

(1) (No change.)

(2) The next continuing education reporting period shall commence on the day following the completion of continuing education credits to correct the deficiency and shall end two years from [form] the date the previous renewal period ended [is borrowed from the next reporting period]. In other words, the extension period is borrowed from the next reporting period.

(3) (No change.)

§143.15. Alternate Eligibility Requirements.

(a) This section applies to individuals applying for general certification who have not met the requirements set out in §143.7 of this title (relating to Types of Certificates and Applicant Eligibility) but who have completed education, training, and clinical

experience which is equivalent to that of a CAHEA-accredited educational program in radiography.

(b) An applicant who meets the alternate eligibility requirements of this section is eligible to be examined for the general certificate. Upon the applicant's successful completion of the examination, the department shall issue an approval letter for the general certificate. In addition to meeting the minimum eligibility requirements set out in §143.7(c)(1)-(5) of this title (relating to Types of Certificates and Applicant Eligibility), an individual must submit the following items to be considered eligible for the general examination:

(1) a satisfactorily completed application on the forms prescribed by the department;

(2) official transcripts or other certified documents which indicate successful completion of coursework specified in subsection (c) of this section which are accompanied by a list which has been typed or legibly printed in English identifying each transcript or document, the sponsor or sponsoring institution for each course, workshop, symposium or seminar, and the inclusive dates of each learning activity; and

(3) proof of successful completion, within the eight-year period prior to application to the department, of supervised clinical practice experience in radiologic technology as specified in subsection (d) of this section; and

(4) a complete resume which has been typed or legibly printed in English of all education, training, and work experience in the field of radiologic technology giving specific dates, locations, names, and qualifications of supervisors and instructors.

(c) The required coursework must consist of instructor-directed learning activities or classroom instruction in the following subject areas for not less than the number of clock-hours specified:

(1) principles of radiation biology and radiation protection—40 hours;

(2) human anatomy and physiology—45 hours;

(3) radiographic procedures and principles of radiographic exposure—60 hours;

(4) radiographic film processing—five hours; and

(5) introduction to radiography, medical ethics and law, medical terminology, methods of patient care and management essential to radiologic procedures, imaging equipment, evaluation of radiographs, radiation physics, radiographic pathology, introduction to quality in medical imaging, and an introduction to

computer literacy as it applies to the medical radiologic technologist—150 hours, total. All subjects must be covered.

(d) The required supervised clinical experience in medical radiologic technology shall consist of at least 2,000 clock hours. Written verification of the experience must be provided on the forms prescribed by the department and must be signed by a physician and a supervising radiologic technologist who is either an ARRT registered technologist or certified by the department as a medical radiologic technologist. The experience must include the following:

(1) a sufficient and well-balanced variety of radiographic examinations and equipment;

(2) integration of the clinical experience with the coursework set out in subsection (c) of this section;

(3) laboratory practicum for student demonstration and practice of essential skills, principles and procedures of image quality, image evaluation, quality assurance, and radiation safety and protection; and

(4) periodic evaluation of the student or trainee's knowledge, problem solving skills, and clinical competencies which shall include, but not be limited to, the following areas listed in subparagraphs (A)-(O) of this paragraph. Upon completion of the 2,000 hours of clinical experience the student or trainee shall be able to:

(A) use oral and written medical communication;

(B) demonstrate knowledge of human structure, function, and pathology;

(C) anticipate and provide basic patient care and comfort;

(D) apply principles of body mechanics;

(E) perform basic mathematical functions;

(F) operate radiographic imaging equipment and accessory devices in a safe and appropriate manner;

(G) position patients and radiographic imaging equipment to perform radiographic examination procedures;

(H) modify standard procedures to accommodate for patient condition and other variables of medical significance;

(I) process radiographs;

(J) determine exposure factors to obtain diagnostic quality radiographs with minimum radiation exposure and adapt exposure factors for various patient conditions, equipment, accessories, and contrast media to maintain appropriate radiographic quality;

(K) practice radiation protection for the patient, self, and others;

(L) recognize emergency patient conditions and initiate first aid and basic life-support procedures;

(M) evaluate radiographic images for appropriate positioning and image quality;

(N) evaluate the performance of radiographic equipment, know the safe limits of operation, report malfunctions to the proper authority and demonstrate knowledge and skills relating to quality assurance; and

(O) exercise independent judgment and discretion in the technical performance of medical radiologic procedures.

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

Issued in Austin, Texas, on April 5, 1990.

TRD-9003505

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

Proposed date of adoption: June 30, 1990

For further information, please call: (512) 458-7275

◆ ◆ ◆
TITLE 28. INSURANCE
Part II. Texas Workers'
Compensation
Commission
Chapter 64. Representing
Claimants Before the Board
◆ ◆ ◆
• **28 TAC §§64.5, 64.10, 64.15,**
64.20

(Editor's Note: The Texas Workers' Compensation Commission proposes for permanent adoption the repealed sections it adopts on an emergency basis in this issue. The text of the repealed sections is in the Emergency Rules section of this issue.)

The Texas Workers' Compensation Commission proposes the repeal of §§64.5, 64.10, 64.15, and 64.20, concerning legal representation of claimants before the agency. The repeals are proposed in response to pending litigation.

The repeals are simultaneously adopted by emergency action, and appear elsewhere in this issue of the *Texas Register*.

George E. Chapman, executive director, also has determined that for the first five year period the proposed repeals are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the repeals.

There is no anticipated impact on employment, locally or statewide, as a result of implementing the repeals.

Mr. Chapman 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 dispute resolution. There will be no effect on small or large businesses as a result of enforcing the repeals. 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 George E. Chapman, Executive Director, Texas Workers' Compensation Commission, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The repeals are proposed under Senate Bill 1, §17.12(b) (71st Legislature, Second Called Session, 1989), which provides for delegation by the Texas Workers' Compensation Commission to the executive director of necessary powers to administer the workers' compensation laws in effect prior to January 1, 1991, which delegation was effected on April 1, 1990; and under Texas Civil Statutes, Article 8307, §4(a), which authorize the adoption of rules necessary for the administration of the workers' compensation laws in effect prior to January 1, 1991.

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

Issued in Austin, Texas, on April 4, 1990.

TRD-9003493

George E. Chapman
Executive Director
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 448-7962

TITLE 31. NATURAL RESOURCES AND CON- SERVATION

Part X. Texas Water Development Board

Chapter 355. Research and Planning Fund

Facility Engineering in Eco- nomically Distressed Areas

• 31 TAC §§355.70-355.80

The Texas Water Development board (the board) proposes new §§355.70-355. 80, concerning facility engineering in economi-

cally distressed areas under the research and planning fund. The data obtained from a facility engineering study will be used by the board to consider making a commitment to provide financial assistance to a project which will serve an economically distressed area.

The new sections establish a procedure and criteria which the board will use in making funds available through the research and planning fund to political subdivisions for up to 75% of the cost of facility engineering for water and wastewater facilities to serve economically distressed areas. An economically distressed area is defined as an area: which is located in an affected county (which is defined as a county that has a per capita income that averaged 25% below the state average for the most recent three consecutive years for which United States Bureau of Economic Analysis statistics are available and an unemployment rate that averaged 25% above the state average for the most recent three consecutive years for which Texas Employment Commission statistics are available and is on a list maintained by the executive administrator of the Texas Water Development board; or a county that is adjacent to an international border); which lacks adequate water and/or wastewater services; which lacks adequate financial resources to provide needed water and wastewater services; and in which 80% of the dwellings in the area were occupied on June 1, 1989. The rules define a political subdivision to be an affected county; or to be a municipality, water district, authority, or water supply corporation located in an affected county.

Through §355.74, the board will adopt, by reference, model political subdivision rules, which must be adopted by political subdivisions before they are eligible for financial assistance under the economically distressed areas program. Through the model rules, the board would establish minimum standards for water and wastewater services.

Using the results of previous studies and staff research, the board will ask that requests for funding for facility engineering be made for designated economically distressed areas. Several areas may be included in one request. The board will consider funding up to 75% of the cost of the facility engineering for those areas that respond to the request for designated area proposals. The final product is called the feasibility study. Much of the work required for a feasibility study must be done by a registered engineer.

In addition to proposals from designated areas, the board may accept requests for funds from undesignated areas. If such a request meets certain criteria, it may be considered for funding.

Once the board approves funding for a study, the board staff and the applicant will work together to develop details of the work outline. The board may provide 75% of the study costs with the applicant providing the balance, with at least one-half of the applicant match in the form of a cash contribution.

The board must consider the ability of local residents to pay for water and wastewater services before funding projects under the Texas Water Code, Chapter 17, Subchapter K. An important work item for the feasibility studies will be developing data addressing

this subject. The information to be assembled will be identified during evaluation of each proposal.

Some of the engineering work tasks associated with the feasibility level studies include an evaluation of the alternatives to solve the problem, a preliminary outline of facilities needed, cost estimation, and identification of funding alternatives. Special engineering work tasks include evaluation of usefulness of septic tanks, innovative treatment facilities, and use of labor from the area. Socioeconomic tasks include developing data on resident per capita income, water and wastewater expenses, and employment.

The end product will be a report containing sufficient data so the board can consider making a commitment for financial assistance to build the physical improvements. When the board commits to financial assistance, it may also agree to fund up to 75% of the cost of the detailed plans and related items necessary to obtain construction bids and begin construction.

Susan Taylor, director of accounting, has determined that for the first five-year period the proposed 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 board staff has determined that the new sections will have no possible impact on local economies.

Ms. Taylor 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 studies leading to potential construction projects in economically distressed areas, thereby eliminating health hazards in these areas. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

A public hearing on the proposed sections will be held on April 30, 1990, at 1:30 p.m. in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711. Written comments must be received by April 30, 1990, to Todd Chenoweth, Project Director, Economically Distressed Areas, P.O. Box 13231, Austin, Texas 78711.

The new sections are proposed under the Texas Water Code, §6.101 and §15. 403, which states that the board shall adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code and other laws of the state.

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

Ability to pay—Rates, fees, and charges that the average customer to be served by the project will be able to pay based on a comparison of what other families of similar income who are similarly situated pay for comparable service.

Affected county—

(A) A county that has a per capita income that averaged 25% below the state average for the most recent three consecutive years for which United States Bureau of Economic Analysis statistics are available and an unemployment rate that averaged 25% above the state average for the most recent three consecutive years for which Texas Employment Commission statistics are available and is on a list maintained by the executive administrator of the Texas Water Development board; or

(B) A county that is adjacent to an international border.

Cost-effectiveness analysis—An analysis performed to determine which water and wastewater facility or component part will result in the minimum total monetary cost over time, without overriding nonmonetary factors, to meet federal, state, and local requirements.

Distressed areas water financing fee—A fee imposed by a political subdivision on undeveloped property.

Economically distressed area—An area within an affected county in which:

(A) water or wastewater facilities are inadequate to meet minimal water supply and wastewater needs of residential users as defined by the minimum state standards adopted by the board;

(B) financial resources are inadequate to provide water or wastewater facilities that will those needs; and

(C) 80% or more of the dwellings to be served by the facilities covered by an application for financial assistance were occupied on June 1, 1989.

Facility engineering—The two phases of studies and tasks that are performed to determine the engineering feasibility of water or wastewater facilities and to obtain plans and specifications for constructing the water or wastewater facilities for an economically distressed area.

Facility Engineering Phase I—The studies, tasks, and reports that are performed to determine the most cost-effective alternative to meet water and wastewater facility needs, determine the feasibility of the proposed alternative, and prepare an application for board financial assistance to construct the alternative.

Facility Engineering Phase II—The tasks that yield design reports, construction drawings, technical specifications, instructions, and other contract conditions and forms needed to construct a water or wastewater facility.

Minimal wastewater needs—A wastewater facility that does not create a nuisance or public health problems.

Minimal water supply needs—A wa-

ter supply system that meets the water quality and quantity standards for a community water system as established by the Texas Department of Health.

Political subdivision—An affected county; municipality located in an affected county; a district or authority created under Texas Constitution, Article III, §52, or Article XVI, §59, located in an affected county; or a nonprofit water supply corporation created and operating under Acts of the 43rd Legislature, First Called Session, 1933, Chapter 76, (Texas Civil Statutes, Article 1434a), located in an affected county.

Wastewater facilities—Any devices and systems which are used in the transport, storage, individual treatment, on-site treatment, cluster system treatment, centralized treatment, conservation, recycling, and reclamation of domestic waste or which are necessary to recycle or reuse reclaimed domestic wastewater at the most economical cost over the estimated life of the new works, including intercepting sewers, out-fall sewers, sewage collections systems, pumps, power equipment, septic tanks (including surface or subsurface drainage facilities and other improvements for proper functioning of septic tank systems), nonconventional treatment methods, and other equipment and their appurtenances; and extensions, improvements, remodeling, additions, and alterations to existing wastewater facilities. The term does not include devices and systems within dwellings, businesses, or institutions.

Water conservation—Those practices, equipment, fixtures, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that water supply is made available for a future or alternative uses.

Water facilities—Any devices and systems which are used in the collection, supply, development, protection, storage, transmission, treatment, and retail distribution of water for safe human use and consumption. The term does not include devices and systems within dwellings, businesses, or institutions.

§355.71. Purpose and Policy.

(a) **Availability.** The board will make funds available through the research and planning fund to political subdivisions for up to 75% of the cost of facility engineering for water and wastewater facilities to serve economically distressed areas. At least 50% of the applicant's minimum required matching share shall be provided in the form of cash.

(b) **Time to enter contract.** Because of the urgent need to solve problems and due to limited funds, each applicant must enter into a contract with the board by the third regular board meeting after the board approves its application.

(c) **Completion of phases.** The board will consider and may provide financing for Facility Engineering Phase II only after completion of Facility Engineering Phase I, or preparation of an equivalent product, and in conjunction with board approval of an application for financial assistance to construct water or wastewater facilities or both.

(d) **Repayment of Phase II costs.** Upon closing a transaction that provides financial assistance for facility construction, the applicant will return to the board that portion of up-front assistance for Facility Engineering Phase II costs that corresponds to the percentage of financial assistance for construction that is a loan.

(e) **Regionalization.** It is the board's policy to encourage local political subdivisions of the state to implement regional water and wastewater facilities when such facilities are appropriate, cost effective, and support the purposes of the Texas water plan and areawide water quality management plans. If a facility engineering application includes items which are ineligible under these rules, due to the regional nature of the project, the board may consider the ineligible items under other funding arrangements or may consider funding only those items which are eligible.

(f) **Priority of applications.** In addition to considering applications for areas designated under §355.73(a) of this title (relating to Solicitation Procedures), the board will give priority to facility engineering applications for economically distressed areas not identified as designated areas that address the most serious public health and water quality problems and that are likely to result in the successful construction and operation of water or wastewater facilities to correct such problems. In evaluating applications for areas not designated under §355.73(a) of this title (relating to Solicitation Procedures) the board will first consider applications which meet at least seven or more of the criteria listed in §355.77(b) of this title (relating to Evaluation Criteria).

(g) **Engineering.** To make the most effective use of the limited amount of funds available, the applicant will confer with the board on all significant decisions related to the Phase I and II facility engineering.

(h) **Alternative selection.** To make maximum use of funds available, the executive administrator and applicant will jointly make decisions on identification of alternatives, selection of a recommended alternative, and the method and timing of implementation.

(i) **Preapplication conference.** It is the board's policy that potential applicants participate in a pre-application conference by contacting the board's staff and arranging a mutually convenient time and place to receive instruction and guidance on aspects

related to preparing a financial assistance application for facility engineering.

§355.72. Applicability. The board will consider applications and may enter into contracts with political subdivisions to provide funding from the research and planning fund to develop facility engineering for water and wastewater facilities to serve economically distressed areas.

§355.73. Solicitation Procedures.

(a) Applications for designated areas.

(1) The board may solicit applications from political subdivisions for specific economically distressed areas designated by the board which lack adequate water or wastewater facilities.

(2) The board will specify the location, type, and scope of project for which facility engineering applications will be solicited. The board will publish information on the solicitation in the *Texas Register*, and the solicitation will include a timetable for submitting facility engineering applications.

(3) Publishing a solicitation does not obligate the board to make an award.

(b) Applications for undesignated areas.

(1) The board will consider applications for water and wastewater facility engineering for areas not designated under subsection (a) of this section provided the applications satisfy the eligibility criteria in §355.74 of this title (relating to Criteria for Eligibility) and the requirements of §355.77(b) of this title (relating to Evaluation Criteria) after notice and only during the time periods designated in subsection (b)(2) of this section. Applications for areas not designated under subsection (a) of this section will be considered in accordance with §355.71 of this title (relating to Purpose and Policy) and in accordance with the criteria established in §355.77 of this title (relating to Evaluation Criteria).

(2) The board will periodically publish notices in the *Texas Register* that applications for areas not designated under subsection (a) of this section will be accepted. The announcement will indicate the period during which applications may be submitted for consideration.

(3) The content of an application for an area not designated under subsection (a) of this section will be the same as for an application for a designated area.

§355.74. Criteria for Eligibility.

(a) Political subdivision eligibility. Political subdivisions must meet the

appropriate requirements of this section before the board may provide financial assistance for facility engineering.

(1) The political subdivision must be located within an affected county, except as provided in paragraph (6) of this subsection.

(2) A county within which the political subdivision applying for assistance is wholly or partially located must have adopted and be enforcing the model subdivision rules required by the Texas Water Code, §16.343. The board adopts these model political subdivision rules by reference. Copies of the model subdivision rules are available from the board upon request from the Texas Water Development Board, Project Director, Economically Distressed Areas, P.O. Box 13231, Austin, Texas 78711.

(3) A municipality which applies for financial assistance or within which a political subdivision applying for assistance is wholly or partially located must have adopted and be enforcing the model subdivision rules required by the Texas Water Code, §16.343, if the economically distressed area is partially or wholly located inside the incorporated limits of the municipality.

(4) A political subdivision applying for facility engineering assistance must have the concurrence, in the form of an official governing body resolution, of each entity holding a certificate of public convenience and necessity that is for the same type of service to be addressed in the projected facility engineering study and that is in the same area addressed by the application.

(5) A district or a nonprofit water supply corporation may apply for assistance from the board if the eligible county or municipality in which the economically distressed area is located do not intend to apply for financial assistance for the same project in the same area and the eligible county or municipality approves by resolution the district's or nonprofit water supply corporation's submittal of an application for financial assistance.

(6) If, after submission of a financial assistance application, the county average per capita income increases or the average unemployment rate decreases so that the county no longer meets the definition of affected county in §355.70 of this title (relating to Definitions), the political subdivision submitting the application will continue to be eligible for the financial assistance originally requested, provided the application is not substantially amended.

(7) The applicant must present evidence from the Texas Department of Health that there is an authorized agent that has jurisdiction over the project area pursuant to the Texas Health and Safety Code, §366.033 (Vernon 1990) and Texas Civil Statutes, 4477-7e, §5(h).

(b) Criteria for eligibility. It is the policy of the board to fund the most cost effective projects with the limited funds available for economically distressed areas. Therefore, the board will provide financial assistance for facility engineering only in economically distressed areas where 80% of the lots to be served by the facilities were occupied on June 1, 1989.

§355.75. Submission of Applications.

(a) General. A separate application shall be submitted for each phase of facility engineering. The applicant shall submit 10 copies of the application.

(b) Phase I completion requirement. Financial assistance for Facility Engineering Phase II will not be awarded until all required facility Engineering Phase I work is completed and approved by the executive administrator.

(c) Application contents. An application for Facility Engineering Phase I or Phase II shall consist of the following:

(1) legal name and address of applicant;

(2) type of facilities for which facility engineering will be prepared;

(3) citation of laws under which the applicant was created and is authorized to plan, develop, and operate water or wastewater facilities;

(4) a map showing the geographic area to be addressed by the facility engineering and a justification for the boundaries. The application must identify any other areas within reasonable distance of the protected area, as determined by the executive administrator, that may need service or areas that do not meet the 80% occupancy requirement in §355.74 of this title (relating to Criteria for Eligibility) and why facility engineering cannot be performed for those areas;

(5) description of existing water and wastewater facility in the economically distressed area;

(6) documentation of the inadequacy of existing water and wastewater facilities;

(7) a description of the relationship to, and effect of, any proposed water or wastewater facility engineering project on other water or wastewater plans or facilities in the facility engineering areas and the surrounding region, if any;

(8) assurances with respect to wastewater facility engineering that the proposed alternative developed and recommended will conform to a certified water quality management plan or will be submitted for certification in a conforming amendment;

(9) a list of the work tasks consistent with §355.76 of this title (relating

to Scope of Facility Engineering Phases) and a time schedule for the tasks to be completed;

(10) the cost of the facility engineering phase, showing the total budget, the amount eligible for facility engineering assistance, and the following:

(A) the amount of funds being requested from the board;

(B) a budget for each individual task to be performed by the applicant;

(C) a budget for each cost element or object class category to be incurred by the applicant, including salaries and wages, fringe benefits, travel, expendable supplies, subcontract services, technical or computer devices, communication, reproduction, overhead or indirect expenses, and profit;

(D) a budget for each individual task to be subcontracted;

(E) an estimated cost element or object class budget for subcontract services. The subcontract services budget will be provided at the same level of detail as required for the applicant's budget;

(11) assurance that implementation of the recommended alternative will be diligently pursued;

(12) if the facility engineering phase is to be prepared through subcontracts, a draft of the request for proposals or an unexecuted draft of the subcontract, including cost and pricing information, a listing of staff qualifications and direct experience, and additional information on subcontract requirements for specialized services or expertise;

(13) qualifications of any political subdivision staff and detailed tasks to be performed that will be paid, in whole or in part, from board funds and the amount budgeted for staff;

(14) a detailed explanation of the in-kind contribution to be provided and the source of the in-kind contribution;

(15) all information necessary to evaluate the application under §355.77 of this title (relating to Evaluation Criteria);

(16) documentation that financial resources available to the economically distressed area are inadequate to provide adequate water or wastewater facilities to the economically distressed area;

(17) evidence that at least 80% of the dwellings and lots to be served by the facility engineering covered by an application for funds or financial assistance were occupied on June 1, 1989;

(18) evidence of political subdivision eligibility in accordance with §355.74 of this title (relating to Criteria for Eligibility of Political Subdivisions) including:

(A) documentation evidencing the required adoption and enforcement of the model subdivision rules;

(B) if the applicant is a water supply corporation or a district, a resolution from the county or municipality with jurisdiction over the project area that evidences county or municipal approval of the application submittal;

(C) concurrence of all holders of certificates of convenience and necessity within the project area; and

(19) any other information required by the executive administrator.

(d) Additional Phase II application requirements. In addition to the requirements of subsection (c) of this section, an application for Facility Engineering Phase II shall contain the following information:

(1) evidence of submission of a completed and approved facility engineering plan; and

(2) an application for financial assistance for the construction of water or wastewater facilities.

§355.76. Scope of Facility Engineering Phases.

(a) Required Facility Engineering Phase I tasks. An application for Facility Engineering Phase I assistance shall provide for the completion of the tasks described in this subsection. All applicable reports and plans shall be signed and sealed by a professional engineer in accordance with the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271a.

(1) A facility plan shall be provided which shall consist of:

(A) incorporation of appropriate data from applicable existing planning reports;

(B) an analysis and explanation of the problems and needs within the economically distressed area and the total project area including:

(i) existing and projected population;

(ii) existing water and wastewater facilities;

(iii) existing and projected water supply and water demand;

(iv) wastewater characterization;

(v) infiltration inflow analysis, if applicable;

(vi) ability of the dwellings to utilize future water and wastewater facilities;

(vii) household and per capita income; and

(viii) average household size and average appraisal values;

(C) a description of the efforts that residents have taken to provide necessary adequate water and wastewater facilities:

(D) the identification, selection, and evaluation of alternatives, including preparation of a cost-effectiveness analysis of the alternatives for providing adequate water and wastewater facilities. For wastewater, alternatives include septic tanks and other on-site systems; regional and non-regional systems; conventional treatment technologies; nonconventional treatment technologies, such as rock reed, root zone, ponding, irrigation, or other technologies that may have been developed by NASA and the Tennessee Valley Authority; and revenue generating alternatives. The alternative evaluation will also consider facilities which will allow for greatest utilization of local labor during facility construction, operation, and maintenance;

(E) environmental data and analysis in accordance with §341.43 of this title (relating to Specific Guidelines for the Impacts Assessment Statement) and/or §375.35 of this title (relating to Required Environmental Review and Determinations);

(F) a water conservation and emergency water shortage plan for the applicant and an explanation of how water conservation will be incorporated into the provision of adequate water and wastewater facilities both to and in dwellings in the economically distressed area;

(G) documentation of consultation with residents of the economically distressed areas to determine the most economical solution without overriding social or environmental factors, evidence of individual user commitment to utilize the facilities, and documentation of public consent for the construction of water and wastewater facilities to serve the economically distressed area. This may involve support of an advisory committee made up of residents from the economically distressed area and other areas;

(H) a description of the proposed facilities, including an identification of any existing facilities to be acquired, replaced, enlarged, or improved;

(I) preliminary engineering design data, including documentation of consistency with the minimum state standards required by the Texas Water Code, §16.343 and referenced in model rules adopted by the board in §355.74(a)(2) of this title (relating to Criteria for Eligibility);

(J) detailed construction cost estimates for each segment of construction, estimates of the operation and maintenance costs for the recommended facilities, and a separate calculation of both construction and operation and maintenance costs on a per dwelling basis. Separate costs for the dwelling rehabilitation needed to allow use of the water and wastewater facilities shall also be provided;

(K) details or drafts of any proposed interlocal agreement or other agreements or contracts needed to implement the project;

(L) a detailed implementation schedule for designing, permitting, financing, and constructing the facilities, and for any other major milestones. If the project is to be phased, major milestones, costs, and descriptions for each component and segment of the project shall be provided; and

(M) if a dam and reservoir project is to be part of the recorded alternative, all additional information required by §363.55 of this title (relating to Required Engineering Feasibility Data for Water Projects).

