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Texas Register

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Volume 13, Number 78, October 14, 1988

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Open Meetings—notices of open meetings

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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.

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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:

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Subscriptions—one year (96 regular issues), \$90; six months (48 regular issues and two index issues), \$70. Single copies of most issues are available at \$4 per copy.

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