(2) A determination of the amount of funds available from federal, state, local, and private organizations for Facility Engineering Phase II, construction, and operation of the recommended facilities shall be provided. This includes the county contribution required by the Texas Water Code, §17.893(d).

(3) A user charge system, including the analysis of a distressed areas water financing fee.

(4) Documentation of the number of dwellings and lots occupied by June 1, 1989, the number of dwellings currently unoccupied, and number of dwellings to be served by the project within the facility engineering area and the economically distressed area shall be developed and provided.

(5) A determination of the feasibility of financing water or wastewater services by creating a conservation and reclamation district.

(b) Optional Facility Engineering Phase I tasks. The Facility Engineering Phase I assistance shall include the items of

work described in this subsection if approved or required by the board:

(1) an appraisal of the value of real property needed for the water and wastewater facilities. In the absence of condemnation powers, the political subdivision shall determine the availability of title, easements, and rights of-way needed to implement the project;

(2) a determination of the availability of surface water and the right to utilize groundwater, the preparation of applications for necessary water rights permits, and the preparation of purchased contracts;

(3) the preparation of applications for necessary state and federal wastewater permits. Facility Engineering Phase I may not include activities associated with administrative or legal proceedings by regulatory agencies;

(4) a determination of the areal extent of existing certificates of convenience and necessity and the preparation of an application for a certificate of convenience and necessity in accordance with Chapter 219, Subchapter G of this title (relating to Certificates of Convenience and Necessity); and

(5) investigations and health studies that provide adequate information for the Texas Department of Health to determine the severity of public health problems within the economically distressed area.

(c) Required Facility Engineering Phase II tasks. Facility Engineering Phase II assistance shall include:

(1) preparation of construction drawings and specifications, including contract documents needed to construct the water or wastewater facility;

(2) preparation of final engineering design reports required to obtain state and federal agency design approval; and

(3) surveys and soil tests needed to design facilities.

§355.77. Evaluation Criteria.

(a) General evaluation criteria. The board will evaluate water or wastewater facility engineering applications for designated and undesignated areas according to the following criteria:

(1) an indication that the facility engineering will not duplicate adequate or ongoing water or wastewater facility engineering within the economically distressed area;

(2) the probability that the facility engineering will result in the implementation of adequate water and wastewater facilities for the economically distressed area;

(3) the severity of inadequate water and wastewater facilities and of raw water availability, water supply, or water quality problems, including violations of public drinking water standards, ambient water quality criteria, or wastewater effluent limitations;

(4) the urgency of addressing water or wastewater problems;

(5) the extent, if any, to which the facility engineering would promote conversion from groundwater to surface water sources;

(6) the number of residents in the economically distressed area to be served by the proposed facilities;

(7) the need for the applicant to receive state financial assistance in order to conduct needed water or wastewater facility engineering;

(8) the ability of the applicant to provide the matching funds and in-kind contributions for facility engineering; and

(9) the extent to which the facility engineering will result in the water or wastewater facilities being provided as a part of a regional system.

(b) Priority evaluation criteria for undesignated area applications. An application for an economically distressed area not designated under §355.73(a) of this title (relating to Solicitation Criteria) must meet seven or more of the criteria of this subsection to receive priority consideration:

(1) documentation, acceptable to the board, from Texas health officials that a severe public health problem exists in the economically distressed area due to inadequate water or wastewater facilities;

(2) the cumulative population of the economically distressed area is greater than 100 residents;

(3) the average density of the economically distressed area is equal to or greater than three dwellings per acre;

(4) the application is for assistance to more than one discreet economically distressed area;

(5) the water supply, if any, serving the economically distressed area does not meet Texas Department of Health minimum standards for a public water supply;

(6) the applicant already provides water and or wastewater service;

(7) the economically distressed area is within an average distance of 1/2 mile from an existing adequate water or wastewater system and is likely to be connected to the system;

(8) the applicant will contribute more than 30% of the funds to the phase of facilities engineering for which funds are being requested;

(9) the economically distressed area covered by the application was included in a regional facilities plan, and the plan identified feasible alternative water or wastewater facilities;

(10) the applicant has an adequate water supply and the water rights necessary to serve the economically distressed area; and

(11) implementation of a recommended alternative has the potential to alleviate an international or interstate pollution problem.

§355.78. Disbursement of Contracted Funds and Cost Accounting.

(a) Contracts. If an application is approved, the board may authorize the executive administrator to enter into a contract with the applicant on behalf of the board. The contract shall contain terms and conditions considered appropriate to protect the interests of the state and the applicant. The contract shall, at a minimum, establish the scope of the work to be conducted; the schedule of work; the beginning and ending dates of work; the incremental and total amounts of funding, including task and cost element or object class expense budgets; billing and payment terms; coordination and reporting requirements; accounting and auditing procedures; liability and termination provisions; and other special and general contractual conditions requiring compliance. An approved applicant shall execute the contract and provide any required assurances, including written evidence of the availability of the local matching share, by the third regular board meeting following the approval of the original application.

(b) Subcontracts. An approved applicant may not enter into a subcontract to perform eligible facility engineering until the subcontract has been approved in writing by the executive administrator. Contractor selection shall be carried out in accordance with the Professional Services Procurement Act, Texas Civil Statutes, Article 664-4 and, when applicable, the Uniform Grant and Contract Management Standards. The board will not be a party to any subcontract, and the political subdivision receiving assistance will be solely responsible for monitoring, administering, and requiring subcontractor compliance with the terms of the board's contract with the political subdivision and terms of each subcontract.

(c) Method of payment. Applicants will be paid on an actual cost reimbursement basis, which may include both fixed fee and time, material, and labor contracts, as provided for in the State Purchasing and General Services Commission's regulations and board policies and procedures. All expenses shall adhere to the contract budget. Applicant billings must be submitted on a State of

Texas purchase voucher and be accompanied by sufficiently detailed invoice information from the contractor and subcontractors, acceptable to the executive administrator, to verify the authenticity of billing charges and accounts. At a minimum, invoices shall fully document labor charges, including the names of the individuals and the numbers of hours worked on individual tasks and the individual hourly charge; travel charges, including copies of tickets and other transportation receipts, copies of lodging receipts, and itemized subsistence expenses by individual, by date and location; direct cost reimbursable charges, including receipts and invoices including the expense item and the reason for the expense; in-kind contributions; and, depending on the type of contract, fringe, overhead or indirect, and profit charges. Each voucher shall also contain a written summary of the tasks performed during the billing period and the costs for each task. All contracts and subcontracts shall provide that 5.0% of the board's share of each progress payment be retained by the board for final payment until after receipt and acceptance of all required reports and documentation. All contract payments shall be made in accordance with the Prompt Payment Act, Texas Civil Statutes, Article 601f and, when applicable, the Uniform Grant and Contract Management Standards. The contractor shall be fully responsible for paying subcontractors before requesting reimbursement from the board.

(d) Records. Applicants, contractors, and subcontractors shall maintain financial accounts, documents, and records that are acceptable to the board. All records shall be made available for examination and audit by the staff of the board and the state. Accounting by applicants, contractors, and subcontractors shall be in a manner consistent with generally accepted accounting practices. All records will be retained for a minimum period of three years, and records shall be retained beyond the three years if litigation, a claim, or an audit is in process or if audit findings are not resolved. The three-year period will begin upon final payment of the funds retained by the board.

(e) Uniform Grants and Contract Management Standards. To the extent determined to be applicable by the board, the applicant will be subject to the requirements of the Uniform Grants and Contract Management Act, Texas Civil Statutes, Article 4413(32g).

(f) Capital equipment. Capital equipment shall not be purchased with facility engineering assistance.

(g) Project budgets. Budgets in applications shall be based upon fair and reasonable rates for all cost items. The board reserves the right to require specific information to explain and justify each cost element, including salary rates for

professional and administrative staff, fringe benefits, overhead or indirect charges, and profits. The applicant shall negotiate budgets by following the procurement standards established in the Professional Service Procurement Act and, as determined to be appropriate by the board, the Uniform Grant and Contract Management Standards. Variances of 5.0% or greater in the individual task budget or cost elements in the object class budget will require a contract amendment.

§355.79. Dissemination of Results.

(a) Phase I reports. Phase I results of all facility engineering projects completed under contract with the board shall be submitted by the applicant in the form of a written report accompanied by all final products, which will then become public information. A minimum of five copies of all draft reports and 12 copies of all final reports shall be delivered to the board. The applicant and subcontractors shall be available for brief presentations of results as required by the executive administrator.

(b) Phase II reports. Phase II results of all facility engineering projects completed under contract with the board will be submitted by the applicant in the form of a written report, which will then become public information. A minimum of four copies of all final products shall be delivered to the board. The applicant and subcontractors shall be available for brief presentations of results as required by the board.

(c) Copyrights and patents. In the absence of statutory or contractual limitations, the contractor may apply for patents on any discoveries made through the facility engineering project. If the contractor does not wish to make the application, the state may request and receive title to the discovery. If the contractor receives a patent, the State of Texas and its political subdivisions shall be entitled to an irrevocable, non-exclusive, royalty-free license to use the discovery for governmental purposes. Specific provisions will be included in each contract to establish eventual ownership of results and potential patents, copyrights, and licenses at the conclusion of all facility engineering projects.

§355.80. Review and Inspection. The applicant will provide to the board:

(1) a monthly, or as often as otherwise required by board rules or contract, accounting of expenditures for facility engineering during the preceding month or other required period; and

(2) additional information, as requested by contract or by the executive administrator, to monitor compliance with the terms and conditions of the financial assistance.

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

Issued in Austin, Texas, on April 6, 1990.

RD-9003609 Suzanne Schwartz
General Counsel
Texas Water Development Board

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 463-7981

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 363. Rules Relating to Financial Programs

Subchapter B. Economically Distressed Areas Program

The Texas Water Development Board (the board) proposes new §§363.201-363.331, concerning rules for financial assistance under the Economically Distressed Areas Program. The sections provide for the administration of the Economically Distressed Areas Program. The sections establish an application procedure and requirements for an application to the board for financial assistance.

The new sections establish a procedure and criteria which the board will use in making funds available through the water development fund to political subdivisions for constructing water and wastewater facilities to serve economically distressed areas. An economically distressed area is defined as an area: which is located in an affected county (which is defined as a county that has a per capita income that averaged 25% below the state average for the most recent three consecutive years for which United States Bureau of Economic Analysis statistics are available and an unemployment rate that averaged 25% above the state average for the most recent three consecutive years for which Texas Employment Commission statistics are available and is on a list maintained by the executive administrator of the Texas Water Development Board; or a county that is adjacent to an international border); which lacks adequate water and/or wastewater services; which lacks adequate financial resources to provide needed water and wastewater services; and in which 80% of the dwellings in the area were occupied on June 1, 1989. The rules define a political subdivision to be an affected county, or a municipality, water district, authority, or a non-profit water supply corporation which is located in an affected county.

The amount and form of financial assistance and the amount and form of repayment of the financial assistance shall be determined by the board. The board shall consider rates, fees, and charges that the average customer

to be served by the project will be able to pay based upon a comparison of what other families of similar income who are similarly situated pay for comparable services, sources of funding available to the political subdivision from federal and private funds and from other state funds, and any local funds of the political subdivision. The sections establish a formula for determining this ability to pay. The rules also provide that the board shall determine the method and evidence of debt.

It is the intent of the board to fund the most cost effective projects with the limited funds available for economically distressed areas. Therefore, the board will provide financial assistance for project construction only in economically distressed areas where 80% of the dwellings and lots to be served by the facilities were occupied on June 1, 1989.

After the board establishes the amount of financial assistance to be paid by the applicant, the board will then set the applicable lending rate. Guidelines for establishing this rate are established by the sections. The interest rate will be applied only to that portion of the financial assistance which an applicant is required to repay.

Susan Taylor, director of accounting, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. There will be an additional cost effect on state government of \$250,000 per year. The estimated effect on local government will consist of a \$25 million increase per year.

The Texas Employment Commission has stated that it foresees no significant impact on overall employment in Texas cities and counties which would result from these sections.

Ms. Taylor 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 implementation of the Economically Distressed Areas Program which has been created to provide financial assistance to those economically distressed areas which lack the proper water and wastewater facilities. There will be no effect on small businesses as a result of enforcing the sections. There is no economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Todd Chenoweth, Project Director, Economically Distressed Areas, P.O. Box 13231, Austin, Texas 78711.

A public hearing on the proposed sections will be held on April 30, 1990, at 1:30 p.m. in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711. Written comments must be received by April 30, 1990, to Todd Chenoweth, Project Director, Economically Distressed Areas, P.O. Box 13231, Austin, Texas 78711.

Introductory Provisions

• 31 TAC §363.201, §363.202

The new sections are proposed under the Texas Water Code, §6.101, which states that the board shall adopt rules necessary to carry out the powers and duties of the board provided by this code and other laws of the state.

§363.201. Scope of Rules. The sections in this subchapter, adopted pursuant to the Texas Water Code, §6.101, shall govern the board's Economically Distressed Areas Program as authorized by the constitution of the State of Texas, Article III, §49-d-7 and the Texas Water Code, Chapters 15, 16, and 17.

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

Ability to pay—Rates, fees, and charges that the average customer to be served by the project will be able to pay based on a comparison of what other families of similar income who are similarly situated pay for comparable service. The board will calculate ability to pay based on the following model:

$$(A) \quad L_n Q = a + b L_n H I + c L_n H V - d A P + e L_n N P;$$

(B) where:

- (1) Q = yearly amount of water consumed per household;
- (2) a = intercept;
- (3) b = parameter for household income;
- (4) c = parameter for housing value;
- (5) d = parameter for price;
- (6) e = parameter for number of persons per house;
- (7) HI = average household income;
- (8) HV = average housing value;
- (9) AP = average price for water; and
- (10) NP = number of persons per household.

(C) the board will calculate parameter values for each of the described factors and intercept values based on a multiple regression analysis of available United States census and utility data.

Affected county—is defined as either of the following:

(A) a county that has a per capita income that averaged 25% below the state average for the most recent three consecutive years for which United States Bureau of Economic Analysis statistics are available and an unemployment rate that averaged 25% above the state average for the most recent three consecutive years for which Texas Employment Commission sta-

tistics are available and is on a list maintained by the executive administrator of the Texas Water Development Board; or

(B) a county that is adjacent to an international border.

Applicant—Any political subdivision or group of political subdivisions which shall formally petition the board for approval of financial assistance with respect to a particular project, proposal, or request by filing the necessary application documents required by this subchapter.

Board—The Texas Water Development Board.

Change order—The documents issued by the political subdivision, with concurrence of the contractor upon recommendation of the project engineer and with the approval and consent of the executive administrator, development fund manager, board, and/or commission, as may be appropriate, authorizing a change, alteration, or variance in previously approved engineering plans and specifications, including, but not limited to, additions or deletions of work to be performed pursuant to the contract or a change in costs for work performed pursuant to the contract.

Closing or date of closing—The time of actual transfer of funds from the board to a political subdivision for purposes of developing, constructing, or acquiring a project.

Commission—The Texas Water Commission or its predecessors.

Conservation—The development of water resources; and those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

Construction—Any one or more of the following:

(A) preliminary planning to determine the feasibility of a project;

(B) engineering, architectural, environmental, legal, title, fiscal, or economic studies;

(C) surveys, designs, plans, drawings, specifications, procedures;

(D) any condemnation or other legal proceeding; and

(E) erection, building, acquisition, alteration, remodeling, improvement, or extension of a project or the inspection or supervision of any of the foregoing items.

Distressed areas water financing fee—A fee imposed by a political subdivision on undeveloped property.

Economically distressed area—An area in which water supply or sewer services are inadequate to meet minimal needs of residential users, in which financial resources are inadequate to provide water supply or sewer services that will satisfy those needs, and in which 80% of the dwellings to be served by financial assistance under the Texas Water Code, Chapter 17, Subchapter K, Chapter 17, were occupied on June 1, 1989.

Economically distressed areas account—Account established within the Texas water development fund to carry out the purposes of the Economically Distressed Areas Program. Program funding may consist of water development bond proceeds; proceeds, other than accrued interest, from the sale, refunding or prepayment of political subdivision bonds acquired by the board in carrying out the purposes of Texas Water Code, Chapter 17, Subchapter K; appropriations, grants, or any other funds available.

Economically Distressed Areas Program—The program for funding projects under authorization of the Texas Constitution, Article III, §49-d-7 and the Texas Water Code, Chapter 17, Subchapter K, Chapter 16, Subchapter J, and §15.407.

Financial assistance—Funds provided by the board pursuant to the Texas Water Code, Chapter 17, Subchapter K.

Minimal sewer service needs—Wastewater facilities that treat water without a nuisance or public health problem.

Minimal water supply needs—Water supply which meets the water quality and quantity standards for a community water system as established by the Texas Department of Health.

Permit—Includes any one of the following:

(A) the authority granted by the commission to appropriate, divert, and use state waters;

(B) the authority granted by the commission to construct a dam and reservoir;

(C) the authority granted by the commission to establish the treatment which shall be given to and the conditions under which waste may be discharged into or adjacent to waters in the state; and

(D) plan approval required by the Texas Water Code, §16.236, for projects that change the flood waters of a stream.

Political subdivision—An affected county; municipality located in an affected county; a district or authority created under the Texas Constitution, Article III, §52 or Article XVI, §59, located in an affected county; or nonprofit water supply corporation created and operating under

Acts of the 43rd Legislature, First Called Session, 1933, Chapter 76 (Texas Civil Statutes, Article 1434a), located in an affected county.

Project—Any engineering undertaking, acquisition, or construction under the Economically Distressed Areas Program for the purpose of any one or more of the following:

(A) conservation and development of the surface or subsurface water resources in the State of Texas, including the control, storage, and preservation of its storm and flood waters and waters of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage facilities, including underground storage and the acquisition or purchase of rights in the underground water and the drilling of wells;

(B) development of the saline and brackish water resources in the state, including any system necessary for desalting;

(C) transportation of water, including any system necessary for the transporting of water to filtration and treatment plants or from filtration and treatment plants to storage, including facilities for transporting waters from such storage or plants to purchasers;

(D) water treatment, including filtration and water treatment plants;

(E) wastewater facilities.

Project engineer—The engineer or engineering firm retained by the applicant to provide complete professional engineering services during the planning, design, and construction of the project.

Storage facilities—The whole or any definable part or portion of a dam or reservoir, whether existing or planned, in which water may be stored for useful purposes.

Waste—The same meaning as provided by the Texas Water Code, §26.001.

Wastewater facilities—Any devices and systems which are used in the transport, storage, individual treatment, on-site treatment, cluster system treatment, centralized treatment, conservation, recycling, and reclamation of domestic waste or which are necessary to recycle or reuse reclaimed domestic wastewater at the most economical cost over the estimated life of the new works, including intercepting sewers, outfall sewers, sewage collections system pumps, power equipment, septic tanks (including surface or subsurface drainage facilities and other improvements for proper

functioning of septic tank systems), nonconventional treatment methods, and other equipment and their appurtenances; and extensions, improvements, remodeling, additions, and alterations to existing wastewater facilities. The term does not include devices and systems within dwellings, businesses, or institutions.

Water conservation plan—A report outlining the methods and means by which water conservation may be achieved.

Water conservation program—A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.

Water development bonds—Bonds authorized by the Texas Constitution, Article III, §49-d-7, and dedicated for use by the Economically Distressed Areas Program.

Water facilities—Any devices and systems which are used in the collection, supply, development, protection, storage, transmission, treatment, and distribution of water for safe human use and consumption. The term does not include devices and systems within dwellings, businesses, or institutions.

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

Issued in Austin, Texas, on April 6, 1990.

TRD-9003608 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 463-7981

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**Subchapter B. Economically
Distressed Areas Program
Policy Declarations**

• 31 TAC §§363.231-363.235

The new sections are proposed under the Texas Water Code, §6.101, which states that the board shall adopt rules necessary to carry out the powers and duties of the board provided by this code and other laws of the state.

§363.231. General Policies.

(a) In accordance with statutory directives and through constitutional authority, a goal of the Texas Water Development Board is to provide financial assistance for water and wastewater facilities in economically distressed areas. The program established by the Texas Water Code, Chapter 17, Subchapter K, will encourage political subdivisions to serve economically distressed areas and further the orderly development of regional water and wastewater facilities through financial assistance and eliminate the serious and un-

acceptable health hazards to the residents of those areas.

(b) The board will encourage political subdivisions in affected counties to apply for financing with which to provide water and wastewater facilities to economically distressed areas. Financing for these projects will come from the dedicated amount as specified in legislation, the Texas Water Code, §17.0111. Planning and implementation of facilities will be designed to mitigate serious health problems which have resulted from the proliferation of poorly designed and in many cases nonexistent housing subdivision infrastructure.

(c) The board shall determine the amount and form of financial assistance and the amount and form of repayment. The board shall consider rates, fees, and charges that the average customer to be served by the project will be able to pay based on a comparison of what other families of similar income who are similarly situated pay for comparable services, sources of funding available to the political subdivision from federal and private funds and from other state funds, and any local funds of the political subdivision. The board shall determine the method of evidence of debt.

(d) It is the policy of the board to promote the conservation of water in the state by requiring implementation of those practices, techniques, and the technologies that will reduce the consumption of water, reduce the waste of water, improve efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses. The board will require all applicants to adopt water conservation programs unless:

- (1) an emergency exists;
- (2) the amount of financial assistance requested is \$500,000 or less; or
- (3) submission of a program is not necessary to facilitate water conservation.

(e) In accordance with the legislative findings and purposes in Acts 1989, 71st Legislature, Chapter 721, the board will limit funding to those projects that demonstrate the most serious and unacceptable health hazards and that are likely to result in the successful construction and operation of water and wastewater facilities.

§363.232. Eligible Facilities.

(a) It is the policy of the board to finance water facilities as defined in §363.202 of this title (relating to Definitions of Terms).

(b) It is the policy of the board to finance wastewater facilities as defined in §363.202 of this title (relating to Definitions of Terms).

(c) Economically Distressed Areas Program funding is not available for operation and maintenance expenses.

(d) It is the policy of the board to fund the most cost effective projects with the limited funds available for economically distressed areas. Therefore, the board will provide financial assistance for project construction only in economically distressed areas where 80% of the lots to be served by the facilities were occupied on June 1, 1989.

(e) When the board provides financial assistance for Phase II facility engineering plans under §§355.70-355.80 of this title (relating to Facility Engineering in Economically Distressed Areas), the board intends to provide financial assistance for construction of the project. The board will take appropriate steps to insure that funds will be available for a reasonable time.

§363.233. Requirements as to Maturity. It is the policy of the board to structure financial assistance to applicants such that the board can maximize the financial resources available to the board. The maturities on loan repayments shall be structured to encourage maximum utilization of any other public or private sources of funding.

§363.234. Permits. The board may make commitments for projects prior to all state permits being received, but will not deliver financial assistance funds until an applicant has obtained all appropriate state permits.

§363.235. Lending Rate.

(a) Policy. After the board establishes the amount of financial assistance to be paid by the applicant, the board will then set the applicable lending rate. This rate will serve the communities of the state by passing on the credit of the state to political subdivisions in the form of loans with interest rates which take into account the state's cost of funds. The board will establish rate scales for each maturity of loans to political subdivisions. In establishing the lending rate scales, the board will take into account the true interest cost of the money to the state including issuance costs and the risks associated with the operation of the financial assistance program. The board will continuously review the lending rate scale, in light of current market conditions, and should there be substantial changes in market conditions, alter the scale if changes are necessary. The amount that an applicant does not have to repay will not have an interest rate associated with those funds.

(b) Two hundred seventy day commitment. The board from time to time finds itself in a position of investing idle bond proceeds at a rate substantially below the cost of bond proceeds. For this reason, financial assistance commitments will remain

in effect for no longer than 270 days; however, the applicant may request that the board extend this commitment beyond the original 270 days. If the board extends the loan commitment beyond the 270 days, it reserves the right to assess a fee for these extensions. Each fee will be established on a case-by-case basis after board consideration and approval.

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

Issued in Austin, Texas, on April 6, 1990.

TRD-9003607 Suzanne Schwartz
General Counsel
Texas Water Development
Board

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For further information, please call: (512) 463-7981

Applications to the Board

• 31 TAC §§363.251-363.257

The new sections are proposed under the Texas Water Code, §6.101, which states that the board shall adopt rules necessary to carry out the powers and duties of the board provided by this code and other laws of the state.

§363.251. Required General Information.

(a) An applicant seeking financial assistance should make an appointment with the staff of the development fund. At a minimum, the preapplication conference should be attended by a member of the governing body of the political subdivision, the entity's engineer, and financial advisor. The primary purpose of the meeting is to establish basic eligibility of the political subdivision for financial assistance.

(b) Initially six copies of an application shall be filed with the board; 40 copies will be filed after information is deemed sufficient. The following information is required on all applications to the board for financial assistance:

(1) legal name(s) of applicant and authority of law under which created;

(2) name, title, and address of official correspondent or representative for applicant and each political subdivision;

(3) names and titles of principal officers, including the managing official of applicant and each political subdivisions;

(4) name and address of project engineer and/or if engineering will be performed by a federal agency, the name and address of the office of the federal agency performing such work;

(5) name and address of legal counsel for applicant. In an application for financial assistance which envisions the

purchase of applicant's bonds by the board, the name and address of bond counsel is also required (if other than legal counsel) and the name and address of financial advisor;

(6) brief description of project including, but not limited to, the following:

(A) location;

(B) a comprehensive statement clearly demonstrating the project need and timing of need in sufficient detail to support and justify the project including present efforts of residents of the economically distressed area to provide necessary water supply and sewer services;

(C) the total estimated cost and allocation of cost to each purpose such as water supply, or wastewater facilities;

(D) proposed allocation and source of project cost to each subdivision, state, and federal agency;

(E) proposed division of the total ownership interest in the project for each political subdivision; and

(F) source of project's water supply;

(7) if a federal project, the name of the federal agency and the extent to which federal planning has progressed. If a federal grant is involved, the amount of the total federal grant and the status of the application for the federal grant;

(8) with respect to each political subdivision, the legal procedures, such as confirmation elections, annexation proceedings, and contract and bond election, required to enable the applicant to assume its obligations with respect to the project, including the stage to which any such procedures have progressed;

(9) information on the basis of which the board can determine whether:

(A) the state will recover its investment;

(B) the cost of such facilities to be acquired exceeds current financing abilities of the area involved; and

(C) whether such facilities can be otherwise financed without state participation;

(10) status of any proceedings to obtain a permit or other authorization from the commission or any other state of federal agency;

(11) the following additional material:

(A) information regarding the inability of the applicant to finance the project without state participation;

(B) evidence that the proposed facilities are consistent with the objectives of the state water plan and/or the state water quality management plan;

(C) the feasibility of creating a conservation and reclamation district under the Texas Constitution, Article XVI, Section 59, to provide the services and finance the water supply and sewer services covered by the application with district bonds issued and sold through the regular bond market; and

(D) if the area for which the applicant seeks financial assistance is outside the limits of a municipality, the applicant shall include a copy of the county map required by Texas Civil Statutes, Article 4477-7e, §6a.

(12) a map of the economically distressed area to be served by the financial assistance together with the number of dwellings to be served by the project and evidence that 80% of the dwellings were occupied on June 1, 1989 and 80% of the lots were occupied on June 1, 1989;

(13) required general information regarding any existing water conservation program, including, but not limited to the following:

(A) education and information programs;

(B) plumbing code standards for water conservation in new construction;

(C) retrofit programs to improve water use efficiency in existing buildings;

(D) conservation-oriented water rate structures;

(E) universal metering and meter repair and re- placement;

(F) leak detection and repair;

(G) drought contingency plans;

(H) ordinances and emergency procedures;

(I) water recycling and reuse;

(J) water conserving landscaping;

(K) distribution system pressure control; and

(L) information on the efficiency of water-using appliances and landscape irrigation equipment by brand and model;

(14) if an exemption from the water conservation program is requested under the provisions of §363.231(d) of this title (relating to General Policies), information by which the board can determine whether:

(A) an emergency exists;

(B) the amount of financial assistance requested is \$500,000 or less; or

(C) submission of a program is not necessary to facilitate water conservation;

(15) information on the basis of which the board can determine that the borrower is charging water and wastewater rates, hook-up fees, and all other fees which are intended for connection of water and wastewater services to residences of economically distressed areas that are equal to or less than rates paid by residents of the political subdivision and without regard to whether the economically distressed area is located in the boundaries of the political subdivision.

(c) After receiving an application the development fund manager will perform the ability to pay calculation. The development fund manager will then add the total amount of requested financial assistance for project construction, the amount of financial assistance for Phase II facility engineering work previously funded by the board for the project, plus the total interest on any amount of financial assistance that must be repaid. If the amount of financial assistance for which repayment is not required exceeds 50% of the resulting sum, the applicant will be asked to provide a finding from the Texas Department of Health that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project.

§363.252. Facility Engineering Requirements. The application shall include all of the facility engineering data, studies, and analysis described in §355.76(a) of this title (relating to Scope of Facility Engineering Phases), and the relevant data and information described in §355.76(b) of this title (relating to Scope of Facility Engineering Phases).

§363.253. Required Fiscal Data.

(a) The applicant shall submit a statement of the project engineer's most current estimate of project cost itemized as to major facilities or items including land and right-of-way costs, fees of engineers, all legal fees, fees of financial advisors and/or consultants, contingencies, and interest during construction. Project costs shall also be allocated to the respective funding source.

(b) The following information is to be furnished when the applicant proposes to sell bonds and/or contract for financing the project, whether the purchasers are to be the board or others than the board:

(1) citation of statutory authority for issuance;

(2) type of bonds (i.e., general obligation, revenue, or combination). If revenues are to be pledged, state the source and nature of such revenue;

(3) amount of the issue;

(4) full name of issue(s);

(5) approximate date of issue(s);

(6) proposed maturities; and

(7) details of option for prior payments.

(c) The applicant shall submit the amount and source of any funds to be expended on the project. Included in this shall be the average household personal income as defined by the United States census, the average per capita income for that project area, average household size, average price of water, and average household appraised value in the project area. Also, the applicant shall include the amount and source of funds to be guaranteed by the appropriate county as well as any information the development fund manager may deem necessary to determine the county's ability to guarantee repayment.

(d) If applicant is authorized by law to levy and collect ad valorem taxes, give the information in paragraphs (1) and (2) of this subsection.

(1) If such right and power have been exercised, give the following information for each of the five preceding years:

(A) assessed valuation of taxable property;

(B) ratio of assessed valuation to actual market value in a specified year;

(C) maximum tax rate permitted by law per \$100 of assessed valuation;

(D) aggregate rate of all taxes levied and aggregate amount in dollars of taxes collected;

(E) total amount in dollars of taxes collected; and

(F) distribution of tax rate as between interest and sinking fund and other purposes.

(2) If applicant is newly created, or if it has never exercised its taxing power, give the following information:

(A) assessed valuation of taxable property if valuations have been established, and if not, the estimated total amount of the assessed valuation of taxable property. Indicate whether the figure represents actual valuation or an estimate; and

(B) maximum tax rate permitted by law per \$100 of assessed valuation.

(e) The applicant shall give details of any limitation governing amount of bonded or general obligation debt which applicant may incur.

(f) If applicant has bonds outstanding which are payable wholly or in part from ad valorem taxes, the following information shall be submitted:

(1) a complete description of each such issue of bonds, including title, date, interest rate, maturities, amount outstanding, and prepayment options;

(2) a consolidated schedule of future requirements of principal and interest extended so as to reflect total annual requirements; and

(3) direct and overlapping debt statement.

(g) If financing of the project will involve sale of bonds or other securities payable wholly or in part from ad valorem taxes, the following information shall be submitted:

(1) schedule of proposed future maturities of principal and interest of proposed bonds plus total maturities of any outstanding bonds from subsection (f) of this section; and

(2) rate of interest assumed in computing future interest maturities on proposed bonds.

(h) The applicant shall provide a schedule of proposed rates, fees, and charges including tap fees required for financing the project under consideration.

(i) If applicant has bonds outstanding which are payable either wholly or in part from net revenues of a system or facility in connection with which the current project is planned, the following information shall be submitted:

(1) a complete description of each such issues of bonds, including title, date, interest rate, maturities, amount outstanding, and prepayment options; and

(2) a consolidated schedule of future requirements of principal and interest extended so as to reflect total annual requirements.

(j) If financing of the project will require the sale of bonds or other securities payable either wholly or in part from net revenues of one or more facilities or systems, the following information shall be submitted:

(1) schedule of proposed future bonds plus total maturities of any outstanding bonds referred to in subsection (i)(1) of this section; and

(2) rate of interest assumed in computing future interest requirements on proposed bonds.

(k) The applicant shall provide a statement as to whether there has been a default in the payment of items of matured principal or interest and if so, give details.

(l) The applicant shall provide an annual audit of financial report prepared by an independent auditor as of the close of the preceding fiscal year (not required if applicant has no operating history).

(m) Where the project envisions the sale of revenue bonds, the applicant shall provide a schedule of the project engineer's estimate of future income and expense, showing the estimated amount of net revenue to accrue in each year during the life of any bonds to be issued.

(n) The applicant shall describe the procedures to be used to collect money from residents who use the proposed water supply and sewer services including procedures for collection of delinquent accounts.

§363.254. Required Legal Data.

(a) The applicant shall submit a statement setting forth the existing or future need for the project, the probable benefits to the area to be served by the project, the steps previously taken or currently being taken to finance the project without state assistance, and the reasons why other financing is not available to defray the entire project cost.

(b) If a bond election is required by law to authorize the issuance of bonds to finance the project, such election should be held prior to consideration of the application by the board. Applicant shall provide the development fund manager with the election date and election results as to each proposition submitted.

(c) The applicant shall submit a certified copy of a resolution of the governing body of each political

subdivision requesting financial assistance from the board, authorizing the submission of the application, designating the official representative for executing the application and appearance before the board, and containing a finding that the applicant cannot reasonably finance the project without assistance from the board in the amount requested. Additional evidence on inability to finance the project without state investment may also be required by the board.

(d) If the applicant is other than an eligible county or municipality, the applicant shall submit a certified copy of a resolution of the governing bodies of each eligible county and municipality in which the service area is located that such county and municipality do not intend to apply for financial assistance for the same project in the same area. Such resolutions shall approve the applicant's submission of an application for financial assistance.

(e) If the project area is located within the service area of a retail public utility or public utility that has a certificate of public convenience and necessity under the Texas Water Code, Chapter 13, the applicant must include an affidavit signed by the chief executive officer of the utility, which shall cooperate with the applicant, stating that the utility does not object to the construction and operation of the services and facilities in its service area.

(f) The applicant shall submit an interlocal agreement pursuant to the Interlocal Cooperation Act, Texas Civil Statutes, Article 4413(32c) between the applicant and the county in which the project will be located. The interlocal agreement must obligate the county to:

(1) guarantee repayment of debt service on the portion of bonds issued to provide the financial assistance according to the agreement entered into with the board by the project applicant or as provided by the board; or

(2) agree to pay at closing from local funds or other funds available to the county an amount equal to 2.5% of the total project cost, or \$500,000, whichever amount is less.

(g) The applicant shall provide adequate proof that the county in which all or part of the project area is located has adopted and will enforce the model rules developed under the Texas Water Code, §16.343 and adopted by the board in §355.74(a)(2) of this title (relating to Criteria for Eligibility of Political Subdivisions).

(h) The applicant shall provide proof that the municipality in which all or part of the project area is located has adopted the model rules developed under the Texas Water Code, §16.343 and adopted by the board in §355.74(a)(2) of this title (relating to Criteria for Eligibility of Political Subdivisions).

(i) The applicant shall provide a written assurance that, to the extent feasible, labor from the affected areas will be used to build the needed water supply and wastewater facilities.

(j) The applicant shall submit a copy of any actual or proposed contract under which any portion of the applicant's water supply is purchased or transported or under which sewer service is provided. Before a loan is closed, a certified copy of such contract shall be required.

(k) If financing of the project will require the sale of bonds to the board payable either wholly or in part from revenues of contracts with others, the applicant shall submit a copy of any actual or proposed contracts under which applicant's gross income is expected to accrue. Before a loan is closed, an applicant shall submit certified copies of such contracts to the development fund manager.

(l) The applicant shall submit a pro forma draft of an ordinance, resolution, or similar instrument to be adopted by the governing body authorizing the issuance of each of the bond issues described in §363.253(g) and (j) of this title (relating to Required Fiscal Data). When an application for financial assistance which envisions the purchase of applicant's bonds by the board is made, such ordinance, resolution, or similar instrument shall contain, in addition to the usual provisions, sections providing:

(1) that a construction fund shall be created which shall be separate from all other funds of the political subdivision. The construction fund shall be established at an official depository of the political subdivision and all funds in the construction fund shall be secured in the manner provided by law for the security of county funds or city funds, as appropriate. If the political subdivision is not required by law to maintain its funds in an official depository, then it shall designate a depository with the approval of the development fund manager and shall maintain the construction fund in such depository and require that funds therein be secured in the manner provided by law for county funds. All proceeds from the sale of bonds to the board and all other proceeds acquired by the political subdivision to construct or acquire the project shall be placed in the construction fund. All proceeds in the construction fund shall be used for the sole purpose of constructing the project as approved by the board except as otherwise stated in these sections or approved by the board;

(2) that a final accounting be made to the board of the total cost of the project upon its completion. Such resolution or ordinance shall also provide that if the project be finally completed at a total cost less than the amount of available funds for constructing the project, or if the development fund manager disapproves

construction of any portion of the project as not being in accordance with the plans and specifications, the political subdivision shall immediately, after filing the final accounting, return to the board the amount of any such excess and/or the cost as determined by the development fund manager relating to the parts of the project not constructed in accordance with the plans and specifications, to the nearest multiple of \$1,000 or \$5,000, depending upon the denomination of the bonds being sold. Thereupon, the board shall cancel and deliver to the political subdivision a like amount of the bonds of the political subdivision held by the board in inverse numerical order. Any remaining funds will be deposited in the interest and sinking fund for bonds purchased by the board. Unless otherwise stated in the loan commitment, in determining the amount of available funds for constructing the project, the political subdivision shall account for all monies in the construction fund, including all loan funds extended by the board, all other funds available from the project as described in the project engineer's sufficiency of funds statement required for closing the board's loan, and all interest earned by the political subdivision on money in the construction fund. This requirement shall not be interpreted as prohibiting the board from enforcing such other rights as it may have under law;

(3) that an annual audit of the political subdivision, prepared by a certified public accountant or licensed public accountant be provided to the development fund manager;

(4) that the political subdivision shall maintain adequate insurance coverage on the project in an amount adequate to protect the board's interest;

(5) that as built plans be provided to the board;

(6) that an operation and maintenance manual will be provided for the treatment works;

(7) that the issuer will implement any water conservation program required by the board until all financial obligations to the state have been discharged; and

(8) that the issuer covenants to abide by the board's rules and relevant state statutes, including the Texas Water Code, Chapters 15, 16, and 17.

(m) The applicant shall submit an affidavit executed by its official representative stating that the facts contained in the application are true and correct to the affiant's best knowledge and belief.

(n) The applicant must present evidence from the Texas Department of Health that there is an authorized agent that has jurisdiction over the project area pursuant to the Texas Health and Safety

Code, §366.033 and Texas Civil Statutes, Article 4477-7e, §5(h).

(o) The applicant shall submit a copy of any existing proposed construction contract.

(1) All proposed construction contracts shall have provisions assuring compliance with the board's rules and all relevant statutes, including the Texas Water Code, Chapter 17. These statutes include, but are not limited to, requirements for bid guarantees of 5.0% performance and payment bonds, progress payments with 5.0% retainage, final approvals by the engineer and governing body of the political subdivision, development fund manager's approval prior to release of retainage, and access to the construction site and records by the board. Further, the contract shall provide that failure to construct the project according to the plans and specifications approved by the executive administrator, development fund manager, board, and/or the commission, as is appropriate, for any and all modifications, amendments, or changes to such engineering plans, regardless of the nature, character, or extent of such changes; failure to construct the project in accordance with sound engineering principles; or failure to comply with any term or terms of the construction contract, shall be considered by the development fund manager as grounds for refusal to give a certificate of final approval for any construction contract. Such contract shall also require the contractor to observe all rules of the board. The provisions of the contract shall constitute an agreement for the benefit of the board under principles applicable to third party beneficiary contracts; however, such provisions are not intended nor shall they be in such form as to constitute an agreement for the benefit of any other third party or parties other than the board.

(2) The political subdivisions shall be represented by a registered professional engineer who shall inspect the project at each phase of construction to assure construction in substantial compliance with the plans and specifications and in accordance with sound engineering principles and the terms and provisions of the construction contracts.

(3) The applicant shall submit such other provisions as may be deemed necessary to provide the board and the political subdivision adequate control to ensure that materials furnished or work performed conform with the provisions of the construction contracts.

(p) The applicant shall submit copies of any proposed or existing contracts for consultant services necessary for the construction of the proposed project and included as part of the total cost of the project. The contracts for engineering contracts shall include the scope of services, level of effort, cost and pricing information,

schedules, and other information necessary for adequate review by the executive administrator.

(q) The applicant shall submit a certification by the designated representative of the political subdivision in a form acceptable to the board which warrants compliance by the political subdivision with all representations in the application, all laws of the State of Texas, and all rules and published policies of the board.

(r) If bonds to be sold to the board are revenue bonds secured by a subordinate lien, copy of the authorizing instrument of the governing body in the issuance of the prior lien bonds shall be furnished.

(s) The applicant shall submit a copy of any proposed or existing lease or other agreement transferring interests in any land acquired for the project.

(t) The applicant shall submit other information, plans, and specifications requested by the board or the executive administrator which are reasonably necessary for an adequate understanding of the project.

§363.255. Required Water Conservation Plan.

(a) The applicant, if not eligible for an exemption under subsection (d) of this section, shall submit either with its application or separately under subsection (b) of this section two copies of a water conservation plan for approval. Before the application is filed, all applicants or their representatives shall discuss the scope and content of the plan with members of the board's staff who are responsible for reviewing the water conservation plan. At the applicant's request, the executive administrator may provide educational material and, to the extent staff personnel are available, may provide technical assistance in developing a comprehensive water conservation plan that is designed to meet existing and anticipated local needs and conditions. The executive administrator shall review all water conservation plans submitted as part of an application for financial assistance for a project, shall determine if the plans are adequate, and shall present information to the board on the water conservation plan when the application is considered by the board.

(b) An applicant may elect to submit the required water conservation plan after the board approves its application for assistance but before any funds are released. In such case, the applicant shall submit the conservation plan to the executive administrator for review. The executive administrator shall make a preliminary determination as to whether the plan is adequate, and shall submit the plan to the board for consideration. The board will approve, disapprove, or approve with modi-

with his recommendation including whether a fee should be assessed the applicant for the extension, and amount of any such fee. Notice of the time and place of board consideration will be given to the applicant's designated representative.

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

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TRD-9003605 Suzanne Schwartz
 General Counsel
 Texas Water Development
 Board

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**Prerequisites to Release of
State Funds**

• **31 TAC §§363.291-363.295**

The new sections are proposed under the Texas Water Code, §6.101, which states that the board shall adopt rules necessary to carry out the powers and duties of the board provided by this code and other laws of the state.

§363.291. Engineering Design Data Prerequisites.

(a) The applicant shall submit for approval to the executive administrator four copies of plans and specifications and an engineering design report. In addition, the applicant shall submit for approval a draft copy of the construction contract bid document for each construction contract to be let and a draft operation and maintenance manual for the treatment works. If a federal grant or loan is involved, the applicant may also be required to submit additional documents to satisfy the requirements of the appropriate program.

(b) All applicants shall comply with the following.

(1) The plans and the engineer report shall be signed and sealed by a professional engineer registered in the State of Texas in accordance with the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271a. The report shall not be dated more than six months prior to filing with the executive administrator or development fund manager.

(2) Maps prepared and submitted in conjunction with the project shall measure 22 or 24 inches by 36 inches outside, with a two-inch binding edge at the left; other margins shall be not less than 1/2 inch wide.

(3) Each engineering sheet, map, etc., shall bear a title in the lower right-hand corner showing the name and address of the owner, the county, the sheet

number, total number of sheets, a description of details, and shall bear the seal and signature of a registered professional engineer.

(4) All specifications for materials and workmanship shall conform to such specifications as may be promulgated or recognized by the board.

(5) The applicant shall provide evidence that requirements and regulations of all state and federal agencies having jurisdiction have been met.

(c) The board, executive administrator, or development fund manager may require the submission of additional engineering data and information, if deemed necessary.

§363.292. Land and Right-of-Way Acquisition Procedures and Prerequisites.

(a) A general outline of practices, procedures, and policies for land acquisition, including procedures for acquisition of rights-of-way, easements, and relocations, both voluntary and involuntary, shall be presented for the executive administrator or development fund manager's approval.

(b) The board may require procedures for control over project funds during construction to assure disbursement within approved appraisals and estimates or as may be required by judicial decree. In such event, the procedures will require certification to the executive administrator or development fund manager that individual acquisitions or relocations are within the appraised value or engineer's estimate prior to request for final release of funds for such acquisition or relocation. The procedures should make provision for submission to the executive administrator or development fund manager for approval of individual tract appraisal reports prior to contact with the owner of the tracts to be acquired.

(c) In the event of necessity for release of funds in excess of the appraised value or engineer's estimate, the board may require that requests be accompanied by a satisfactory explanation and justification of the political subdivision, together with evidence of the extent, if any, that such excess will affect the estimated total project cost.

(d) The applicant should include, within the general outline of the procedures, the qualifications of the personnel proposed for appraisal work, and the qualifications of land agents.

(e) The foregoing is not intended to be inclusive of all of the procedures which may be deemed necessary in the judgment of the board for an effective land acquisition and relocation program or which may be required for proper control of the disbursement of funds, but rather are in-

tended as illustrative of the areas to which such procedures will have application. Provision for amendment of the initially approved procedures in the event of an anticipated increase in total estimated project costs will be required.

§363.293. Commission Permits and Resolution Prerequisite.

(a) Prior to the release of state funds for any financial assistance the applicant must obtain all required permits from the commission to appropriate, impound, divert, use or transport state waters, or to construct wastewater facilities as may be appropriate under the circumstances, or any other permit or approval that may be required by the commission and shall furnish the executive administrator with certified copies of appropriate permits.

(b) The applicant shall provide the executive administrator with information necessary to allow the executive administrator to make a written finding that the applicant proposing surface water development has the necessary water right authorizing it to appropriate and use the water the project will provide and/or that an applicant proposing underground water development has the right to use water that the project will provide. Funds shall not be released to the applicant until the executive administrator has made the appropriate finding under this subsection.

§363.294. Legal and Fiscal Document Prerequisites. The documents which shall be required prior to the release of state funds shall include the following as appropriate:

(1) a statement as to sufficiency of funds, including proceeds to be derived from sale of bonds to the board and to others and any other available funds to complete the project;

(2) in those projects involving the sale of bonds to the board or to others, a binder of a corporate surety company, to execute good and sufficient payment and performance bonds each in the full amount of the contract price. Such surety company must be authorized to do business in Texas in accordance with Texas Civil Statutes, Article 5160. The board may, at its discretion, waive this requirement for a binder if the chief executive officer of the political subdivision and the project engineer certify to the board that the contractor shall not be notified to proceed until the performance bond and payment bond have been executed and filed and the political subdivision demonstrates to the board's satisfaction it is financially capable of meeting its bond requirements without income which may be generated from the improvements to be constructed with the bond proceeds;

(3) a certified copy of an escrow agreement providing that funds for

construction costs shall be disbursed only in accordance with the provisions of the Texas Water Code. This escrow agreement may be waived if the bond proceedings contain a covenant that construction funds will be disbursed only in accordance with the provisions of the Texas Water Code, and if the applicant demonstrates to the board's satisfaction that it is financially capable of meeting its bond requirements without income which may be generated from the improvements to be constructed with the bond proceeds;

(4) a certified copy of the bond transcript including the ordinance, resolution, or similar instrument adopted by the governing body authorizing issuance of bonds sold to the board containing the covenants as agreed upon or as may be required in the board's resolution. The board may require that bond resolutions and covenants reflect provisions consistent with the executive administrator's or development fund manager's approved land acquisition procedures framed in the application and supporting documents;

(5) if not combined in the preceding document, a certified copy of the ordinance, resolution, or similar instrument adopted by the governing body authorizing issuance of any other bonds to finance the balance of the cost of the project;

(6) bonds delivered in proper form to the office of the state treasurer, Austin, or other place specified by the development fund manager, accompanied by written instructions for delivering the proceeds of the bonds, i.e., written instructions as to whom the state warrant shall be made payable and to whom it shall be delivered;

(7) a contingently executed copy of each proposed construction contract to be entered into by the political subdivision for construction of the projects containing the information required in §363.254(o) of this title (relating to Required Legal Data);

(8) a certified copy of each contract relating to the sale of water by the political subdivision;

(9) a certified copy of each contract relating to the purchase or transport of water to the political subdivision;

(10) a proposed act of assurance in a form acceptable to the board to be executed by the contractor which shall warrant compliance by the contractor with all laws of the State of Texas and all rules and published policies of the board;

(11) a certified copy of appropriate commission permits for those projects involving the appropriation, impoundment, use, diversion, or transportation of state water or for discharge of waste into or adjacent to water, in the state;

(12) for a wastewater project, evidence of commission approval of plans and specifications;

(13) any further proposed leases or other agreements transferring any interest in land acquired for the project subsequent to those furnished under §363.254(s) of this title (relating to Required Legal Data);

(14) such other instruments or documents as the board may determine to be in the public interest and containing such terms and conditions as the resolution of conditional approval may require; and

(15) for a public water system, evidence of Texas Department of Health approval of plans and specifications.

§363.295. Water Conservation Program Prerequisites.

(a) Prior to the release of funds, two copies of the applicant's water conservation program, including documentation of local adoption, shall be submitted to and approved by the executive administrator. To the extent personnel are available, the executive administrator may provide technical assistance to an applicant in developing a comprehensive water conservation program that is consistent with the approved conservation plan. The water conservation program shall be developed according to criteria and guidelines for water conservation planning available from the executive administrator. The program shall consist of a long-term water conservation program and an emergency water demand management program.

(b) The long term water conservation program shall, at a minimum include:

(1) education and information programs;

(2) water saving plumbing codes or regulations for new construction and for replacement of plumbing in existing structures for cities of 5,000 population or more and utilities and cities with existing general plumbing codes;

(3) conservation-oriented water rate structures;

(4) universal metering and meter repair and replacement;

(5) leak detection and repair;

(6) means of implementation and enforcement;

(c) The long term water conservation program may also include, but is not limited to, the items in paragraphs (1)-(5) of this subsection. If any of elements in paragraph (1)-(5) of this subsection are not included, the reasons for exclusion will be clearly stated.

(1) water conserving landscaping;

(2) distribution system pressure control;

(3) water recycling and reuse;

(4) information on the efficiency of water using appliances and landscape irrigation equipment by brand and model; and

(5) plumbing fixtures retrofit programs.

(d) The emergency water demand management program shall, at a minimum, include drought contingency plans, and shall include:

(1) education and information programs;

(2) procedures for program implementation including:

(A) trigger conditions signaling the start of an emergency period;

(B) drought contingency measures;

(C) initiation procedures;

(D) termination notification actions; and

(3) means of implementation and enforcement.

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

Issued in Austin, Texas on April 6, 1990.

TRD-9003604

Suzanne Schwartz
General Counsel
Texas Water Development
Board

Earliest possible date of adoption: May 14, 1990

For further information, please call: (512) 463-7981

Economically Distressed Areas Program—Final Procedures and Requirements

• 31 TAC §363.301, §363.302

The new sections are proposed under the Texas Water Code, §6.101, which states that the board shall adopt rules necessary to carry out the powers and duties of the board provided by this code and other laws of the state.

§363.301. *Instruments Needed for Closing.* Upon approval by the board and/or certification by the development fund manager, the political subdivision shall make necessary arrangements with the development fund manager as may be appropriate, consistent with established policy of the board and this subchapter, for actual transfer of funds from the treasury of the State of Texas to the political subdivision and the receipt from the politi-

cal subdivision of those bonds, if any, theretofore authorized and issued for the purpose of financing the project. The documents which shall be required at the time of closing shall include the following:

(1) unqualified approving opinions of the attorney general of Texas as to the legality of bonds sold to the board and also as to bonds sold to finance the balance of the project cost. On each of which opinions shall appear a certification from the comptroller of public accounts that such bonds have been registered in that office; and

(2) unqualified approving opinion by a recognized bond attorney acceptable to the board as to legality of bonds sold to the board and to others. Such attorney shall also furnish the board a transcript of bond proceedings relating to the bonds purchased by the board which shall contain those instruments normally furnished a purchaser of a bond issue, but the political subdivision need not duplicate any material previously supplied to the board.

§363.302. Escrow of Papers. If any of the instruments required by §363.291 of this title (relating to Instruments Needed for Closing) cannot be filed prior to delivery of the bonds then payment shall be escrowed in an Austin bank under arrangements which permit the delivery of the bonds to the board simultaneously with payment for the bonds.

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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Suzanne Schwartz
General Counsel
Texas Water Development
Board

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TITLE 31. NATURAL RESOURCES AND CON- SERVATION

Part X. Texas Water Development Board

Chapter 363. Rules Relating to Financial Programs

Subchapter B. Economically Distressed Areas Program Construction Phase for Eco- nomically Distressed Areas Program

• 31 TAC §§363.311-363.321

The new sections are proposed under the Texas Water Code, §6.101, which states that

the board shall adopt rules necessary to carry out the powers and duties of the board provided by this code and other laws of the state.

§363.311. General Information. On projects to be constructed or enlarged by a political subdivision or subdivisions, one political subdivision may be designated under an agreement with the board to act as manager for the project and perform the functions customarily performed by a manager-owner.

§363.312. Loan Recipient Responsibilities. The loan recipient shall expeditiously initiate and complete the project in accordance with its application and the board's conditions on approval of the application. The loan recipient shall be responsible for the administration and management of the project and shall provide the engineering services and other services necessary to fulfill this obligation.

§363.313. Awarding Construction Contracts. The designated political subdivision shall be responsible for assuring that proper procedures are observed in advertising for bids and selecting the bidder to construct the project. Before notifying the successful bidder or awarding the contract, the political subdivision shall submit to the executive administrator for review and approval a complete transcript of the bidding procedures which shall consist of: the invitation to bid and the advertisement of bids; bid plans and specifications; names of parties who obtain sets of bidding documents and plans and specifications; a summary of the results of the bid-opening; and a copy of the proposed contract to be awarded. When requested by the board or the executive administrator, the designated political subdivision shall also submit information on the qualifications of the contractor or contractors selected to perform the work. The contract shall comply with the provisions of the Texas Water Code, §17.183. If the executive administrator approves the bidding procedures, the bidder selected, and the proposed construction contract, the designated political subdivision shall notify the successful bidder. If the executive administrator disapproves the bidding procedures, the executive administrator shall advise the designated political subdivision of the specific matters which must be remedied before the executive administrator will grant approval. After the executive administrator's approval is granted, the successful bidder shall obtain usual and customary insurance for the project and shall execute a contractor's performance bond and a payment bond, as required by Texas Civil Statutes, Article 5160, each with a corporate surety company authorized to do business in Texas and each for 100% of the value of the construction contract. Before the construction contract is awarded,

the executive administrator shall approve the insurance and bonds, and the project engineer shall submit a statement to the executive administrator as to the sufficiency of available funds to complete the project.

§363.314. Disbursement of State Funds. State funds expended for the acquisition and/or development of facilities in a nonfederal project shall be disbursed in accordance with the provisions of the master agreement and any other contracts by the board pursuant thereto, subject to the following: in projects involving the acquisition of land, the board shall not pay or agree to pay any of the costs of land acquisition in advance, but may pay or agree to pay its pro rata portion of such costs as they accrue or on any other reasonable basis agreed to by the board; provided, that if construction is to be paid for as work progresses, the board shall not pay or agree to pay more than 95% of its pro rata portion of the amount due at the time of each progress payment, as certified to by the project engineer; and provided further that the remaining 5.0% thereunder shall be paid only after approval by the project engineer and, in addition, upon final certification by the development fund manager that work to be performed under the terms of the construction contract has been completed in a satisfactory manner and in accordance with:

(1) approved plans and specifications; and

(2) sound engineering principles and practices. Upon the resolution of any disputes and completion of work, the development fund manager shall issue a final, unqualified certificate of completion. This certification shall be called a certificate of approval.

§363.315. Operation and Maintenance Manual. A final operation and maintenance manual shall be submitted for approval by the time construction is complete.

§363.316. When Project Costs Exceed Estimates. In the event project costs exceed the estimates on the basis of which the board's commitment has been made, the board may reopen the proceedings in which the original findings approving the project were made, and may hold further meetings or hearings thereon as provided in §363.281 of this title (relating to Board Consideration of Application) and §363.282 of this title (relating to Action of the Board on Application). The board may request information reasonably necessary for an adequate review of the findings previously made and may amend the prior resolution of approval on the basis of the information developed. Any contracts made pursuant to the original resolution of approval shall likewise be subject to review and may be

renegotiated on the basis of amendments to the resolutions. If project costs exceed the estimates, the board may follow any procedure deemed appropriate under the circumstances, including amendment of the resolution and renegotiation of any contracts made pursuant thereto.

§363.317. Inspection During Construction. After the construction contract is awarded, the designated political subdivision shall provide for adequate inspection of the project by the project engineer and require his assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and in accordance with sound engineering principles and construction practices. The executive administrator is authorized to inspect the construction of any project at any time in order to assure that plans and specifications are being followed and that the works are being constructed in accordance with sound engineering principles and construction practices, but such inspection shall never subject the State of Texas to any action for damages. The executive administrator shall bring to the attention of the designated political subdivision and the project engineer any variances from the approved plans and specifications. The designated political subdivision and the project engineer shall immediately initiate necessary corrective action.

§363.318. Alterations in Approved Plans and Specifications. If after the executive administrator or development fund manager approves engineering plans and specifications it becomes apparent that changes in such plans and/or specifications are necessary or appropriate, a change order and justification therefore shall be submitted for approval, well in advance of the construction alteration when possible. The executive administrator or development fund manager may approve and authorize a change, alteration, or variance in previously approved engineering plans and specifications, including, but not limited to, additions or deletions of work to be performed pursuant to the contract, if such change, alteration, or variance does not change, vary, or alter the basic purpose or effect of a project, is not a substantial or material alteration in the plans and specifications, and does not increase the loan commitment of the board for the project. Any change, alteration, or variance in the previously approved plans and specifications which involves an alteration in the basic purpose or effect of a project, substantially or materially alters the previously approved plans and specifications of the project, or which involves an increase in the loan commitment of the board for the project, must be approved and authorized by the board. If there is an immediate danger to life or

property, tentative approval of change orders may be secured from the executive administrator or development fund manager via telephone and confirmed by letter or telegraph. A request for a change order should contain sufficient information, with plans or drawings and cost estimates, to enable the executive administrator or development fund manager to review the proposal. Engineering computations shall be included if structural changes are involved. After approval of the proposed alterations by the board, executive administrator, or development fund manager, as is appropriate, copies of the approved change order shall be forwarded to the project engineer. If commission approval of plans for a wastewater treatment plant or other facility has been required, commission approval also must be obtained before any substantial or material alteration is made in those plans.

§363.319. Inspection of Materials.

(a) The executive administrator is also authorized to inspect all materials furnished, including inspection of the preparation or manufacture of the materials to be used. A resident engineer or inspector may be stationed at the construction site to report to the executive administrator on the manner and progress of the construction or to report conditions relating to the materials furnished and the compliance by the contractor with approved plans and specifications for the project. Such inspection will not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents.

(b) In the event construction procedures or materials are determined by the executive administrator to be substandard or otherwise unsatisfactory and/or not in conformity with approved plans and specifications, the executive administrator may order the political subdivision to take such action through the project engineer in the manner provided for in the construction contract to correct any such deficiency.

(c) In those instances of dispute between the political subdivision's project engineer and the executive administrator's representative as to whether material furnished or work performed conforms with the terms of the construction contract, the executive administrator may order the political subdivision to direct the project engineer to reject questionable materials and/or initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

(d) The contractor shall furnish the executive administrator's representative with every reasonable facility for ascertaining whether the work as performed is in accordance with the requirements and intent of the contract.

(e) The executive administrator or development fund manager is authorized to conduct engineering and financial audits of every project which is financed in whole or in part by Texas water development funds. For purposes of this section, the following definitions are applicable.

(1) Financial audit—Consists of a review of all the board's files for historical background for the project, a visit to the project offices or site to gather sufficient information to perform a detailed review of documents which substantiate the project expense, a tabulation of expenses, and issuance of an audit report to document the findings.

(2) Engineering audit—Consists of a physical inspection of the project to analyze and compare the project with the approved plans and specifications, resulting in the issuance of a technical report which itemizes any variances from the construction contract and approved plans and specifications and recommends corrective action.

(f) In addition to normal testing procedures required of the political subdivision, the executive administrator may require reasonable additional tests of construction materials or processes which the executive administrator determines to be necessary during the construction of projects financed in whole or in part by Texas water development funds. All tests, whether for the executive administrator or the project engineer, will conform to current American Water Works Association, American Association of State Highway and Transportation Officials, American Society of Testing and Materials, Texas Department of Highways and Public Transportation published procedures, or similar criteria. The executive administrator shall specify which tests are applicable. Samples for testing shall be furnished free of cost to the executive administrator upon request on the construction site.

§363.320. Release of Retainage.

(a) Partial release. The progress payments for construction shall not exceed 95% of the amount due at the time of the payment as shown by the engineer of the project, but, if the project is substantially complete, a partial release of the 5.0% retainage may be made by the political subdivision after obtaining the approval of the executive administrator.

(b) Final release. Payment of the retainage remaining due upon completion of the construction contract shall not be made by the political subdivision until after:

(1) approval of the engineer for the political subdivision as required under the bond proceedings;

(2) approval by the governing body of the political subdivision by a resolution or other formal action; and

(3) certification by the development fund manager that the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices.

(c) Certificate of approval. No valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications. The development fund manager shall require the approvals of the engineer and the political subdivision prior to issuing its certification under subsection (b) of this section. This certificate shall be called a certificate of approval.

§363.321. Contractor Bankruptcy. In the event of a contractor bankruptcy, any agreements entered into with the bonding company (other than the bonding company serving as general contractor or fully bonding another contractor acting as their agent) must be submitted for approval of the executive administrator or development fund manager. The political subdivision shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

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

Issued in Austin, Texas on April 6, 1990.

TRD-9003602 Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call: (512) 463-7981

Post Construction Responsibilities Compliance Procedures

• 31 TAC §363.331

The new section is proposed under the Texas Water Code, §6.101, which states that the board shall adopt rules necessary to carry out the powers and duties of the board provided by this code and other laws of the state.

§363.331. General Responsibilities. After the satisfactory completion of the project, the political subdivisions shall be held accountable by the board for the continued validity of all representations and assurances made to the board. Continuing cooperation with the board is expected. To facilitate such cooperation and to enable the board to protect the state's monetary investment and the public interest, the following provisions shall be observed.

(1) Operation and maintenance requirements. The executive administrator is authorized to inspect the project and the records of operation and maintenance of the project at any time. If it is found that the project is being improperly or inadequately operated and maintained to the extent that the project purposes are not being properly fulfilled or that integrity of the state's investment is being endangered, the executive administrator shall require the political subdivisions to take corrective action.

(2) Financial requirements. The development fund manager may request certified copies of all minutes, operating budgets, monthly operating statements, contracts, leases, deeds, audit reports, and other documents concerning the operation and maintenance of the project in addition to the requirements of the covenants of the bond indenture and/or the master agreement. The financial assistance provided by the board is based on the project's economic feasibility, and the board shares the political subdivision's desire to maintain this feasibility in the project's operation and maintenance at all times. The development fund manager shall periodically inspect, analyze, and monitor the project's revenues, operation, and any other information the board requires in order to perform its duties and to protect the public interest.

(3) Water conservation reporting. Applicants with required water conservation programs shall report annually to the executive administrator on the implementation, status, and effectiveness of the water conservation programs until all of their financial obligations to the state have been discharged. The executive administrator may require a political subdivision which is not effectively implementing its conservation program to take corrective action. The executive administrator may refer further noncompliance by a political subdivision to the attorney general, or may take other corrective actions deemed appropriate to assure compliance.

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

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TRD-9003601 Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call: (512) 463-7981

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter X. Diagnostic Services for Persons with Potential of Mental Retardation

• 40 TAC §§29.2301-29.2306

The Texas Department of Human Services (DHS) proposes new §§29.2301-29.2306, concerning diagnostic services for persons with potential of mental retardation, in its Purchased Health Services chapter. The purpose of the new sections is to comply with the Appropriations Act (the Act) passed by the 71st Texas Legislature. The Act directed the department to maximize Title XIX Medicaid funds by working with the Texas Department of Mental Health and Mental Retardation to develop Medicaid coverage for diagnostic services for persons with potential of mental retardation.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed 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. Raiford 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 more Medicaid-eligible individuals will receive diagnostic services to determine if they are mentally retarded. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Questions about the content of this proposal may be directed to Betty Hable at (512) 450-3197 in DHS's Long Term Care Special Programs. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services -167, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§29.2301. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Diagnostic services—As specified in 42 Code of Federal Regulations §440.130(a), including any medical procedures or supplies recommended by a physician or other licensed practitioner of

the healing arts, within the scope of his practice under state law, to enable him to identify the existence, nature, or extent of illness, injury, or other health deviation in a recipient.

Mental retardation—Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period. Subaverage general intellectual functioning refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age group mean for the tests used.

§29.2302. Reimbursable Diagnostic Services. Reimbursable diagnostic services include, but are not necessarily limited to:

(1) medical assessment performed by a licensed physician (M.D./D.O.) including:

(A) a relevant medical history and a statement of findings of a physical exam;

(B) recommendation for consultation with other medical and paramedical professionals; and

(C) referral for further diagnostic studies and/or evaluations;

(2) psychological assessment:

(A) to determine the individual's levels of intellectual, adaptive behavior, and affective functioning;

(B) to identify the individual's needs; and

(C) to make written recommendations that will address those needs;

(3) social assessment:

(A) to provide a written description of significant factors that have influenced the individual's life history;

(B) to construct a developmental history which includes links in heredity and/or social environment that may be relevant to the individual's diagnosis; and

(C) to provide recommendations regarding available resources that will address the needs of the individual; and

(4) developmental assessment:

(A) to determine the individual's level of cognitive functioning;

(B) to identify the service needs; and

(C) to recommend resources to address those needs.

§29.2303. Exclusions. Diagnostic services provided to persons residing in an intermediate care facility for persons with mental retardation (ICF-MR) are excluded as a reimbursable service under this subchapter.

§29.2304. Provider Qualifications. A provider agency of diagnostic services must:

(1) comply with all applicable federal, state, and local laws and regulations pertaining to comprehensive diagnostic assessments;

(2) be enrolled and approved for participation in the Texas Medical Assistance Program;

(3) sign a written provider agreement with the Texas Department of Human Services (DHS), in which the provider agrees to comply with the terms of the agreement and all requirements of the Texas Medical Assistance Program including regulations, rules, handbooks, standards, and guidelines published by DHS or its designee;

(4) bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by DHS or its designee and the provisions of OMB Circulars A-87 and A-102; and

(5) meet the following additional criteria:

(A) be a community-based agency that has a service delivery system that provides core and essential services prescribed by the State Mental Retardation Authority in the Texas Department of Mental Health and Mental Retardation (TDMHMR) Mental Retardation Community Standards;

(B) meet the administrative and program operation procedures specified by State Mental Retardation Authority in the Mental Retardation Community Standards; and

(C) be in compliance with the State Mental Retardation Authority Guidelines for Annual Financial and Compliance Audit or meet the requirements of the state auditor.

§29.2305. Conditions for Payment.

(a) As a condition for the provider receiving payment for diagnostic services, the services must be determined by a

physician (M.D. or D.O.) to be reasonable and medically necessary in determining the existence, nature, or extent of illness, injury, or other health deviation in a recipient.

(b) The service provider must be a physician or be professional/paraprofessional staff licensed or certified in the state in which the services are provided.

(c) Services provided by the professional staff must be within the staff's scope of practice as defined by Texas law.

§29.2306. Reimbursement Methodology.

(a) General information. The Texas Department of Human Services (DHS) will reimburse qualified provider agencies for diagnostic services provided to Medicaid-eligible persons with a potential of mental retardation. The Texas Board of Human Services determines reimbursement rates according to §24.101 and §24.102 of this title (relating to General Specifications and Methodology). These rates are:

(1) uniform;

(2) determined prospectively; and

(3) determined at least annually. Rates may be determined more often than annually if the Texas Board of Human Services determines that it is necessary.

(b) Basis for the rate analysis.

(1) For the rate period, providers will be reimbursed on the projected expenses required to provide completed diagnostic services.

(2) Cost data is taken from the costs associated with the four assessment areas comprising the completed diagnosis, and from the costs associated with overhead expenses.

(3) The reimbursement rate will be developed by use of DHS cost survey data submitted by providers, consultation with service providers, and professionals experienced in diagnostic services.

(c) Reporting of costs.

(1) Cost reporting. Providers must submit information annually, unless otherwise specified, on cost survey forms which are provided by DHS or on facsimiles which are formatted according to DHS specifications and which are preapproved by DHS staff. From the survey data, DHS will develop and implement a cost-based, statewide, uniform reimbursement rate for completed diagnostic services. Providers must complete the cost survey forms according to the rules and specifications set forth in the methodology specified in this section.

(2) Reporting period and due date. Provider agencies must prepare the survey to reflect diagnostic activities during the designated cost-survey reporting period.

The cost surveys must be submitted to DHS no later than 30 days following the end of the designated reporting period unless otherwise specified by DHS.

(3) Extension of due date. DHS may grant extensions of due dates for good cause. A good cause is one that the provider agency could not reasonably be expected to control. Provider agencies must submit requests for extensions in writing to DHS before the cost survey due date. Provider Reimbursement Section staff respond to requests within 10 workdays of receipt.

(4) Failure to file an acceptable cost survey. If a provider agency fails to file a cost survey according to all applicable rules and instructions, the department may withhold all provider payments until the provider agency submits an acceptable cost survey.

(5) Allocation method. If allocation of cost is necessary, provider agencies must use and be able to document reasonable methods of allocation. DHS adjusts allocated costs if the department considers the allocation method to be unreasonable. The provider agency must retain workpapers supporting allocations, as specified in §69.202 of this title (relating to Contractors' Records).

(6) Cost survey certification. Provider agencies must certify the accuracy of cost surveys submitted to DHS in the format specified by DHS. Provider agencies may be liable for civil and/or criminal penalties if they misrepresent or falsify information.

(7) Cost data supplements. The department may at times require additional financial and statistical information other than the information contained in the cost survey.

(8) Review of cost surveys. DHS staff review each cost survey to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions. The review of the cost survey includes a desk audit. DHS reviews all cost surveys according to the criteria in §24.201 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports). If a provider agency fails to complete cost reports according to instructions or rules, the department returns the cost reports to the provider agency for proper completion. The department may require information other than that contained in the cost survey to substantiate reported information.

(9) On-site audits. The department may perform on-site audits on all provider agencies that participate in the Medicaid program for diagnostic services for persons with potential of mental retardation. DHS determines the frequency and nature of audits but ensures that they are not less than that required by federal regulations related to the administration of the program.

(10) Notification of exclusions and adjustments. DHS notifies providers of exclusions and adjustments to reported expenses made during desk reviews and on-site audits of cost surveys as specified in §24.401 of this title (relating to Notification).

(11) Access to records. Each contracted provider must allow access to any and all records necessary to verify cost-survey information submitted to DHS. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the contracted provider. If a provider agency does not allow inspection of pertinent records within 30 days following written notice from DHS, a hold is placed on vendor payments until access to the records is allowed. If the provider agency continues to deny access to records, the department may cancel the provider agency's contract.

(12) Recordkeeping requirements. Provider agencies must maintain records according to the requirements stated in §69.202 of this title (relating to Contractors' Records). Provider agencies must ensure that records are accurate and sufficiently detailed to support the financial and statistical information contained in cost surveys.

(13) Failure to maintain adequate records. If a provider agency fails to maintain adequate records to support the financial and statistical information reported in cost surveys, the department allows 90 days for the provider agency to bring recordkeeping into compliance. If a provider agency fails to correct deficiencies within 90 days from the date of notification of the deficiency, the department may cancel the provider agency's contract for services.

(d) Reimbursement rate determination. The department determines rate reimbursement in the following manner.

(1) Exclusion of certain reported expenses. Provider agencies must ensure that all unallowable costs are eliminated from the cost survey. The department excludes any unallowable costs that are included in the cost survey.

(2) Cost determination by cost center. Reported costs from the survey are taken from the four assessment areas and from the allocated amount of overhead expenses.

(A) The medical assessment area includes the salaries, wages, and benefits for all diagnostic personnel providing a medical assessment and/or support.

(B) The psychological assessment area includes the salaries,

wages, and benefits for all diagnostic personnel providing a psychological assessment and/or support.

(C) The social assessment area includes the salaries, wages, and benefits for all diagnostic personnel providing a social assessment and/or support. It also includes the activities of the diagnostic coordinator.

(D) The developmental assessment area includes the salaries, wages, and benefits for all diagnostic personnel providing a developmental assessment and/or support.

(E) Indirect overhead expenses include, but are not limited to, allowable indirect overhead expenses allocated to diagnostic services: supplies, administrative, and facility costs including utilities. Administrative costs are defined as those costs required to support diagnostic services and which are not included in the costs for the direct delivery of diagnostic services. Allowable overhead expenses may be the same as a facility's approved indirect rate. Direct costs associated with diagnostic support staff are specified in subparagraphs (A)-(D) of this paragraph.

(3) Cost per client. Within an assessment area, the cost per client is determined by multiplying the reported salary per hour times the total number of hours spent on diagnostic services for that client.

(4) Average overhead cost. An average overhead cost per completed diagnosis will be calculated by dividing the reported allocated overhead expense for diagnostic services by the number of completed diagnoses.

(5) Projected costs. Reported costs are projected prior to their being arayed. The department determines reasonable methods for projecting costs from the historical reporting period to the prospective rate period. Cost projections adjust the allowed historical costs for significant changes in cost-related conditions anticipated to occur between the historical cost period and the prospective rate period. Significant conditions include, but are not necessarily limited to, wage and price inflation or deflation, changes in program utilization and occupancy, modification of federal or state regulations and statutes, and implementation of federal or state court orders and settlement agreements. The department determines reasonable and appropriate economic adjusters, as described in §24.301 of this title (relating to Determination of Inflation Indices), to calculate the projected expenses. DHS adjusts rates if new legislation, regulations, or economic factors affect costs, as specified in §24.501 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs).

(6) **Rate-setting methodology.** The department determines the recommended reimbursement rate using the following method:

(A) **assessment areas.** The costs per client per assessment area are arrayed from low to high. The median cost per client per assessment area is selected from each assessment area;

(B) **overhead.** The overhead costs per assessment per facility are arrayed from low to high. The median facility's overhead cost per assessment is selected;

(C) **total rate for completed diagnosis.** The sum of the four median costs per client per assessment area plus the median overhead costs per assessment area become the recommended reimbursement rate.

(7) **Rate setting authority.** The Texas Board of Human Services establishes the reimbursement rate in an open meeting after consideration of financial and statistical information, and public testimony. The board will set rates which, in its opinion, will be within budgetary constraints, adequate to reimburse the cost of operations for an efficient and economic provider, and justifiable given current economic conditions.

(8) **Reviews of cost survey disallowances.** A provider agency may request notification of the exclusions and adjustments to reported expenses made during either desk reviews or on-site audits, according to §24.401 of this title (relating to Notification). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken by DHS, under §24.601 of this title (relating to Reviews and Administrative Hearings).

(e) **Requirements for allowable costs.** Allowable costs must be:

(1) necessary and reasonable for the proper and efficient administration of diagnostic services for which the department has contracted;

(2) authorized or not prohibited under state or local laws or regulations;

(3) consistent with any limitations or exclusions described in this section, federal or state laws, or other governing limitations as to types or amounts of cost items;

(4) consistent with policies, regulations, and procedures that apply to both diagnostic services and other activities of the organization of which the contracted provider agency is a part;

(5) treated consistently using generally accepted accounting principles appropriate to the circumstances;

(6) not allocable to or included as a cost of any other program in either the current or a prior period; and

(7) the net of all applicable credits.

(f) **Reasonableness.** A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, the department considers the following:

(1) whether the cost is of a type generally recognized as ordinary and necessary for the provision of diagnostic services or the performance under the contract;

(2) the restraints or requirements imposed by generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications; and

(3) the action that a prudent person would take in the circumstances, considering his responsibilities to the public, the government, his employees, clients, shareholders, and/or members, and the fulfillment of the purpose for which the business was organized.

(g) **List of allowable costs.** The following list of allowable costs is not comprehensive, but rather serves as a general guide and serves to clarify certain key expense areas. The absence of a particular cost does not necessarily mean that it is not an allowable cost.

(1) **compensation of contracted or staff diagnostic employees.** The only employees whose compensation is an allowable cost are those contracted or staff diagnostic employees who provide diagnostic services directly, such as the physician, registered nurse, psychologist, educational specialist, social worker, diagnostic coordinator, and clerical staff. Therapists may be included if their services have been referred prior to summary and recommendation, and if their time is spent on assessment only. Compensation includes:

(A) **wages and salaries.** This category includes deferred compensation, overtime pay, incentive pay and bonuses, or any other monies subject to withholding taxes and FICA deductions;

(B) **payroll taxes and insurance.** Federal Insurance Contributions Act (FICA or social security), unemployment compensation insurance, workmen's compensation insurance;

(C) **employee benefits.** This category includes employer-paid health and life insurance premiums, and employer contributions to employee retirement accounts;

(2) **travel.** Travel expenses directly related to the provision of diagnostic services are allowable. Mileage is allowable if there is adequate documentation of the mileage and if the expense was related to delivery of services for which the department has contracted;

(3) **indirect overhead expenses.** Costs incurred at administrative and support levels of management above the costs of direct delivery of diagnostic services are allowable to the extent that the administrative and support costs were incurred to support the delivery of diagnostic services in the conduct of normal operations. Allowable costs incurred at administrative and support levels of management above the costs of direct delivery of diagnostic services include personnel costs, staff development, legal services, quality assurance, accounting, bookkeeping, building, and building and equipment maintenance. Allowable costs are limited to the allocated portion of these costs, which portion can be documented as being related to the delivery of diagnostic services by the diagnostic unit. The following categories and conditions also apply:

(A) **building, equipment, and capital expenses;**

(B) **depreciation and amortization expense.** Property owned by the provider and improvements to owned, leased, or rented property and valued at more than \$500 at the time of purchase must be depreciated or amortized, using the straight-line method.

(i) **Excluding air conditioning units and trade fixtures,** allowable depreciation for buildings is calculated by deducting the estimated salvage value from the historical cost and dividing the result by the asset's remaining years of useful life.

(ii) **Costs of building equipment, air conditioners, furnaces, chairs, desks, and building and grounds improvements** qualify as depreciation and amortization expenses.

(C) **insurance expense.** Allowable insurance expense includes costs of insurance covering facility fire and casualty, professional liability and malpractice, and transportation equipment liability;

(D) **utilities expense.** Includes electricity and natural gas, water, waste water, garbage collection, telephone, and telefacsimile;

(E) **materials and supplies.** Includes office supplies, educational supplies, and testing equipment;

(F) training expenses. Limited to direct costs for travel, lodging, food, and registration fees for personnel who provide diagnostic services directly. Training must be related directly to diagnostic services;

(G) administrative wages and salary. Limited to expenses incurred which are directly related to the provision of diagnostic services. Allowable compensation costs include those items defined in subsection (g)(1)(A)-(C) of this section.

(h) Unallowable costs. Unallowable costs are expenses incurred by a provider agency, which are not directly or indirectly related to the provision of diagnostic services according to applicable laws, rules, and standards. A provider agency may expend funds on unallowable cost items, but those costs must not be included in the cost survey and are not used in calculating a rate recommendation. Unallowable costs include but are not necessarily limited to:

(1) compensation in the form of salaries, benefits, or any form of compensation given to individuals who do not provide diagnostic services;

(2) personal expenses not directly related to the provision of diagnostic services;

(3) management fees or indirect costs that are not derived from the actual cost of materials, supplies, or services necessary for the delivery of diagnostic services;

(4) advertising expenses other than those for advertising in the yellow pages, for employee recruitment, and for meeting any statutory or regulatory requirement;

(5) business expenses not directly related to the provision of diagnostic services;

(6) political contributions;

(7) depreciation and amortization of unallowable costs, including amounts in excess of those resulting from the straight line depreciation method; capitalized lease expenses in excess of the actual lease payment; and goodwill or any excess above the actual value of the physical assets at the time of purchase;

(8) trade discounts of all types, including returns, allowances, and refunds;

(9) donated facilities, materials, supplies and services including the values assigned to the services of unpaid workers and volunteers;

(10) dues to all types of political and social organizations, and to professional associations not directly and primarily concerned with the delivery of diagnostic services;

(11) entertainment expenses except those incurred for entertainment provided to the staff of the diagnostic unit as an employee benefit;

(12) board of directors fees;

(13) fines and penalties for violations of regulations, statutes, and ordinances of all types;

(14) fund raising and promotional expenses;

(15) interest expenses on loans pertaining to unallowable items and on that portion of interest paid which is reduced or offset by interest income;

(16) insurance premiums pertaining to items of unallowable cost;

(17) accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount, including any form of profit sharing and the accrued liabilities of deferred compensation plans;

(18) mileage expense exceeding the current reimbursement rate set by the Texas Legislature for state employee travel;

(19) costs of purchases from a related party which exceed the original cost to the related party;

(20) out-of-state travel expenses not directly related to the provision of diagnostic services; however, training courses or quality assurance functions are allowable for those who provide diagnostic services;

(21) contributions to self-insurance funds which do not represent payments based on current liabilities;

(22) any expense incurred because of imprudent business practices;

(23) expenses which cannot be adequately documented;

(24) expenses not reported according to the instructions of the cost survey;

(25) any expense not allowable under other pertinent federal, state, or local laws or regulations.

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

Issued in Austin, Texas, on April 6, 1990.

TRD-9003552

Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Proposed date of adoption: June 15, 1990

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



Chapter 31. Case Management Services

Case Management for Persons with Chronic Mental Illness

• 40 TAC §§31.201-31.205

The Texas Department of Human Services (DHS) proposes new §§31.201-31.205, concerning case management for persons with chronic mental illness, in its case management for persons with mental retardation or related condition chapter. The purpose of the new sections is to comply with the Appropriations Act passed by the 71st Texas Legislature. The new sections address target population, services, and provider qualifications, as well as reimbursement methodology for provider services.

DHS is proposing the sections under a new undesignated head. The title of Chapter 31 is changed to Case Management Services. The old chapter title, Case Management for Persons with Mental Retardation or Related Condition, becomes the first undesignated head for the chapter.

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

Mr. Raiford 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 section will be that chronically mentally ill individuals may receive services in the community and avoid hospitalization. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Betty Hable at (512) 450-3197 in DHS's Long Term Care Special Programs. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-132, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§31.201. Target Population.

(a) Case management services will be provided to Medicaid-eligible individuals who are chronically mentally ill and whose comprehensive assessment indicates they would benefit from long term care in the community.

(b) Case management services may be provided to persons, regardless of age, who have a single chronic mental disorder, excluding mental retardation, or a combination of chronic mental disorders as defined in the latest edition of the *American Psychiatric Association's Diagnostic and Sta-*

tistical Manual of Mental Disorders, and are at risk of institutionalization. Those at risk of institutionalization include individuals who, without community-based support services, would require long-term psychiatric care in a hospital. Chronically mentally ill (CMI) individuals will not be required to receive case management services.

§31.202. Services.

(a) Case management services are provided to assist Medicaid-eligible individuals who are mentally ill in gaining access to medical, social, educational, and other appropriate services that will help these individuals reach or maintain optimal level of functioning in a community-based setting. Case management services are provided through a definable system under which responsibility for locating, coordinating, and monitoring a group of services rests with a designated person or organization.

(b) Initial intake is initial contact of the Medicaid-eligible individual which begins with determination of whether the individual needs immediate intervention or if a comprehensive assessment is appropriate. The initial intake includes recording of client identifying information and the nature of the presenting problem. Initial intake may be done by telephone, through face-to-face interview, or by referral from another professional.

(c) Crisis intervention is appropriate for eligible individuals whose circumstances are either a threat to themselves or others and who require an immediate response. The case manager assists the eligible individual in locating and coordinating emergency services and documents the nature and results of the intervention. Crisis intervention services must be available 24-hours, seven days a week.

(d) A formal, written comprehensive assessment is developed by the case manager in a face-to-face interview with the Medicaid-eligible individual. The case manager uses collateral contacts plus clinical, diagnostic, evaluative, medical, educational, and other appropriate records in conjunction with the interview to determine the specific service needs of the client. At a minimum, the written assessment will address the following:

- (1) identifying information;
- (2) physical health;
- (3) social/emotional status;
- (4) diagnosis/level of functioning;
- (5) social relationships/support network;
- (6) existing care being provided through the informal support system, including family;

- (7) activities of daily living;
- (8) physical living environment/housing/transportation;
- (9) analysis of source of income/resources;
- (10) vocational/educational status;
- (11) legal status; and
- (12) unmet care needs of the client.

(e) The written service plan is developed to address the specific care needs of the client. The service plan is developed to the extent possible with the client, his family, or other support system(s). The service plan must include at a minimum:

- (1) the persons involved in the development of the service plan;
- (2) measurable goals to be achieved via the provision of care;
- (3) a description of all services to be provided;
- (4) the periodic review of the service plan and description of unmet needs; and
- (5) schedules for the case manager to monitor the service plan and to perform a formal reassessment.

(f) Service implementation is the responsibility of the case manager who arranges for the delivery of appropriate services to the client. Through negotiation, the case manager will act as an advocate for the client and assist service providers in planning and program development that will meet the needs of persons with chronic mental illness.

(g) Staff consultation is the responsibility of the case manager who provides consultation and information to other human service and health care professionals and/or family members on behalf of the Medicaid-eligible individuals to ensure that their specific service needs are met through a coordinated system of community-based care. The case manager must document in writing those activities performed by the case manager concerning service implementation and staff consultation.

(h) Monitoring will be conducted on a periodic basis, and each monitoring visit will be documented in writing. Monitoring by the case manager will determine:

- (1) what services have been delivered;
 - (2) whether the services were delivered as scheduled; and
 - (3) if the services are consistent with the written service plan.
- (i) A formal reassessment of the client's progress and needs will be

conducted on a periodic basis. Modifications to the service plan or a change of service provider may be required. At the reassessment, the case manager will determine if modifications to the service plan are necessary and if the level of involvement by the case manager should be adjusted. The reassessment will be documented in writing.

§31.203. Service Limitations.

(a) Case management services will not be reimbursable as a Medicaid service for which another payor is liable or if case management services are associated with the proper and efficient administration of the state plan. Case management activities associated with the following are not reimbursable as an optional, targeted case management service:

- (1) Medicaid eligibility determinations and redetermination;
- (2) Medicaid eligibility intake processing;
- (3) Medicaid preadmission screening;
- (4) prior authorization for Medicaid services;
- (5) required Medicaid utilization review;
- (6) EPSDT administration; and
- (7) Medicaid "lock-in" provided for under the Omnibus Reconciliation Act of 1987, §1915(a).

(b) Reimbursement will not be made for:

- (1) services that are an integral and inseparable part of another Medicaid service such as discharge planning from a Medicaid certified acute care facility, Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF), Intermediate Care Facility for Mentally Retarded (ICF-MR) or, inpatient psychiatric facilities;
- (2) outreach activities that are designed to locate individuals who are potentially Medicaid-eligible; or
- (3) any medical evaluation, examination, or treatment billable as a distinct Medicaid-covered benefit; however, referral arrangements and staff consultation for such services are reimbursable as a case management service.

§31.204. Provider Qualifications.

(a) Public Law 100-203, §4118(i), Omnibus Reconciliation Act of 1987, is invoked to limit the provider of case management services to the State Mental Health Authority, which is the Texas Department of Mental Health and Mental Retardation (TDMHMR) or provider authorized by the TDMHMR to provide case management services. The department

has determined that TDMHMR is qualified to ensure that persons with chronic mental illness receive the full range of services through case management that they need to assist them in achieving their maximum level of functioning in the community.

(b) Standards and procedures have been developed and implemented by TDMHMR that ensure that case management services are:

(1) available on a statewide basis with procedures to ensure continuity of services without duplication;

(2) provided by case managers who meet the educational and work experience requirements specified by the TDMHMR employment standards for case managers;

(3) provided by case managers who have completed the TDMHMR case management curriculum;

(4) delivered through a system with written standards and procedures that ensures that an individual case manager is responsible for the overall coordination of services for the Medicaid-eligible participant;

(5) provided through an identifiable unit of an organization that is vested with sole responsibility for the provision of case management services;

(6) administered through a community-based center or a facility outreach center that is governed by the operating procedures and program standards established by the TDMHMR;

(7) in compliance with federal, state and local laws, including directives, settlements, and resolutions applicable to the target population;

(8) provided regardless of an individual's ability to pay;

(9) provided in accordance the TDMHMR Community Mental Health Standards; and

(10) in compliance with the TDMHMR Guidelines for Annual, Financial, and Compliance Audit.

§31.205. Reimbursement Methodology.

(a) General information. As specified in §24.101 and §24.102 of this title (relating to General Specifications and Methodology), the Texas Department of Human Services (DHS) reimburses qualified providers for case management services provided to Medicaid eligible individuals with chronic mental illness. The Texas Board of Human Services determines reimbursement rates at least annually for case management services. These rates are:

(1) uniform statewide;

(2) prospective (see §31.1 of this title (relating to Definitions)); and

(3) cost related.

(b) Basis for rate analysis.

(1) For the initial reimbursement period, providers will be reimbursed based on rates set as a result of an analysis of a survey of actual costs reported by a sample of qualified providers and an analysis of anticipated costs required to provide the relevant targeted case management services.

(2) The anticipated costs will reflect the estimated costs of hiring qualified staff, as specified by DHS, in sufficient number and appropriate mix to meet the projected client load service mix.

(3) At some future date, as yet unspecified, reimbursement rates will be based on actual costs reported by qualified providers.

(c) Reporting of cost.

(1) Cost reporting. Each individual case management provider unit must submit financial and statistical information in a cost report or survey format designated by DHS. The cost report will capture the expenses of the case management unit including salaries and benefits, administration, building and equipment, utilities, supplies, travel, and indirect overhead expenses related to the case management unit.

(2) The following requirements apply.

(A) Accounting requirements. All information submitted on the cost reports must be based upon the accrual method of accounting unless the governmental entity operates on a cash basis. The provider must complete the cost report according to the prescribed statement of allowable and unallowable costs. Cost reporting should be consistent with generally accepted accounting principles (GAAP). In cases in which cost reporting rules conflict with GAAP, IRS, or other authorities, the cost reporting rules take precedence for Medicaid provider cost reporting.

(B) Reporting period. The provider must prepare the cost report to reflect activities during the provider's fiscal year. The cost report is due three months after the end of this fiscal year, although an extension may be granted for good cause. DHS may require cost reports or other information for other time periods. Failure to file an acceptable cost report or complete required additional information will result in a hold on the vendor payments until the cost report information or additional information is provided. The provider must certify the accuracy of the cost report or additional information.

(C) Review of cost reports. As specified in §24.201 of this title (relating

to Basic Objectives and Criteria for Desk Review of Cost Reports), DHS reviews each cost report or survey. Cost reports not completed according to instructions or rules are returned to the provider for proper completion.

(D) On-site audit of cost reports. DHS staff perform a sufficient number of audits each year to ensure the fiscal integrity of the case management reimbursement rate. The number of on-site audits actually performed each year may vary. Adjustments consistent with the results of on-site audits are made to the rate base until the rate base is closed for final rate analysis.

(E) Record-keeping requirements. Each provider must maintain records for at least three years after the date he submits his cost report. The provider must ensure that the records are accurate and sufficiently detailed to support the financial and statistical information reported in the cost report. If a provider does not maintain records which support the financial and statistical information submitted on the cost report, the provider will be given 90 days to correct this record-keeping. A hold of the vendor payments to the provider will be made if the deficiency is not corrected within 90 days from the date the provider is notified.

(F) Access to records. The provider must allow DHS or its designated agents access to any and all records necessary to verify information on the cost report.

(G) Reviews of cost report disallowances. A provider who disagrees with DHS cost report disallowances may request a review of the disallowances as specified in §24.601 of this title (relating to Reviews and Administrative Hearings).

(H) DHS notifies providers of exclusions and adjustments to reported expenses made during desk reviews and on-site audits of cost reports according to §24.401 of this title (relating to Notification).

(d) Rate setting methodology.

(1) Rates by unit of service. Reimbursement rates for case management services will be determined for a unit of service defined as a case management contact. The action can be face-to-face or by telephone. See §31.1 of this title (relating to Definitions).

(2) Exclusion or adjustment of expenses. Providers must eliminate unallowable expenses from the cost report. DHS or TDMHMR excludes from the rate base any unallowable expenses included in the cost report and makes adjustments to ex-

penses reported by providers to ensure that the rate base reflects costs which are consistent with efficiency, economy and quality of care, are necessary for the provision of case management services, and are consistent with federal and state Medicaid regulations. If there is doubt as to the accuracy or allowability of a significant part of the information reported, individual cost reports may be eliminated from the rate base.

(3) Rate determination process. The Texas Board of Human Services determines reimbursement rates according to §24.101 of this title (relating to General Specifications). As specified in §24.501 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs), the Texas Board of Human Services may also adjust payment rates when new legislation, regulations, or economic factors affect costs. DHS staff submit rate recommendations to the Texas Board of Human Services. Recommended rates are determined in the following manner.

(A) Total allowable costs for each provider will be determined from analyzing the allowable historical costs reported on the cost report and the allowable anticipated costs.

(B) Each provider's total allowable costs are projected from the historical cost reporting period to the prospective rate period using inflation factors according to §24.301 of this title (relating to Determination of Inflation Indices).

(C) An allowable cost per contact will be calculated for each case management site. The allowable costs per contact for each site are arrayed and the median point is calculated. A provider's cost may be excluded from the cost array based on a determination that there were errors in cost reporting or the program was not operating within the appropriate standard of quality.

(D) The median cost component is multiplied by an appropriate percentage determined by the Texas Board of Human Services to calculate the recommended contact reimbursement rate for an economic and efficient provider.

(e) Cost information. Only allowable cost information is used to compile the rate base. See §31.1 of this title (relating to Definitions) for definitions of allowable and unallowable costs.

(1) List of allowable costs. The following list of allowable costs is not comprehensive; instead, it is meant to serve as a general guide and to clarify certain key expense areas. The absence of a particular cost does not necessarily mean that expense is not an allowable cost.

(A) Compensation of case management staff. Compensation may be provided only to those staff who provide case management services directly to the clients or who support the work of staff of the case management unit in the normal conduct of operations relating to case management services. Examples of staff include case managers, case manager supervisors, case management unit administrator, clerical workers. This category includes

(i) wages and salaries;

(ii) payroll taxes and insurance, including Federal Insurance Contributions Act (FICA or social security), unemployment compensation insurance, workman's compensation insurance; and

(iii) employee benefits. This category includes employer paid health, life accident, liability and disability insurance for employees; contributions to employee retirement funds; and deferred compensation limited to the dollar amount the employer contributes.

(B) Indirect costs. Costs incurred at administrative and support levels of management (that is, personnel, staff development, legal, quality assurance, accounting, bookkeeping, and building and equipment maintenance) above the individual case management unit are allowable only if the costs were incurred in the purchase of materials, supplies, or services used by the case management unit in the conduct of normal operations. Allowable costs are limited to the allocated portion of these costs which can be documented as being related to the delivery of case management services by the case management unit.

(C) Utilization review committee.

(D) Materials and supplies. This category includes office supplies, housekeeping supplies, and materials and supplies for the operation, maintenance, and repair of buildings, grounds, and equipment.

(E) Utilities. This category includes electricity, natural gas, fuel oil, water, waste water, garbage collection, telephone, and telegraph.

(F) Buildings, equipment, and capital expenses.

(i) Buildings, equipment, and capital used by the case management site or in support of the case management staff, and not for personal business. If these costs are shared with other program operations the portion of these costs relating directly to case management may be al-

lowed on a pro rata basis if the proportion of use for case management is documented.

(ii) Depreciation and amortization expense. Property owned by the provider entity and improvements to owned, leased or rented case management property that are valued at more than \$500 at the time of purchase must be depreciated or amortized, using the straight line method. The minimum usable lives to be assigned to common classes of depreciable property are:

(I) buildings up to 30 years, with a minimum salvage value of 10%;

(II) transportation equipment used for the transport of clients, materials and supplies, or staff providing case management services: a minimum of three years for passenger automobiles; five years for light trucks and vans, with a minimum salvage value of 10%.

(G) Provider-owned property. Property may be treated by the provider as ordinary expenses when the property and improvements to the property owned, leased, or rented by the provider are valued at less than \$500 at the time of purchase.

(H) Rental and lease expense. This category includes buildings, building equipment, transportation equipment, equipment, materials, and supplies. Allowable rental or lease expense paid to a related party is limited to the actual allowable cost incurred by the related party.

(I) Transportation expense. This category includes depreciation, lease, or mileage claimed at the allowable reimbursement per mile set by the state legislature for state employees.

(J) Business and professional association dues limited to associations devoted primarily to the issues of case management.

(K) Outside training costs. These expenses are limited to direct costs (transportation, meals, lodging, and registration fees) for training provided to personnel rendering services directly to the clients or staff of the case management unit. The training must be directly related to issues concerning case management, and it must be located within the continental United States.

(2) List of unallowable costs. Unallowable costs are not included in the rate base used to determine recommended rates. The following list clarifies certain

expense categories of unallowable costs. See also §31.3 of this title (relating to Definitions) for definition of unallowable costs:

(A) compensation in the form of salaries, benefits, or any form of compensation given to individuals who do not provide case management services either directly to clients or in support of staff;

(B) personal expenses not directly related to the provision of case management services;

(C) management fees or indirect costs that are not derived from the actual cost of materials, supplies or services provided directly to the case management unit;

(D) advertising expenses other than those for advertising in the yellow pages, adds for employee recruitment, and advertising to meet any statutory or regulatory requirement;

(E) business expenses not directly related to the provision of case management services;

(F) political contributions;

(G) depreciation and amortization of unallowable costs. This category includes amounts in excess of those resulting from straight line depreciation method, capitalized lease expenses in excess of the actual lease payment, and goodwill or any excess above the actual value of the physical assets at the time of purchase;

(H) trade discounts of all types. This category includes returns, allowances, and refunds;

(I) donated facilities, materials, supplies and services including the values assigned to the services of unpaid workers and volunteers;

(J) dues to all types of political and social organizations, and to professional associations not directly and primarily concerned with case management services;

(K) entertainment expenses except those incurred for entertainment provided to the staff of the case management unit as an employee benefit;

(L) boards-of-directors fees;

(M) fines and penalties for violations of regulations, statutes, and ordinances of all types;

(N) fundraising and promotional expenses;

(O) interest expenses on loans pertaining to unallowable items and on that portion of interest paid which is reduced or offset by interest income;

(P) insurance premiums pertaining to items of unallowable cost;

(Q) accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount. This category includes any form of profit sharing and the accrued liabilities of deferred compensation plans;

(R) mileage expense exceeding the current reimbursement rate set by the Texas Legislature for state employee travel;

(S) costs of purchases from a related party which exceed the original cost to the related party;

(T) out-of-state travel expenses, except for provision of case management-related services including training and quality assurance functions;

(U) contributions to self-insurance funds which do not represent payments based on current liabilities;

(V) expenses incurred because of imprudent business practices;

(W) expenses which cannot adequately be documented;

(X) expenses not reported according to the instructions of the cost report;

(Y) expenses not allowable under other pertinent federal, state, or local laws or regulations.

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

Issued in Austin, Texas, on April 6, 1990.

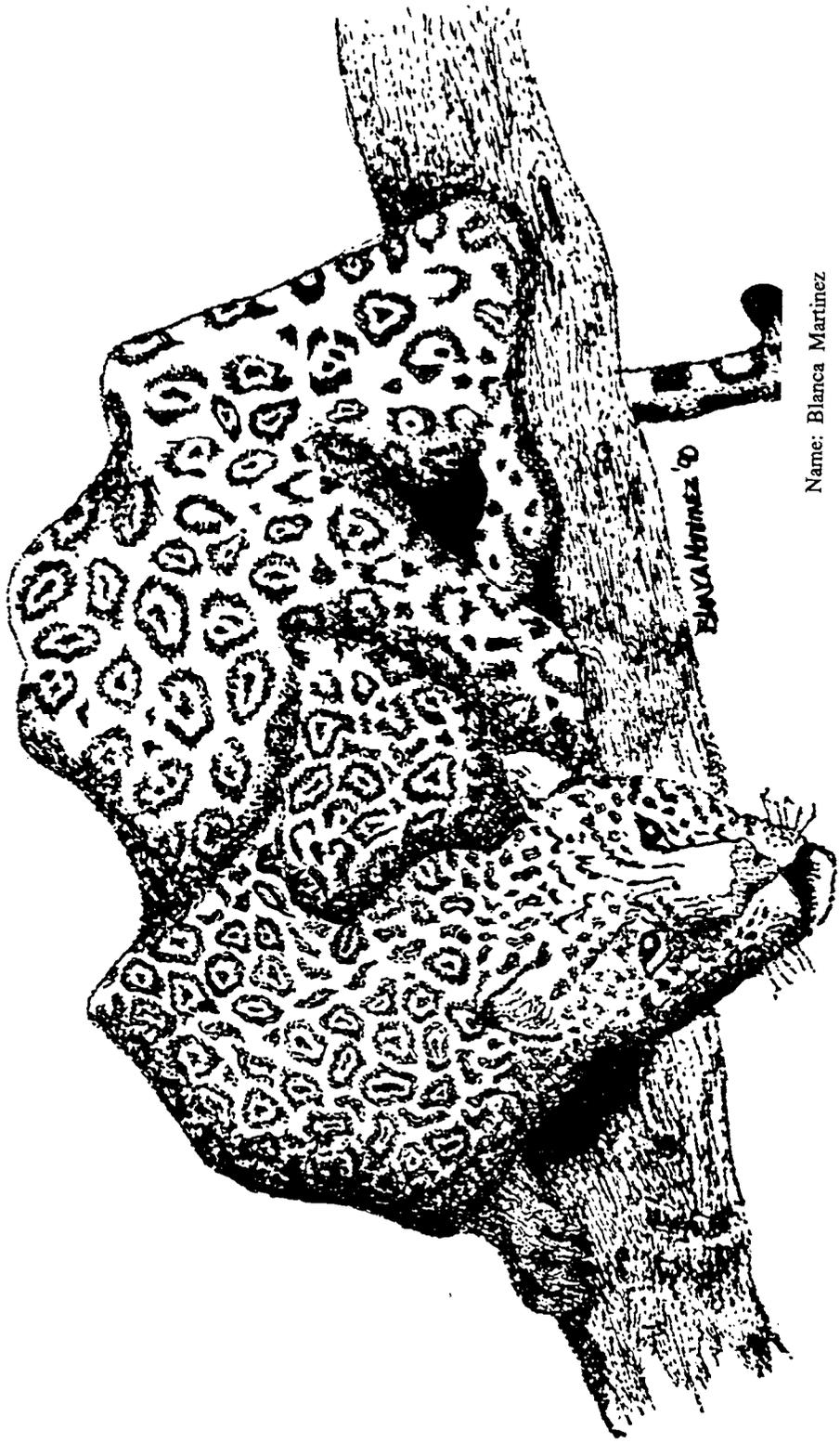
TRD-9003551

Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Proposed date of adoption: June 15, 1990

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

◆ ◆ ◆



Name: Blanca Martinez

Grade: 9

School: Richardson Jr. High, Richardson

Withdrawn Sections

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part II. Texas Rehabilitation Commission

Chapter 117. Special Rules and Policies

• 40 TAC §117.1

The Texas Rehabilitation Commission has withdrawn the emergency effectiveness of proposed new §117.1, concerning the special rules and policies. The text of the emergency section appeared in the March 6, 1990, issue of the *Texas Register* (15 TexReg 1221). The effective date of this withdrawal is April 27, 1990.

Issued in Austin, Texas, on April 6, 1990.

TRD-9003529 Charles W. Schiesser
Assistant Commissioner for
Legal Services
Texas Rehabilitation
Commission

Effective date: April 27, 1990

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





Name: Lee

Grade: 7

School: Richardson Jr. High, Richardson

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 VI. Texas Surplus Property Agency

Chapter 147. Executive

• 1 TAC §147.1

The Texas Surplus Property Agency adopts new §147.1, without changes to the proposed text as published in the March 6, 1990, issue of the *Texas Register* (15 TexReg 1223).

The new section is created to conform with Senate Bill Number 357, enacted by the 71st Legislature.

The new section will create a sick leave pool for the benefit of agency employees.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6252-6b, which provide the Texas Surplus Property Agency with the authority to make rules.

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

Issued in Austin, Texas, on April 6, 1990.

TRD-9003600

Marvin J. Titzman
Executive Director
Texas Surplus Property Agency

Effective date: April 30, 1990

Proposal publication date: March 6, 1990

For further information, please call: (512) 661-2381

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 169. Authority of Physicians to Supply Drugs

• 22 TAC §§169.1-169.6

The Texas State Board of Medical Examiners adopts the repeal of §§169.1-169.6, without changes to the proposed text as published in the February 13, 1990, issue of the *Texas Register* (15 TexReg 757).

The repeals are adopted because it was necessary to remove these sections to re-

place with language to integrate the provisions of Senate Bill 788 and make board rules consistent with legislation.

The repeals will eliminate any questions regarding consistency between the rules and the legislation.

No comments were received regarding adoption of the repeals.

The repeals are adopted 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 the 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 the 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 April 9, 1990.

TRD-9003549

G. V. Brindley, Jr., M.D.
Executive Director
Texas State Board of Medical Examiners

Effective date: April 27, 1990

Proposal publication date: February 13, 1990

For further information, please call: (512) 452-1078

• 22 TAC §§169.1-169.8

The Texas State Board of Medical Examiners adopts new §§169.1-169.8, without changes to the proposed text as published in the February 13, 1990, issue of the *Texas Register* (15 TexReg 757).

The new sections are adopted because there was a need for the board to integrate the provisions of Senate Bill 788 and to make the board rules consistent with the legislation.

It is expected that the new sections will bring the legislation and the board rules into alignment.

A comment was expressed regarding expanding portions of §169.5, concerning sample drugs, and addition of language in the rule chapter regarding any failure to comply with the rules. There was one comment received regarding a concern about the immediate needs provision. One individual physician had concerns about some of the rule language. Generally, comments stated that the board had adequately articulated the intent of Senate Bill 788.

Commenters in favor of adopting the new sections as proposed were: Texas Medical Association; Texas Society of Hospital Phar-

macists; and Texas Osteopathic Medical Association (although they had some suggestions for clarification).

It was felt that the laws in this regard are very specific and the board rules track the law.

The new sections are adopted 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 the 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 the 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 April 9, 1990.

TRD-9003550

G. V. Brindley, Jr., M.D.
Executive Director
Texas State Board of Medical Examiners

Effective date: April 27, 1990

Proposal publication date: February 13, 1990

For further information, please call: (512) 452-1078

TITLE 25. HEALTH SERVICES;

Part I. Texas Department of Health ;

Chapter 31. Special Supplemental Food Program for Women, Infants and Children (WIC)

• 25 TAC §31.1

The Texas Department of Health adopts under federal mandate an amendment to §31.1, which adopts by reference federal regulations on special supplemental food program for women, infants and children (WIC). The amendment is to the text of the section and to the material adopted by reference in the section.

The federal regulations were initially promulgated by the United States Department of Agriculture (USDA) and were published in 7 Code of Federal Regulations (CFR), Part 246. The amendments in this adoption under federal mandate incorporate recent changes to 7 CFR Part 246 by the USDA in order to implement the nondiscretionary benefit-related provisions of

the Child Nutrition and WIC Reauthorization Act of 1989, Public Law 101-147. The changes became effective on February 1, 1990, and are as follows. The first change implements the provision in the Act which gives state agencies the option to exclude military housing allowances received by personnel who live off base from consideration when determining the income eligibility of applicants for the program. The second change implements the provision in the Act which requires that recipients of food stamps, or assistance under aid to families with dependent children (AFDC) or medicaid, be considered adjunctively (i.e., automatically) income eligible for WIC; provided that AFDC and medicaid recipients have been determined fully eligible for one of these programs, as opposed to being presumptively (i.e., provisionally) eligible pending completion of the eligibility determination process.

The amendment to §31.1 is adopted under federal mandate for the following reasons. Under federal and state enabling legislation (The Federal Child Nutrition Act of 1966, 42 United States Code Annotated §1786; the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II), the WIC program is 96% federally funded and governed by federal regulations. Funds are made available to the department by federal grant. The federal statute (42 United States Code Annotated §1786); the federal regulations (7 Code of Federal Regulations Part 246), and the federal grant (Federal-State Special Supplemental Food Program Agreement) authorize the United States Department of Agriculture to make the funds available to the department to administer the WIC program in the State of Texas, provided that the department administers the program in accordance with the federal regulations. Therefore, the department under federal mandate, adopts the amendments effective February 1, 1990. The amendment to the section will reflect the effective amendment date.

The amendments are adopted under the following statutes and regulations which provide the Board of Health with the authority to adopt rules covering the Special Supplemental Food Program for Women, Infants, and Children: Texas Health and Safety Code, §1.05; the Texas Omnibus Hunger Act of 1985; Acts 1985, 69th Legislature, Chapter 150, Title II; Texas Human Services Code, Chapter 33; the Child Nutrition Act of 1966, 42 United States Code Annotated §1786; the Commodity Distribution Reforms Act and WIC amendments of 1987 (Public Law 100-237); and 7 Code of Federal Regulations Part 246; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§31.1. Federal Regulations on Special Supplemental Food Program for Women, Infants, and Children (WIC).

(a) The Texas Department of Health adopts by reference the United States Department of Agriculture regulations on the Special Supplemental

Food Program for Women, Infants, and Children (WIC). These regulations are contained in the Federal Register publication entitled "Special Supplemental Food Program for Women, Infants, and Children" dated February 13, 1985, as amended in February, 1990.

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

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

Issued in Austin, Texas, on April 6, 1990.

TRD-9003540 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: February 1, 1990

Proposal publication date: N/A

For further information, please call: (512) 458-7444

◆ ◆ ◆
• 25 TAC §31.2

The Texas Department of Health adopts under federal mandate an amendment to §31.2, which adopts by reference the Women, Infants and Children (WIC) State Plan of Operations. The amendments are to the text of the section and to the material adopted by reference in the section.

The amendments to the State Plan of Operations contain the federally approved requirements and procedures for the administration of the WIC Program in the State Plan in accordance with the federal requirements in 7 Code of Federal Regulations Part 246. The latest amendments to 7 Code of Federal Regulations Part 246 require the state plan to provide program benefits to homeless individuals. This new federal requirement became effective on January 16, 1990.

The amendment to §31.2 is adopted under federal mandate for the following reasons. Under federal and state enabling legislation (The Federal Child Nutrition Act of 1966, 42 United States Code Annotated §1786; the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II), the WIC program is 96% federally funded and governed by federal regulations. Funds are made available to the department by federal grant. The federal statute (42 United States Code Annotated §1786); the federal regulations (7 Code of Federal Regulations Part 246) and the federal grant (Federal-State Special Supplemental Food Program Agreement) authorize the United States Department of Agriculture to make the funds available to the department to administer the WIC program in the State of Texas, provided that the department administers the program in accordance with the federal regulations. Therefore, the department under federal mandate, adopts the amendment effective January 16, 1990. The amendment to the section will reflect the effective amendment date.

The amendments are adopted under the following statutes and regulations which

provide the Board of Health with the authority to adopt rules covering the Special Supplemental Food Program for Women, Infants, and Children: Texas Health and Safety Code, §1.05; the Texas Omnibus Hunger Act of 1985; Acts 1985, 69th Legislature, Chapter 150, Title II; Texas Human Services Code, Chapter 33; the Child Nutrition Act of 1966, 42 United States Code Annotated §1786; the Commodity Distribution Reforms Act and WIC amendments of 1987 (Public Law 100-237); and 7 Code of Federal Regulations Part 246.

§31.2. WIC State Plan of Operations.

(a) The Texas Department of Health adopts by reference the publication titled, "WIC State Plan of Operations", as amended in January, 1990. This plan has been developed by the WIC Program, Texas Department of Health.

(b) (No change)

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

Issued in Austin, Texas, on April 6, 1990.

TRD-9003541 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: January 16, 1990

Proposal publication date: N/A

For further information, please call: (512) 458-7444

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Chapter 325. Solid Waste
Management

Subchapter P. Annual Fees
and Related Reports

Permitted Facilities

The Texas Department of Health adopts the repeal of existing §§325.601-325.603 and adopts new §§325.601-325.603, without changes to the proposed text as published in the December 22, 1989, issue of the *Texas Register* (14 TexReg 6706-6708).

In 1989, a report of the legislative Task Force on Waste Management Policy recommended a new fee system be adopted which would fund the department's solid waste management program more adequately. The Task Force recommendation was adopted in Senate Bill 1519, 71st Texas Legislature, 1989.

Senate Bill 1519 mandated that a flat rate fee be adopted of 50 cents per ton for landfilled waste and 25 cents per ton for waste disposed of by any method other than landfilling. Facilities that record waste based on cubic yards rather than tons are allowed a separate fee rate of 17 cents per cubic yard of compacted waste or 10 cents per cubic yard of uncompacted waste. Transporters who are required to register will also be assessed a fee according to the amount of waste hauled. Permit application fees have been discontinued.

Operators of facilities for landfilling, incinerating, shredding/composting, and land application of sludge are required to report quarterly the amount of waste received or processed during the quarter. The completed report will be returned to the department with a fee payment according to the amount appropriate for the waste received or processed. At the end of each year, all facility operators will report the total waste received or processed during the year.

The proposed sections were published in the *Texas Register* and a public hearing was conducted in Austin on January 12, 1990. One comment was received at the hearing; no additional comments were received.

Regarding §325.601 (b)(1), a commentor requested that, since composting is a form of recycling and a fee would not be paid on recycled materials, then no fee should be paid for composted sludge and brush. The department agrees that composting is a form of recycling but understands that Senate Bill 1519 intends that such materials be charged a fee at the rate of 25 cents per ton rather than the 50 cents per ton charged for landfilled waste. Senate Bill 1519 specifies that the "... department shall charge a fee ... for solid waste received at an incinerator or a shredding and composting facility at one-half the fee set for solid waste received for disposal at a landfill." The department has determined that a "shredding only" operation would not be charged a fee at the shredding facility because the waste will most likely go to a composting facility, incinerator or landfill elsewhere and be charged a fee at that facility. However, Senate Bill 1519 does not authorize the department to exempt compost from the fee.

The Environmental Management Department, City of San Antonio, commented on proposed sections and expressed concerns as previously stated.

• 25 TAC §§325.601-325.603

The repeal is adopted under the Solid Waste Disposal Act, Health and Safety Code, §361.024 which provides the Board of Health with the authority to adopt rules to manage and control municipal solid waste; Senate Bill 1519, §5, 71st Legislature, 1989, which requires the Board of Health by rule to adopt a fee schedule by which the department will charge fees on solid waste that is disposed of in the State of Texas; Senate Bill 59, 71st Legislature, 1989, which appropriates the fee revenue to the department for managing solid waste under its authority; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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

Issued in Austin, Texas, on April 4, 1990.

TRD-9003483 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: May 1, 1990

Proposal publication date: December 22, 1989

For further information, please call: (512) 458-7271

◆ ◆ ◆
• 25 TAC §§325.601-325.603

The new sections are adopted under the Solid Waste Disposal Act, Health and Safety Code, §361.024 which authorizes the Board of Health to adopt rules to manage and control municipal solid waste; Senate Bill 1519, §5, 71st Legislature, 1989, which requires the Board of Health by rule to adopt a fee schedule by which the department will charge fees on solid waste that is disposed of in the State of Texas; Senate Bill 59, 71st Legislature, 1989, which appropriates the fee revenue to the department for managing solid waste under its authority; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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

Issued in Austin, Texas, on April 4, 1990.

TRD-9003484 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: May 1, 1990

Proposal publication date: December 22, 1989

For further information, please call: (512) 458-7271

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TITLE 34. PUBLIC
FINANCE

Part I. Comptroller of
Public Accounts

Chapter 1. Central
Administration

Practice and Procedure

• 34 TAC §1.33

The Comptroller of Public Accounts adopts the repeal of §1.33, without changes to the proposed text as published in the March 6, 1990, issue of the *Texas Register* (15 TexReg 1228).

This section is being repealed in order that a substantially revised section dealing with the same subject matter may be adopted.

No comments were received regarding adoption of the repeal.

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

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

Issued in Austin, Texas on April 6, 1990.

TRD-9003539 Bob Bullock
Comptroller of Public
Accounts

Effective date: April 27, 1990

Proposal publication date: March 6, 1990

For further information, please call: (512) 463-4004

◆ ◆ ◆
The Comptroller of Public Accounts adopts new §1.33, without changes to the proposed text as published in the March 6, 1990, issue of the *Texas Register* (15 TexReg 1228).

The new section sets out the comptroller's policy on the use of discovery in administrative hearings. It also expands allowable discovery to include interrogatories.

No comments were received regarding adoption of the new section.

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

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

Issued in Austin, Texas on April 6, 1990.

TRD-9003533 Bob Bullock
Comptroller of Public
Accounts

Effective date: April 27, 1990

Proposal publication date: March 6, 1990

For further information, please call: (512) 463-4004

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TITLE 40. SOCIAL
SERVICES AND
ASSISTANCE

Part I. Texas Department
of Human Services

Chapter 15. Medicaid
Eligibility

Subchapter D. Resources

• 40 TAC §15.441

The Texas Department of Human Services adopts an amendment to §15.441 concerning burial spaces. The amendment is a result of federal mandate that excludes interests on purchase agreements.

The amendment is justified to comply with federal requirements.

The amendment will function by excluding from income and resource determinations interest that is earned on the value of the agreement to purchase excluded burial spaces and that is left to accumulate.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs. To comply with federal requirements, this amendment is adopted to be effective April 1, 1990.

§15.441. Real Property.

(a) (No change.)

(b) Other real property. The equity value of a client's ownership or part ownership in real property other than the home is a resource.

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

(6) burial spaces. The cost of opening and closing a grave and a burial space owned by a client, or by a person whose resources are deemed to the client, are excluded as long as the burial space is intended for the client, the client's spouse, or any member of the client's immediate family. Immediate family includes the client's minor and adult children, stepchildren, adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those individuals. It does not include grandchildren or the client's spouse's immediate family. If a client owns a burial space that is not excludable, the department counts the equity value of the space as a resource. The department excludes from income and resource determinations the interest that is earned on the value of the agreement to purchase excluded burial spaces and that is left to accumulate.

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

Issued in Austin, Texas, on April 5, 1990.

TRD-9003501 Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: April 1, 1990

Proposal publication date: N/A

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

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**Part II. Texas
Rehabilitation
Commission**
**Chapter 117. Special Rules
and Policies**

◆ ◆ ◆
• 40 TAC §117.1

The Texas Rehabilitation Commission adopts new §117.1, without changes to the proposed text as published in the March 6, 1990, issue of the *Texas Register* (15 TexReg 1229).

Under Senate Bill 959, the commission shall adopt HIV/AIDS-related workplace guidelines and specific provisions in order to address direct care providers.

The new section will increase awareness and the promotion and adoption of personal

prevention behaviors. Accurate HIV education will promote positive attitudes for dealing with conflicts resulting from misinformation. For each HIV infection prevented, \$80,000 to \$100,000 in medical costs will be saved.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Human Resources Code, Title 7, 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 hearings, and other regulations necessary to carry out the purposes of this chapter.

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

Issued in Austin, Texas, on April 6, 1990.

TRD-9003530 Charles W. Schiesser
Assistant Commissioner
Texas Rehabilitation
Commission

Effective date: April 27, 1990

Proposal publication date: April 6, 1990

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

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State Board 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 Article 5.97, the 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, and the final actions printed in this section have not been previously published as proposals.

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, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has approved various items presented at a March 14, 1990, board meeting affecting the policy forms and endorsements of the Texas Homeowners Policy and the Texas Standard Farm and Ranch Owners Policy and the manual rules of the Texas Key Rate Schedule contained in the Texas General Basis Schedules. The items approved are as follows.

Item 2 approves a new exclusion under Section II Exclusions of the Texas Homeowners Policy coverage forms and the

Standard Texas Farm and Ranch Owners Policy, Form Number HO-419, to eliminate any liability coverage for bodily injury for an insured or family member of the same household. The addition of this exclusion in the Texas Homeowners Policy and the Texas Standard Farm and Ranch Owners Policy clarifies that liability coverage for inter family bodily injury claims was not intended under these policies nor does the rating structure contemplate such liability coverage.

Item 3 approves the amending of the Texas Homeowners Endorsement HO-210, Farmers Personal Liability, to add an exclusion for property damage arising out of any substance released or discharged from an aircraft. The addition of this exclusion makes the Form HO-210 consistent with existing personal liability coverage under the Texas Standard Farm and Ranch Owners Policy and the monoline General Liability Farmers Personal Liability Policy.

Item 7 approves an amendment to the Texas Key Rate Schedule to set forth a definition of good and dependable operating condition for a fire truck which is 25 years old or older. The existence of a definition of good and dependable operating conditions provides the State Board of Insurance a method of judging the reliability of fire apparatus 25 years old or older to determine whether such equipment

can continue to be recognized for credit in the key rate schedule as viable fire apparatus for fire protection in a city or town.

Item 9 approves an amendment of the Texas Homeowners Policy coverage forms to replace the exclusion of loss caused by inherent vice with the new wording loss caused by any quality in property that causes it to damage or destroy itself. The new wording better describes the type of loss to be excluded from coverage and eliminates misunderstanding and confusion as to the meaning of "inherent vice."

Item 10 approves an amendment to the Texas Homeowners Policy coverage forms to replace the exclusion of loss caused by vermin with the new wording loss caused by rats or mice. The use of specific wording of rats and mice eliminates misunderstanding and confusion as to the meaning of vermin.

These changes are to be effective October 1, 1990, with the exception of Item 7 which is to be effective May 1, 1990.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register 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.

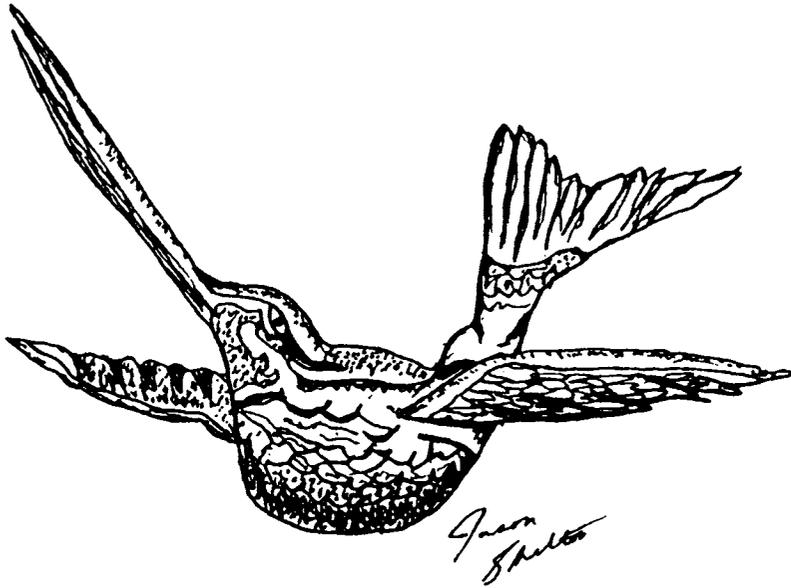
Issued in Austin, Texas on April 6, 1990.

TRD-9003537 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Effective dates: May 1, 1990, and October 1,
1990

For further information, please call: (512)
463-6327





Name: Jason

Grade: 7

School: Richardson Jr. High, Richardson

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 outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Alcoholic Beverage Commission

Monday, April 23, 1990, 10:30 a.m. The Texas Alcoholic Beverage Commission will meet at 1600 West 38th Street, Room 320, Jefferson Building, Austin. According to the complete agenda, the commission will discuss approval of minutes of March 30, 1990 meeting; administrator's and staffs' report of agency activity; and approve affidavit of destruction of tested alcoholic beverages.

Contact: W. S. McBeath, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: April 10, 1990, 9:40 a.m.

TRD-9003651

State Banking Board

Tuesday, April 17, 1990, 10 a.m. The State Banking Board will meet at 2601 North Lamar Boulevard, Austin. According to the agenda summary, the board will discuss approval of previous minutes; consideration of interim charter application; change of domicile applications; conversion applications; review of other pending applications; and the board may convene into executive session.

Contact: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Filed: April 9, 1990, 1:50 p.m.

TRD-9003630

Texas Bond Review Board

Friday, April 13, 1990, 10 a.m. The Staff Planning Meeting of the Texas Bond Review Board will meet in the Sergeant's Committee Room, State Capitol, Austin. According to the complete agenda, the board will discuss approval of minutes; consider proposed issues: treasury department-lease purchase of application systems and super-minicomputer systems; University of Houston System-consolidated

revenue refunding bonds, series 1990A; Texas National Research Laboratory Commission-general obligation bonds, series 1990; Texas Turnpike Authority-revenue bonds, series 1990; Texas Housing Agency-collateralized home mortgage revenue bonds, series 1990 A and B. Other business: consideration of proposed amendments to the Public School Facilities Funding Act.

Contact: Tom K. Pollard, Room 506, Sam Houston Building, 201 East 14th Street, Austin, Texas 78711, (512) 463-1741.

Filed: April 5, 1990, 2:56 p.m.

TRD-9003514

Texas Cancer Council

Friday, April 13, 1990, 9 a.m. The Executive Board of Directors of the Texas Cancer Council will meet at the Shivers Conference Room, M.D. Anderson Cancer Center, 1515 Holcombe Boulevard, Houston. According to the complete agenda, the board will discuss fiscal year 1990-1991 funding issues; fiscal year 1992-1003 legislative appropriation request; May 2 agenda; and other business.

Contact: Emily Untermeyer, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Filed: April 9, 1990, 1:25 p.m.

TRD-9003629

Texas Department of Commerce

Tuesday, April 10, 1990, 10 a.m. The Board of Directors of the Texas Department of Commerce met at 816 Congress Avenue, Suite 1100, Austin. According to the complete emergency revised agenda, the board will recess into executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(r); reconvene meeting; presentation and consideration of adoption of resolution on product liability; adoption of prior minutes; consideration of enterprise project

applications from Atochem North America, Inc., City of Beaumont and Jefferson County; and Embassy Packing, Inc., City of McAllen; consideration of proposed strategic plan; and presentation of marketing plan.

Contact: Mary Lane, 816 Congress Avenue, Suite 1100, Austin, Texas 78701, (512) 320-9660.

Filed: April 9, 1990, 4:25 p.m.

TRD-9003640

Thursday, April 19, 1990, 9:30 a.m. The State Job Training Coordinating Council/Executive Committee of the Texas Department of Commerce will meet at the Fairmont Hotel, 1717 North Akard Street, Dallas. According to the complete agenda, the council will consider policies for programs under the Job Training Partnership Act. Action will be taken by the executive committee on the following items: PY90 Title III state plan; CY90 Title IIB SDA plan approval; PY90-PY91 governor's coordination and special services plan; and PY90 Wagner-Peyser 7(a) and 7(b) state plan.

Contact: Leslie Ross, P.O. Box 12728, Austin, Texas 78711, (512) 320-9464.

Filed: April 9, 1990, 3:25 p.m.

TRD-9003633

Texas Department of Community Affairs

Thursday, April 19, 1990, 10 a.m. The Advisory Council on Community Affairs of the Texas Department of Community Affairs will meet at 8317 Cross Park Drive, Room 1-96, Austin. According to the complete agenda, the council will discuss approval of minutes from November 30, 1989; executive director's report; and other business.

Contact: Larry Crumpton, 8317 Cross Park Drive, Austin, Texas 78754, (512) 834-6010.

Filed: April 9, 1990, 10:51 a.m.

TRD-9003622

Texas Department of Criminal Justice Board of Pardons and Paroles

Monday-Friday, April 16-20, 1990, 10 a.m. The Texas Department of Criminal Justice Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, a panel (composed of three board members) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Karin Armstrong, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: April 6, 1990, 10:44 a.m.

TRD-9003534

Texas Education Agency

Wednesday, April 11, 1990, 8:30 a.m. The Advisory Committee for the Development Performance Indicators-Subcommittee for the Development of a Performance Indicator System of the Texas Education Agency held an emergency meeting in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee reviewed subcommittee agenda from subcommittee chairman; general discussion; joint discussion with the governor's educational excellence subcommittee on performance indicators; discussion related to performance indicators; general discussion with only members of the SBOE advisory subcommittee for the development of performance indicator system. The emergency status was necessary because the agency found it to be an urgent public necessity for this meeting to be held to discuss the possible joint efforts between the governor's educational excellence committee and the State Board of Education advisory committee for the development of performance indicators and the possible implications that could develop from this cooperative effort.

Contact: Dr. Ruben D. Olivarez, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9642.

Filed: April 5, 1990, 4:15 p.m.

TRD-9003519

Thursday, April 19, 1990, 2 p.m. The Interagency Coordinating Council on Dropout Prevention and Recovery of the Texas Education Agency will meet in the First Floor Conference Room, Room 1-96, Texas Department of Community Affairs Building, 8317 Cross Park Drive, Austin. According to the complete agenda, the council will hear reports from the subcom-

mittee on identification of barriers to services; subcommittee on early identification of dropouts; subcommittee on welfare reform; subcommittee on repositioning staff; and the subcommittee on media task force; compendium update; and time and date of next meeting.

Contact: Federico Miller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9512.

Filed: April 9, 1990, 8:50 a.m.

TRD-9003568

Friday, May 4, 1990, 8:45 a.m. The Committee of Practitioners of the Texas Education Agency will meet in Room 1-109, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee of practitioners will convene to discuss revisions and changes to the Chapter 1 School Improvement Plan, the Standard Application System (SAS) 201R91, and the SAS 214 (capital expenses).

Contact: Tommy L. Harris, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9374.

Filed: April 9, 1990, 8:50 a.m.

TRD-9003567

Texas Council on Vocational Education

Wednesday, May 2, 1990, 10 a.m. The Texas Council on Vocational Education will meet at the Radisson Plaza Hotel, 700 San Jacinto Street, Justice Room, Austin. According to the agenda summary, the council will conduct a public hearing to receive testimony on vocational-technical education beginning at 10 a. m. Following the public hearing, the council will conduct a regular meeting. The minutes of the council's February 9 meeting will be discussed for adoption; hear legislative status reports on Texas school finance and federal vocational education reauthorization; review and act on the council's evaluation topics report; receive a status report on actions of the joint liaison committee at its April 3 meeting; receive a status report on actions of the Texas Higher Education Coordinating Board at its April 19-20 meeting; preview the local advisory committee videotape; review and act on the council's 1990-1992 budget; and receive a status report on council appointments.

Contact: Val Blaschke, P.O. Box 1886, Austin, Texas 78767, (512) 463-5490.

Filed: April 10, 1990, 9:18 a.m.

TRD-9003648

Employees Retirement System of Texas

Tuesday, April 17, 1990, 9:15 a.m. The Group Insurance Advisory Committee of the Employees Retirement System of Texas, will meet at Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Room 1410, Austin. According to the agenda summary, the committee will discuss approval of minutes from previous meeting; panel discussion on legislative process-health insurance contribution; discussion regarding communications; and other related insurance matters.

Contact: James W. Sarver, 18th and Brazos Streets, Austin, Texas 78701, (512) 476-6431, ext. 217.

Filed: April 9, 1990, 11:50 a.m.

TRD-9003627

Thursday-Friday, April 19-20, 1990, 8 a.m. and 8:30 a.m. respectively. The Board of Trustees of the Employees Retirement System of Texas will meet in the ERS Board Room, ERS Building; 18th and Brazos Streets, Austin. According to the agenda summary, the board will conduct an executive session; recess; resume executive session; consideration of appointment of executive director-2 p.m.

Contact: William S. Nail, 18th and Brazos Streets, Austin, Texas 78701, (512) 476-6431, ext. 213.

Filed: April 9, 1990, 11:14 a.m.

TRD-9003613

Texas Employment Commission

Tuesday, April 17, 1990, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss prior meeting notes; approval of architectural and design fee for architecture and interior design to reroof and repair air conditioning and heating system for Beaumont agency owned building; internal procedures of commission appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 16; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: April 9, 1990, 4:02 p.m.

TRD-9003635

Texas Growth Fund

Wednesday, April 18, 1990, 9:30 a.m. The Texas Growth Fund will meet at the Crescent Office Building, 100 Crescent Court,

Suite 1000, Dallas. According to the complete agenda, the fund will review report of investment officers; and discuss additional organizational matters.

Contact: Christine Mangiantini, Room 15-A, Sam Houston Building, 201 East 14th Street, Austin, Texas 78711, (512) 463-1814.

Filed: April 9, 1990, 2:24 p.m.

TRD-9003631

Texas Department of Health

Wednesday, April 18, 1990, 10:30 a.m. The Advisory Committee on Mental Retardation Facilities of the Texas Department of Health will meet in Room T-607, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider update on intermediate care facilities-related conditions; update on personal care homes; special waste rules; subcommittee report on architectural regulations for facilities serving the mentally retarded; update on informal administrative review; update on preadmission screening and annual resident review; and schedule next meeting.

Contact: Richard Butler, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7706.

Filed: April 5, 1990, 10:34 a.m.

TRD-9003512

Friday, April 20, 1990, 2 p.m. The Hospital Licensing Advisory Council of the Texas Department of Health will meet in Room G-107, 1100 West 49th Street, Austin. According to the agenda summary, the council will hear and discuss hospital licensing director's report; update on amendments to hospital licensing standards; amendments relating to special waste; proposed legislation; report on hospital fires; and subjects for next meeting.

Contact: Maurice B. Shaw, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7538.

Filed: April 9, 1990, 10:51 a.m.

TRD-9003623

Friday, April 27, 1990, 10 a.m. The Hospital Patient Transfer Advisory Committee of the Texas Department of Health will meet in Room T-607, 1100 West 49th Street, Austin. According to the agenda summary, the committee will discuss draft rules to implement hospital patient transfer agreements.

Contact: Maurice B. Shaw, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7538.

Filed: April 9, 1990, 3:35 p.m.

TRD-9003644

Friday, April 27, 1990, 10 a.m. The Ad Hoc Committee on Nurse Aides in Long

Term Care Facilities of the Texas Department of Health will meet in Room G-107, 1100 West 49th Street, Austin. According to the agenda summary, the committee will approve minutes of previous meeting; review committee guidelines for eligibility for voting; develop process for revising Texas nurse aide rules; develop emergency and proposed rules incorporating exemptions for competency evaluations; consider federal rules and develop comments to be submitted to Health Care Financing Administration; consider other items not requiring committee action.

Contact: Richard Butler, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7706.

Filed: April 9, 1990, 3:35 p.m.

TRD-9003643

Texas Health and Human Services Coordinating Council

Thursday, April 12, 1990, 12:00 noon. The Strategic Policy Committee of the Texas Health and Human Services Coordinating Council met in Room M741, 1100 West 49th Street, Austin. According to the complete emergency revised agenda, the committee discussed charge to the committee; advisory groups update; human services interagency committee update; information and referral project update; strategic planning project discussion; and new business. The emergency status was necessary because of a change in time and room number.

Contact: Carol Price, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: April 6, 1990, 9:23 a.m.

TRD-9003531

Texas Statewide Health Coordinating Council

Thursday, April 19, 1990, 2 p.m. The Texas Statewide Health Coordinating Council will meet in Room M-652, 1100 West 49th Street, Austin. According to the agenda summary, the council will discuss and review 1991-1992 preliminary state health plan.

Contact: Don Kretsinger, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: April 6, 1990, 1:57 p.m.

TRD-9003556

Friday, April 20, 1990, 9 a.m. The Texas Statewide Health Coordinating Council will meet in Room M-652, 1100 West 49th Street, Austin. According to the agenda

summary, the council will approve minutes of February 2, 1990 meeting; hear report for Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health; discuss and adopt 1991-1992 preliminary state health plan; select next meeting date.

Contact: Don Kretsinger, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: April 6, 1990, 1:57 p.m.

TRD-9003555

Texas Historical Commission

Thursday, April 26, 1990, 8 a.m. The Main Street Committee of the Texas Historical Commission will meet at the Embassy Suites Coffee Shop, 4250 Ridgmont Drive, Abilene. According to the complete agenda, the committee will discuss critique of first lady's tour; Houston neighborhood conservation program request; grant writing workshops; resource teams; and progress in Main Street cities.

Contact: Curtis Tunnell, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: April 6, 1990, 1:58 p.m.

TRD-9003554

Texas Housing Agency

Tuesday, April 17, 1990, 11 a.m. The Low Income Tax Credit Ad Hoc Committee of the Texas Housing Agency will meet in the THA Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the committee will consider and/or possibly act on the following items: approval of minutes of March 29, 1990 Tax Credit Meeting; request for proposals for low income tax credit underwriter; proposed low income tax credit state allocation plan; and proposed low income tax credit rules.

Contact: Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: April 9, 1990, 4:21 p.m.

TRD-9003638

Tuesday, April 17, 1990, 1 p.m. The Finance and Planning Committee of the Texas Housing Agency will meet in the THA Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the committee will consider and possibly act on the following items: responses to request for proposals for financial advisor and selection of same; and extension of the \$142,000 permanent loan commitment period to the Association for Retarded Citizens, Texas for construction of a community based mental/health mental retardation homes.

Contact: Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: April 9, 1990, 4:21 p.m.

TRD-9003637

Tuesday, April 17, 1990, 3 p.m. The Personnel and Programs Committee of the Texas Housing Agency will meet in the THA Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the committee will consider and possibly act on the following items: proposal regarding THA serving as a clearinghouse in partnership with Resolution Trust Corporation (RTC) for information dissemination purposes as described in the Financial Institutions Reform Recovery Enforcement Act legislation; financing proposal between the Texas Housing Agency and the RTC; selection of master servicer for the 1990 THA Series A&B mortgage revenue bond financing; agency personnel manual and employee handbook; report from staff on the development of a business/operational plan and executive administrator position; and while in executive session pursuant to §2(e) and §2(g), Article 6252-17, Texas Civil Statutes, consider and possibly act on pending or contemplated litigation and duties, evaluation and discipline of employees. Act on executive session items as required in open session.

Contact: Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: April 9, 1990, 4:21 p.m.

TRD-9003639

State Board of Insurance

Tuesday, April 10, 1990, 10 a.m. The State Board of Insurance met in Room 414, 1110 San Jacinto Street, Austin. According to the complete emergency revised agenda, the board heard report by staff of the life group concerning structuring and appointment of an advisory committee on the drafting of possible rules concerning provisions in life, health and accident policies concerning coverage for consequences of chemical dependency pursuant to Senate Bill 911; including possible consideration of appointment of members to that advisory committee. The emergency status was necessary to meet an imminent peril to the public health and welfare by providing standards for adequate coverage of chemical dependency in accordance with Senate Bill 911.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 6, 1990, 4:30 p.m.

TRD-9003562

Tuesday, April 10, 1990, 10 a.m. The State Board of Insurance met in Room 414,

1110 San Jacinto Street, Austin. According to the complete emergency revised agenda, the board considered emergency amendment to the Texas Automobile Manual, Rule 11, entitled "Changes," by adding a new exception providing that for newly approved rating factors such as classifications and territories a company is to use the rules and rates in effect at the time of the change to the policy. The emergency status was necessary in order for effective date to coincide with that of previous amendments in order to give proper and complete instructions regarding rate calculation.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 9, 1990, 11:30 a.m.

TRD-9003621

Tuesday, April 17, 1990, 9 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the complete agenda, the board will consider corrective amendment to Board Order 56054 concerning disciplinary action against Robert Golden Wilson; and motion for rehearing in the appeal of William Charles Cook from Commissioner's Order 89-1632.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 5, 1990, 10:15 a.m.

TRD-9003509

Tuesday, April 17, 1990, 9 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the complete agenda, the board will hold a public hearing to consider an appeal by Kenneth Rowe Burroughs of Commissioner's Order 89-0436.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 5, 1990, 10:15 a.m.

TRD-9003508

Texas Health Insurance Risk Pool

Thursday, April 12, 1990, 10 a.m. The Texas Health Insurance Risk Pool held an emergency meeting at 333 Guadalupe Street, Republic Plaza I, Room 216, Austin. According to the complete agenda, the board discussed approval of minutes; continued review of plan of operation; reviewed RFP for insurance broker/consultant; continued discussion of policy provision; and new business brought before the board. The emergency status was necessary to meet an imminent peril to the

public health, safety, and welfare by considering methods for marketing of health insurance for certain citizens of Texas.

Contact: Kay Simonton, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 322-3401.

Filed: April 5, 1990, 11:47 a.m.

TRD-9003513

Lamar University System-Board of Regents

Thursday, April 12, 1990, 1 p.m. The Board of Regents of the Lamar University System-Board of Regents will meet at the John Gray Institute, Map Room, 855 Florida, Beaumont. According to the complete agenda, the board will hear chairman's comments; chancellor's comments; discuss item 308-consider appointment of head basketball coach at Lamar-Beaumont; item 309-receive recommended budget for fiscal year 1991 for adoption at April 30, 1990, board meeting; and hear regents comments and suggestions.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: April 9, 1990, 9:35 a.m.

TRD-9003626

Texas Department of Mental Health Mental Retardation

Thursday, April 19, 1990, 1:15 p.m. The Planning and Policy Development Board of the Texas Department of Mental Health Mental Retardation will meet at the Wichita Falls State Hospital, Chapel, 6515 Lake Road, Wichita Falls. According to the complete agenda, the board will discuss proposed naming of the chapel at Brenham State School the Lillian A. Wilder Chapel; consideration of appointment to the medical advisory committee; employee incentive policy; and consideration of proposed strategic plan. If deaf interpreters required, notify TDMHMR (512) 465-4585, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: April 5, 1990, 4:49 p.m.

TRD-9003523

Thursday, April 19, 1990, 2:15 p.m. The Business and Asset Management Committee of the Texas Department of Mental Health Mental Retardation will meet at the Wichita Falls State Hospital, Chapel, 6515 Lake Road, Wichita Falls. According to the complete agenda, the committee will discuss proposed construction of a recreational facility on the campus of San Angelo State School; proposed remodeling of building

#740 to create a hospitality house on the campus of Austin State School; proposed construction of a regional orthotics building on campus of Lufkin State School; approval of construction projects funded from fiscal year 1988-1989 general revenue and from emergency repairs and maintenance funds; approval of fiscal year 1990-1991 CMHMRC allocations; and approval of fiscal year 1990 operating budget adjustments. If deaf interpreters required, notify TDMHMR (512) 465-4585, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Friday, April 20, 1990, 9 a.m. The Board of the Texas Department of Mental Health Mental Retardation will meet at the Wichita Falls State Hospital, Chapel, 6515 Lake Road, Wichita Falls. According to the agenda summary, the board will hear citizens' comments (limited to three minutes); and discuss issues to be considered. If deaf interpreters required, notify TDMHMR, (512) 465-4585, Ernest Fuentes 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: April 5, 1990, 4:18 p.m.

TRD-9003521

State Pension Review Board

Monday, April 23, 1990, 3 p.m. The Performance Evaluation Subcommittee of the State Pension Review Board will meet at 5001 Spring Valley Road, Suite 530-East, Dallas. According to the complete agenda, the subcommittee will prepare final report to be submitted to full committee.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: April 10, 1990, 9:35 a.m.

TRD-9003649

Tuesday, April 24, 1990, 10 a.m. The Investment Policy Working Committee of Investment Review Committee of the State Pension Review Board will meet at the Houston Firemen's Pension Office, 602 Sawyer, Suite 650, Houston. According to the complete agenda, the committee will discuss and prepare final report of working committee's recommendation to the full committee.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: April 10, 1990, 9:34 a.m.

TRD-9003650

Texas State Board of Pharmacy

Wednesday-Thursday, April 18-19, 1990, 9 a.m. The Texas State Board of Pharmacy will meet at the Wyndham Southpark Hotel, 4140 Governor's Row, IH-35 and Ben White Boulevard, Austin. According to the agenda summary, the board will hear testimony and review alleged violations of those laws which persons are subject to administrative sanctions and what form the sanctions are to take. The board will commence in open session to consider: approval of minutes of February 13-14, 1990; consider proposed rules 281.24, 281.48(i), and 281.51; rules for adoption 295.5, 291.6, 283.2 and 283.4; liability insurance for public officials and employees; hear reports and discuss status of 1990 law reference, the strategic planning committee meeting of March 22, 1990, recent APhA annual meeting and USPC quinquennial meeting in Washington, D.C. from March 8-14, 1990, the TSHP annual meeting, April 8-11, 1990; consider a petition for a preceptor's license; proposed agreed board orders; and executive session to discuss pending litigation and personnel matters.

Contact: Fred S. Brinkley, Jr., 8505 Cross Park Drive, Suite 110, Austin, Texas 78754, (512) 832-0661.

Filed: April 9, 1990, 11:03 a.m.

TRD-9003612

Public Utility Commission of Texas

Monday, April 16, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a joint prehearing conference in Docket Number 8636: joint application of Texas-New Mexico Power Company and Houston Lighting and Power Company for approval of agreements.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 6, 1990, 4:31 p.m.

TRD-9003559

Monday, April 16, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a joint prehearing conference in Docket Number 6992: application of Texas-New Mexico Power Company for certification of a lignite-fired generation station in Robertson County.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 6, 1990, 4:31 p.m.

TRD-9003560

Monday, April 16, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a joint prehearing conference in Docket Number 8880: petition of Texas New Mexico Power Company for approval of deferred accounting treatment for the TNP One, Units 1 and 2 and adjustment to PCRF calculation.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 6, 1990, 4:31 p.m.

TRD-9003561

Monday, April 16, 1990, 3 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a prehearing conference in Docket Number 8914: complaint of National Telecommunications of Austin against Southwestern Bell Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 6, 1990, 3:53 p.m.

TRD-9003565

Tuesday, April 17, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a rescheduled hearing on the merits in Docket Number 9177: petition of Southwestern Public Service Company for authority to establish new fixed fuel factors and to be exempt from notice requirements.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 5, 1990, 3:03 p.m.

TRD-9003516

Tuesday, April 17, 1990, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a prehearing conference in Docket Number 8888: application of Magic Valley Electric Cooperative, Inc. to amend its certificate of convenience and necessity to include a proposed transmission line within Cameron County.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 6, 1990, 3:54 p.m.

TRD-9003564

Monday, April 23, 1990, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a prehearing conference in Docket Number 9453: application of Brazos Electric Power Cooperative, Inc. original petition for waiver of qualifying facility purchase and sale requirements.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 5, 1990, 3:03 p.m.

TRD-9003517

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Railroad Commission of Texas

Monday, April 9, 1990, 1 p.m. The Railroad Commission of Texas met at the William B. Travis Building, 1701 North Congress, 12th Floor Conference Room, Austin. According to the complete emergency revised agenda, the commission considered whether to use state funds to clean up an oil spill, MLT Oil Company, Brightwell-A-Lease (06332), East Texas Field, Rusk County. The emergency status was necessary because oil spill of approximately 20-30 barrels in a marsh area near Rabbit Creek was causing an imminent threat to the public safety and welfare.

Contact: Willis Steed, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6827.

Filed: April 9, 1990, 10:52 a.m.

TRD-9003611

Thursday, April 19, 1990, 10 a.m. The Railroad Commission of Texas will meet at the Sheraton Crown Hotel and Conference Center, 15700 John F. Kennedy Boulevard, Houston. According to the agenda summary, the commission will hold a statewide hearing on oil and gas.

Contact: Paula Middleton, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6729.

Filed: April 6, 1990, 10:40 a.m.

TRD-9003538

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School Land Board

Tuesday, April 17, 1990, 10 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the agenda summary, the board will discuss approval of the minutes of the previous board meeting; pooling applications, Brown-Bassett Field,

Terrell County; Shelby Sue Field, Shackleford County; Canadian Hunter Field, Harris County; Eileen Sullivan Field, Leon County; consideration of schedule and procedures for the October, 1990 oil, gas and other minerals lease sale; bids received for the Yates Field Unit crude oil; Good Faith Claimant, McMullen County; policy on excess acreage; coastal public lands-lease application, Laguna Madre, Cameron County; easement application, San Antonio Bay, Aransas County; executive session-pending and proposed litigation; the board members will travel to inspect state-owned land in Corpus Christi and Palacios and to inspect aquaculture operations.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: April 9, 1990, 4:31 p.m.

TRD-9003641

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The Supreme Court of Texas and its Administrative Agency, The State Bar of Texas

Thursday, April 26, 1990, 9 a.m. The Supreme Court of Texas and its Administrative Agency, The State Bar of Texas will meet in the Courtroom, Supreme Court Building, 200 West 14th Street, Austin. According to the complete agenda, there will be a Supreme Court Budget Hearing-State Bar of Texas 1990-1991 Budget.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: April 9, 1990, 12:11 p.m.

TRD-9003628

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Texas Surplus Property Agency

Tuesday, April 17, 1990, 1:30 p.m. The Governing Board of the Texas Surplus Property Agency will meet at 2103 Ackerman Road, San Antonio. According to the complete agenda, the board will discuss approval of minutes of February 21, 1990 board meeting; agency automation project update; and repair-expansion of agency facilities.

Contact: Marvin J. Titzman, P.O. Box 8120, San Antonio, Texas 78208, (512) 661-2381.

Filed: April 9, 1990, 9:36 a.m.

TRD-9003625

University of Texas System

Thursday, April 12, 1990, 9 a.m. The Board of Regents and Standing Committees of the University of Texas System met in the Auditorium (Room 119), Biomedical Research Building, U.T. Health Center, U.S. 271 North and State Highway 155, Tyler. According to the agenda summary, the committees will consider: amendments to RRR; depository banks; cash defeasance of PUF bonds; revenue financing system; chancellor's docket (submitted by system administration); appointments to endowed academic positions; fees; housing and tuition rates; UT Dallas-admission of lower division students; agreements; buildings and grounds matters including approval for projects, preliminary and final plans; award of contracts; land and investment matters; acceptance of gifts, bequests, and estates; establishment of endowed positions and funds; litigation, land acquisition and negotiated contracts; and personnel matters.

Contact: Arthur H. Dilly, P.O. Box N, U.T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: April 6, 1990, 3:57 p.m.

TRD-9003557

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University of Texas Health Science Center at San Antonio

Wednesday, April 18, 1990, 3 p.m. The Institutional Animal Care and Use Committee of the University of Texas Health Science Center at San Antonio will meet at the Dental Dean's Conference Room 4.32 or, 7703 Floyd Curl Drive, San Antonio. According to the agenda summary, the committee will discuss approval of minutes; protocols for review; subcommittee reports; and other business.

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas, (512) 567-3717.

Filed: April 9, 1990, 2:37 p.m.

TRD-9003632

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The Texas A&M University System, Board of Regents

Monday, April 16, 1990, 1 p.m. The Committee for Academic Campuses of the the Texas A&M University System, Board of Regents will meet in the MSC Annex, Texas A&M University, College Station. According to the complete agenda, the committee will meet jointly with the Advisory Panel to receive reports and further discuss undergraduate education at Texas A&M University.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 78343-1122, (409) 845-9603.

Filed: April 5, 1990, 10:35 a.m.

TRD-9003510

Wednesday, May 16, 1990, 10 a.m. The Board of Regents of the Texas A&M University System will meet in the Houston Office of the Texas A&M University System, 1100 Louisiana Street, Suite 3050, Houston. According to the complete agenda, the board will review the budgets for fiscal year 1990-1991.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 78343-1122, (409) 845-9603.

Filed: April 5, 1990, 10:35 a.m.

TRD-9003511

Texas Water Commission

Monday, April 16, 1990, 1 p.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 123, Austin. According to the agenda summary, the commission will consider various matters within the jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-8040.

Filed: April 6, 1990, 3:24 p.m.

TRD-9003566

Tuesday, April 24, 1990, 10 a.m. The Office of Hearing Examiners of the Texas Water Commission will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the complete agenda, the examiners will conduct a hearing on a water right application by Boyt Realty Company, to sever the rights now authorized for the company by Certificate of Adjustment Number 08-4248 from the certificate and modify its authorization.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 9, 1990, 4:20 p.m.

TRD-9003645

Thursday, April 26, 1990, 10:30 a.m. The Texas Water Commission will meet in Room 5-101, William B. Travis Office Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will consider complaints of Levers Canal Rice Producers Association, Inc., J & E Farms, Inc. and Three Dailey Farms, Inc. against Trinity Water Reserve, Inc. and Boyt Realty Company; Docket Number 8388-M.

Contact: Jim Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 5, 1990, 3:42 p.m.

TRD-9003522

Wednesday, May 16, 1990, 3 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will conduct a hearing on consideration of a temporary order for Phillips 66 Company, Borger Refinery and NGL Process Center to discharge water from the Pantex Reservoir, located adjacent to State Highway 119 approximately 4 miles northeast of the City of Borger, Hutchinson County.

Contact: Laura R. Culbertson, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: April 5, 1990, 3:43 p.m.

TRD-9003518

Texas Workers' Compensation Commission

Tuesday, April 10, 1990, 9 a.m. The Committee of the Texas Workers' Compensation Commission met at the Bevington A. Reed Building, 200 East Riverside Drive, Room 107, Austin. According to the complete agenda, the committee will hold under the Open Meeting Act, Article 6252-17, Texas Civil Statutes, a work session of the special advisory committee on physical therapy care for the purpose of comparing the physical medicine section of the proposed California RVS to the 1988 Texas Physical Therapy Association Guidelines.

Contact: Ellen C. English, 200 East Riverside Drive, Austin, Texas 78704-1287, (512) 463-0814.

Filed: April 6, 1990, 4:21 p.m.

TRD-9003558

Regional Meetings

Meetings Filed April 5, 1990

The Bexar Appraisal District Appraisal Review Board met at 535 South Main, San Antonio, April 11, 1990, at 8:30 a.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Cass County Appraisal District Board of Directors met at the District Office, 502 North Main Street, Linden, April 9, 1990, at 7 p.m. Information may be obtained from Janelle Clements, Box 1150, Linden, Texas 75563, (214) 756-7545.

The Concho Valley Council of Governments Executive Committee met at 5002 Knickerbocker Road, San Angelo,

April 11, 1990, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76904, (915) 944-9666.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth, Lampasas, April 11, 1990, at 8:30 a.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058.

The Permian Basin Regional Planning Commission Board of Directors met at 2514 Pliska Drive, Midland, April 11, 1990, at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 6391, Midland, Texas 79711.

The Region 12 Education Service Center Administrative-Board of Directors will meet at 113 University Parks Drive, Waco, April 19, 1990, at 5:15 p.m. Information may be obtained from Harry J. Beavers, P.O. Box 1249, Waco, Texas 76703-1249, (817) 756-7494.

The South Plains Association of Governments Executive Committee met at 1323 58th Street, Lubbock, April 10, 1990, at 9 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730.

The South Plains Association of Governments Board of Directors met at 1323 58th Street, Lubbock, April 10, 1990, at 10 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730.

The Tarrant Appraisal District Review Board met at 2309 Gravel Road, Fort Worth, April 10, 1990, at 8:30 a.m. Information may be obtained from Vernon Evans, 2309 Gravel Road, Fort Worth, Texas 76118, (817) 284-8884.

TRD-9003504

Meetings Filed April 6, 1990

The Callahan County Appraisal District Board of Directors will meet at the District Office, 130 West Fourth Street, Baird, April 16, 1990, at 7:30 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165.

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadaway Street, Abilene, April 24, 1990, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadaway Street, Abilene, April 24, 1990, at 2:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.

The Dallas Area Rapid Transit Business Development Adhoc Committee met at 601 Pacific Avenue, Board Conference Room, Dallas, April 10, 1990, at 1 p. m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Mobility Impaired Committee met at 601 Pacific Avenue, Board Room, Dallas, April 10, 1990, at 2:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Audit Committee met at 601 Pacific Avenue, Board Conference Room, Dallas, April 10, 1990, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dewitt County Appraisal District Board of Directors will meet at 103 Bailey Street, Cuero, April 17, 1990, at 7:30 p.m. Information may be obtained from John Haliburton, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Eastland County Appraisal District Board of Directors will meet at the Commissioner's Courtroom of Eastland, County Courthouse, Eastland, April 18, 1990, at 1 p.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597.

The El Oso Water Supply Corporation Board of Directors met in their office in Karnes City, April 10, 1990, at 8 p.m. Information may be obtained from Hilmer Wagener, P.O. Box 309, Karnes City, Texas 78118, (512) 780-3539.

The Grand Parkway Association met at 5757 Woodway, 140 East Wing, Houston, April 11, 1990, at 8:15 a.m. Information may be obtained from Larry W. Nettles, 2823 First City Tower, 1001 Fannin, Houston, Texas 77002-6760, (713) 654-4586.

The Grayson Appraisal District Board of Directors met at 205 North Travis, Sherman, April 11, 1990, at noon. Information may be obtained from Deborah Reneau, 205 North Travis, Sherman, Texas 75090, (214) 893-9673.

The Hays County Appraisal District Board of Directors met at 632 A East Hopkins, Municipal Building, San Marcos, April 12, 1990, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 632 "A" East Hopkins, San Marcos, Texas 78666, (512) 754-7400.

The Houston-Galveston Area Council Projects Review Committee will meet at the Board of Directors Conference Room, Fourth Floor, 3555 Timmons Lane, Houston, April 17, 1990, at 9 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Houston, Texas 77027, (713) 627-3200.

The Hunt County Appraisal District Board of Directors met at the Hunt County Appraisal District Board Room, 4801 King Street, Greenville, April 12, 1990, at 7 p.m. Information may be obtained from Joe P. Davis or Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Liberty County Central Appraisal District Agricultural Advisory Board will meet at 315 Main Street, Liberty, April 18, 1990, at 9:30 a. m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722.

The Liberty County Central Appraisal District Appraisal Review Board will meet at 315 Main Street, Liberty, April 19, 1990, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, April 25, 1990, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722.

The Lower Colorado River Authority Retirement Benefits Committee met at 3700 Lake Austin Boulevard, Austin, April 12, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3250.

The North Central Texas Council of Governments for the Local Government Investment Fund for Texas met at 616 Six Flags Drive, Suite 200, Arlington, April 12, 1990, at noon. Information may be obtained from Charles Cason, III, 1201 North Watson, Suite 270, Arlington, Texas 76005-5888, (817) 640-3300.

The Permian Basin Housing Finance Corporation Finance Committee met at the Commission Offices, 2514 Pliska Drive, Midland, April 11, 1990, at 3 p.m. Information may be obtained from Terri Moore, P.O. Box 6391 ATS, Midland, Texas 79711, (915) 563-1061.

The Texas Regional Planning Commissions' Employee Benefit Agency Board of Trustees met at the Health Economics Corporation, 1300 West Mockingbird Lane, Dallas, April 12, 1990, at 10 a.m. Information may be obtained from Jack Gazelle, P.O. Box 22777, Houston, Texas 77227.

TRD-9003524

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Meetings Filed April 9, 1990

The Capital Area Rural Transportation System (CARTS) CARTS Executive Committee held an emergency meeting at 5111 East First Street, Conference Call, Austin, April 10, 1990, at 4 p.m. The emergency status was necessary because of timely

consideration of mechanics of land acquisition. Information may be obtained from Edna M. Burrough, 5111 East First Street, Austin, Texas 78701, (512) 478-7433.

The Carson County Appraisal District Appraisal Review Board will meet at 102 Main, Panhandle, April 19, 1990, at 8:30 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068-0970, (806) 537-3569.

The Cass County Appraisal District Appraisal Review Board met at the District Office, 502 North Main Street, Linden, April 12, 1990, at 9 a.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (214) 756-7545.

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse, Denton, April 19, 1990, at 4 p.m. Information may be obtained from John D. Brown, 3911 Morse, Denton, Texas 76205, (817) 566-0904.

The Education Service Center, Region XVI Board of Directors will meet in the Texas Empire Room, Amarillo Club, Seventh and Tyler, Amarillo, April 20, 1990, at 1 p.m. Information may be obtained from Dr. Kenneth M. Laycock, P.O. Box 30600, Amarillo, Texas 79120, (806) 376-5521.

The Gonzales County Appraisal District Board of Directors met at 928 St. Paul Street, Gonzales, April 12, 1990, at 5 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Gray County Appraisal District Board of Directors met at 815 North Sumner, Pampa, April 12, 1990, at 5 p.m. Information may be obtained from W. Pat Bagley, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791.

The Lower Neches Valley Authority Board of Directors will meet at LNVA Office Building, 7850 Eastex Freeway, Beaumont, April 17, 1990, at 10:30 a. m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011.

The Mason County Appraisal District will meet at 206 Ft. McKavitt Street, Mason, April 18, 1990, at 5 p.m. Information may be obtained from Neal Little, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989.

The Nortex Regional Planning Commission Executive Committee will meet at the Wichita Falls Activities Center, Room 214, 10th and Indiana, Wichita Falls, April 19, 1990, at noon. Information may be obtained from Dennis Wilde, 210 Kemp Boulevard, Wichita Falls, Texas 76307, (817) 322-5281.

The Palo Pinto Appraisal District Board of Directors will meet at the Palo Pinto

County Courthouse, Palo Pinto, April 18, 1990, at 3 p.m. Information may be obtained from Jack F. Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 59-1234.

The Region III Education Service Center Board of Directors will meet at 1905 Leary Lane, Victoria, April 16, 1990, at 1:30 p.m. Information may be obtained from Dr. Julius Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731.

The San Antonio River Authority Board of Directors will meet at the SARA General Offices, 100 East Guenther Street, San Antonio, April 18, 1990, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (512) 227-1373.

The San Antonio River Authority Salary Review and Personnel Committee will meet at the SARA General Offices, 100 East Guenther Street, San Antonio, April 18, 1990, at 3:45 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (512) 227-1373.

The San Antonio River Authority Employees Retirement Fund Board of

Trustees will meet at the SARA General Offices, 100 East Guenther Street, San Antonio, April 18, 1990, at 1:45 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (512) 227-1373.

The San Antonio River Industrial Development Authority Board of Directors will meet at the SARA General Offices, 100 East Guenther Street, San Antonio, April 18, 1990, at 10 a.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (512) 227-1373.

The South East Texas Regional Planning Commission Executive Committee will meet at the City of Beaumont Council Chambers, 801 Main, Beaumont, April 18, 1990, at 7 p.m. Information may be obtained from Jackie Vice, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384.

The Tarrant Appraisal District Review Board met at 2309 Gravel Road, Fort Worth, April 10, 1990, at 8:30 a.m. Information may be obtained from Vernon Evans, 2309 Gravel Road, Fort Worth, Texas 76118, (817) 332-3151.

The Tarrant Appraisal District Review Board will meet at Holiday Inn-Bedford, 3003 Airport Freeway, Bedford, April 20, 1990, at 8 a.m. Information may be obtained from Vernon Evans, 2309 Gravel Road, Fort Worth, Texas 76118, (817) 284-8884.

TRD-9003563

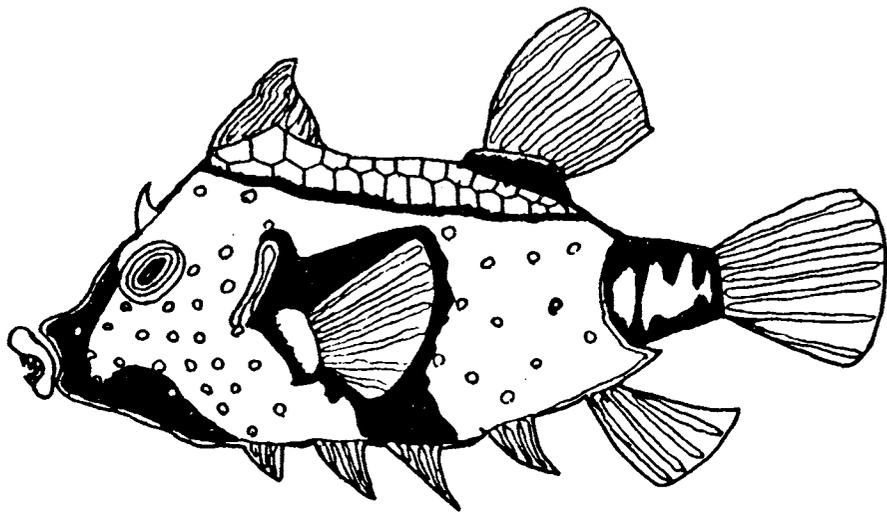
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Meetings Filed April 10, 1990

The Comal Appraisal District Board of Directors will meet at 430 West Mill Street, New Braunfels, April 16, 1990, at 7:30 p.m. Information may be obtained from Richard Rhodes, Jr., P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597.

The Harris County Appraisal District Board of Directors will meet at 2800 North Loop West, Eighth Floor, Houston, April 18, 1990, at 1:30 p.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291.

TRD-9003647

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Jimmerson Minor

Name: Jimmerson Minor

Grade: 7

School: Richardson Jr. High, Richardson

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 Department of Banking

Notice of Cancellation

The April 19, 1990, hearing on an application to withdraw excess earnings from trust deposits filed by White Funeral Home, Incorporated, Weatherford, has been canceled.

Additional information may be obtained from Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on April 6, 1990.

TRD-9003542 Ann Graham
General Counsel
Texas Department of Banking

Filed: April 6, 1990

For further information, please call: (512) 479-1200



State Banking Board

Notice of Hearing Cancellation

As no opposition has been noted in the application for domicile change by the North Houston Bank, Houston, the hearing previously scheduled for Wednesday, April 11, 1990, has been canceled.

Issued in Austin, Texas, on April 5, 1990.

TRD-9003553 William F. Aldridge
Director of Corporate Affairs
Texas Department of Banking

Filed: April 6, 1990

For further information, please call: (512) 479-1200



Texas Education Agency

Request for Applications

This request for application is filed in accordance with the Texas Education Code, §21.114, which was added by Senate Bill 417, §2.15, 71st Texas State Legislature, 1989, First Called Session.

Description. The Texas Education Agency (TEA) is requesting applications from school districts or cooperatives of school districts for the development of an integrated program of educational and support services for student who are pregnant or who are parents.

The authorizing statute requires the TEA to evaluate the effectiveness of these pilot projects and submit a report to the 72nd Texas State Legislature no later than February 1, 1991. Projects must provide comprehensive data to assist the TEA in this evaluation.

Dates of Projects. The School-Age Pregnancy and Parenting Program will be implemented during the 1989-1990

and 1990-1991 school years. Applicants shall plan for a starting date of September 1, 1991, and ending date of August 31, 1991.

Project Amount. Funding for 1990-1991 will be contingent upon budget authority from the State Board of Education. A maximum of \$10 million will be provided for the continuation of projects initially funded in 1989-1990 and the funding of new projects. For both continuing and new projects, funding for 1990-1991 cannot exceed \$200,000 per project. Funding for continuing projects will be contingent upon satisfactory performance during 1989-1990. Funding for 1990-1991 may be used to establish a new program or to expand programs funded from other sources.

Selection Criteria. The authorizing statute that pilot programs be established in school districts in which at least 30% of students are of low socioeconomic status. Accordingly, a district may submit an application if it exceeds 0.30 on any of the following ratios: the district's best six months' average of 1988-1989 reported national school lunch (NSL) claims divided by the district's best four of eight weeks' refined average daily attendance (ADA) for 1988-1989; the district's best six months' average of 1988-1989 reported NSL claims divided by the district's four fall weeks' refined ADA for 1989-1990; the district's October 1989 reported NSL claims divided by the district's four fall weeks' refined ADA for 1989-1990; the district's highest three months of 1989-1990 reported NSL claims divided by the district's four fall weeks' refined ADA for 1989-1990. The request for application will include a list of all districts qualifying under any of these formulas.

Awards will be made based upon the applicant's ability to carry out all requirements contained in the request for application. The TEA reserves the right to select from the highest ranking applications districts with high concentrations of students who are parents and those which coordinate multiple funding sources without duplication of funds.

Consideration will also be given to the geographic distribution of pilot sites, the size distribution of districts, cost effectiveness, and replicability.

Further Information. A copy of the complete request for application may be obtained by writing or calling the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304.

For clarifying information about this request contact Sunny Thomas, Division of General Education, Texas Education Agency, (512) 463-9501.

Deadline for Receipt of Applications. The deadline for submitting an application is 5 p.m., Friday, June 15, 1990.

Issued in Austin, Texas on April 6, 1990.

TRD-9003569 W. N. Kirby
Commissioner of Education

Filed: April 9, 1990

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**Texas Health and Human Services
Coordinating Council**
**Announcement of Consulting Contract
Award**

The Texas Health and Human Services Coordinating Council has awarded a consulting contract under the provisions of Texas Civil Statutes, Article 6252-11c. The Request for Proposals for this contract was published in the *Texas Register* on January 23, 1990, (15 TexReg 381).

The award is not to exceed \$60,000, including travel costs. The contract was awarded on March 26, 1990 to Ilene Gray, 2703 Addison, Austin, Texas 78757, in consultation with Andersen Consulting, Arthur Andersen and Company, S.C., 701 Brazos Street, Suite 1020, Austin, Texas 78701.

The purpose of this contract is to facilitate the work of the State Information and Referral Task Force and to develop a State Information and Referral Plan for Texas. The consultant will present a written report on findings from an analysis of existing systems and the review of public needs in July, 1990. The consultant will present a draft State Information and Referral Plan to task force members in October 1990. The consultant will make changes as requested by the task force and provide the approved draft plan to the Texas Health and Human Services Coordinating Council by November 15, 1990. A summary of public comments on the draft State I&R Plan will be presented to the task force in January, 1991. The consultant will prepare the final State I&R Plan and submit it to the Health and Human Services Coordinating Council by March 1, 1991.

The contract period will be from March 26, 1990-March 1, 1991.

Issued in Austin, Texas, on April 4, 1990.

TRD-9003499 Patricia O. Thomas
Executive Director
Texas Health and Human Services
Coordinating Council

Filed: April 5, 1990

For further information, please call: (512) 463-2195

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Public Hearing Announcement

The Policy Coordination Workgroup has scheduled a public hearing on April 11, 1990, in the Reagan Building-Room 101, 14th and Congress Avenue, in Austin; agency testimony will be from 10 a.m.-3 p.m.; public testimony from 3 p.m.-8 p.m. Testimony will be received regarding the objectives of the Commission on Children, Youth, and Family Services; recommendations concerning critical needs, interagency coordination, statewide philosophy; and strategies to maximize federal funds as they relate to children, youth, and families.

Issued in Austin, Texas, on April 3, 1990.

TRD-9003481 Patrice Thomas
Executive Director
Texas Health and Human Services
Coordinating Council

Filed: April 4, 1990

For further information, please call: (512) 463-2195

Texas Department of Human Services
Request for Proposal

The Texas Department of Human Services (DHS) is requesting written proposals for services under DHS's Services to Runaways and At-risk Youth Program in DHS's Region 11, Harris County, only. The program provides financial assistance for establishing new programs or strengthening existing programs which address the needs of runaway and truant children and their families, and divert runaway and truant youth from the juvenile justice and the child welfare systems.

Description: The services to be provided by the contractor are family crisis intervention counseling, emergency residential care, and aftercare services for the child and the family.

Limitations: Eligible applicants include public agencies (units of government), private nonprofit agencies, private for-profit agencies, and individuals. Applicants must provide local match funds of 10% per year.

Contract Term and Amount: The contract period will be from September 1, 1990 through August 31, 1991. The total amount of the contracts awarded will be contingent on the region's allocation of contract funds for the Services to Runaways and At-risk Youth.

Evaluation and Selection: Proposals will be evaluated and projects selected based on program description, project experience, staff qualifications and experience, geographic location of services, clients' access to services, program innovativeness, and cost of services.

Offerors' Conference: A conference will be held to address concerns and answer questions that potential bidders may have. The conference will take place on April 30, 1990, at 9:30 a.m. in the West Conference Room, Texas Department of Human Services, 1300 East 40th, Houston, Texas 77022.

Contact Person: Bid packets and additional information may be obtained from Linda M. Laird, Contract Manager; Protective Services for Families and Children; Texas Department of Human Services; P. O. Box 16017 (MC 175-1); Houston, Texas 77222; (713) 696-7382.

Closing Date: The last date to receive offers is May 15, 1990, by 4 p.m.

Issued in Austin, Texas, on April 9, 1990.

TRD-9003572 Cathy Rossberg
Agency liaison, Policy Communication
Services
Texas Department of Human Services

Filed: April 9, 1990

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

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State Board of Insurance
Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for admission to do business in Texas of Western Atlantic Reinsurance Corporation, a foreign casualty insurance company. The home office is in Manchester, New Hampshire.
2. Application for admission to do business in Texas of Adjustco, Incorporated, a foreign third party administrator. The home office is in Dover, Delaware.

Issued in Austin, Texas, on April 2, 1990.

TRD-9003506

Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: April 5, 1990

For further information, please call: (512) 463-6327

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The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for name change by Montford Lloyds Insurance Company, a domestic casualty insurance company. The home office is in Dallas. The proposed new name is Underwriters Lloyds Insurance Company.
2. Application for incorporation in Texas of Adapt Health Plan, a domestic health maintenance organization. The home office is in Dallas.
3. Application for admission to do business in Texas of Glenn Software Systems, Incorporated, a foreign third party administrator. The home office is in Southfield, Michigan.

Issued in Austin, Texas, on April 3, 1990.

TRD-9003507

Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: April 5, 1990

For further information, please call: (512) 463-6327

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The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for name change by the Variable Annuity Life Insurance Company, a domestic life insurance company. The home office is in Houston. The proposed new name is American General Annuity Insurance Company.
2. Application for admission to do business in Texas of Atlantic Administrators, Incorporated, a foreign third party administrator. The home office is in Waltham, Massachusetts.

Issued in Austin, Texas, on April 4, 1990.

TRD-9003536

Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: April 6, 1990

For further information, please call: (512) 463-6327

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Correction of Error

The State Board of Insurance submitted emergency sections which contained an error as submitted for publication in the April 3, 1990 issue of the *Texas Register* (15 TexReg 1877). The emergency sections concern implementation of the Omnibus Health Care Rescue Act's reduction in certain professional liability insurance premiums.

In §5.1302, paragraph (1) should read as follows. "(1) policy-writing rules and forms for a medical professional liability insurance policy providing coverage with policy limits of liability of not less than \$100,000 per occurrence and \$300,000 aggregate for the policy period;"

Texas Department of Public Safety Correction of Error

The Texas Department of Public Safety submitted proposed new sections, which were published with errors in the March 30, 1990, issue of the *Texas Register* (15 TexReg 1779).

In §16.73, fourth sentence, the words "commercial driver's license" is printed twice. The second reference should be omitted:

In §19.23, subsection (d) should read as follows. "(d) Temperature. The device shall meet the requirements of subsections (a) and (b) of this section when used at ambient temperatures of -20 degrees C to 83 degrees C or other limits as set by the scientific director."

In §19.23, subsection (f) should read as follows. "(f) Vibrational stability. The device shall meet the requirements of subsections (a) and (b) of this section when subjected to simple harmonic motion having an amplitude of 0.38 mm (0.015 inches) applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2 1/2 minutes, then decreased at a uniform rate to 10 Hz in 2 1/2 minutes. The device shall also meet the requirements of subsections (a)-(b) of this section when subjected to simple harmonic motion having an amplitude of 0.19 mm (0.0075 inches) applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2 1/2 minutes, then decreased at a uniform rate to 30 Hz in 2 1/2 minutes."

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**Texas Water Commission
Invitation for Bids**

This is a formal notice to bidders of the intention of the Texas Water Commission (TWC) to let a contract for construction of United Creosoting Company Interim Remedial Action, Residential Housing Demolition.

Sealed bids addressed to Paul B. Cravens, P.E., Project Manager, Superfund and Emergency Response Section, Hazardous and Solid Waste Division, will be received until 10 a.m. local prevailing time on May 14, 1990, and then publicly opened and read aloud for furnishing all labor, equipment, materials, supplies, and supervision necessary for construction of the United Creosoting Company Interim Remedial Action, Residential Housing Demolition.

Specified work shall consist of demolition of six residential houses and restoration of all surface disturbance and site perimeter fencing, including all labor, materials, supplies, and supervision as shown and specified in accordance with the project plans and specifications for the United Creosoting Superfund Site. The site is located at end cul-de-sacs of Brewster Street and Columbia Street in the City of Conroe, Montgomery County.

Plans and specifications may be examined without charge at the Texas Water Commission, Room 1157, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, or one copy may be obtained for the nonrefundable purchase price of \$50 at the following location on or after April 11, 1990: Roy F. Weston, Inc., 5599 San Felipe, Suite 700, Houston, Texas 77056, (713) 621-1620.

A certified or cashier's check, or an acceptable bid bond in an amount not less than 5.0% of the total bid, shall accompany each bid as a guaranty that, if awarded the

contract, the bidder will promptly enter into contract with the TWC and furnish bonds on the forms provided.

The successful bidder shall furnish a performance bond and a payment bond, each in the amount of 100% of the contract, written by a responsible surety company authorized to do business in the State of Texas and licensed by the State of Texas to issue surety bonds and in accordance with all applicable state and federal law.

Bidders are required to inspect the site of the work as provided in the instructions to bidders and to inform themselves of all local conditions. Time of completion shall be 60 calendar days including Saturdays, Sundays, and legal holidays.

Attention to bidders is directed to Texas Civil Statutes, Article 5159 (Vernon 1987) requiring that not less than the general prevailing rates of per diem wages for work of similar character in the locality where the work is performed shall be paid all laborers, workmen, and mechanics employed in the construction of public works. Also, the successful bidder will be required to comply with the Labor Standards Provisions for Federal and Federally Assisted Construction Contracts (EPA Form 5720-4).

Any contract or contracts awarded under this invitation for bids are expected to be funded in part by a grant from the United States Environmental Protection Agency. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this invitation for bids or any resulting contract. This procurement will be subject to

regulations contained in 40 Code of Federal Regulations, Parts 30 and 33.

By signing bid, a bidder affirms that he has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid. Failure to sign the bid or signing it with a false statement, shall void the submitted bid or any resulting contracts, and the bidder shall be removed from all bid lists (State Purchasing and General Services Commission, 1 Texas Administrative Code §113.5(0) (July 1, 1988)).

Equal opportunity in employment: all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. Bidders on this work will be required to comply with the President's Executive Order Number 11246, as amended. The requirements for bidders and contractors under this order are explained in the specifications.

Address: Texas Water Commission, Superfund and Emergency Response Section, P. O. Box 13087, Austin, Texas 78711.

Contact: Paul Cravens, P.E. (512) 463-8182.

Issued in Austin, Texas, on April 9, 1990.

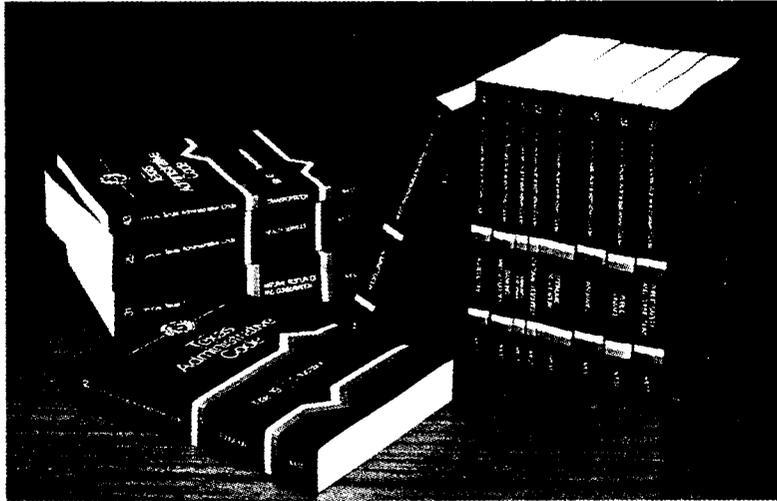
TRD-9003610 Jim Haley
Director, Legal Division
Texas Water Commission

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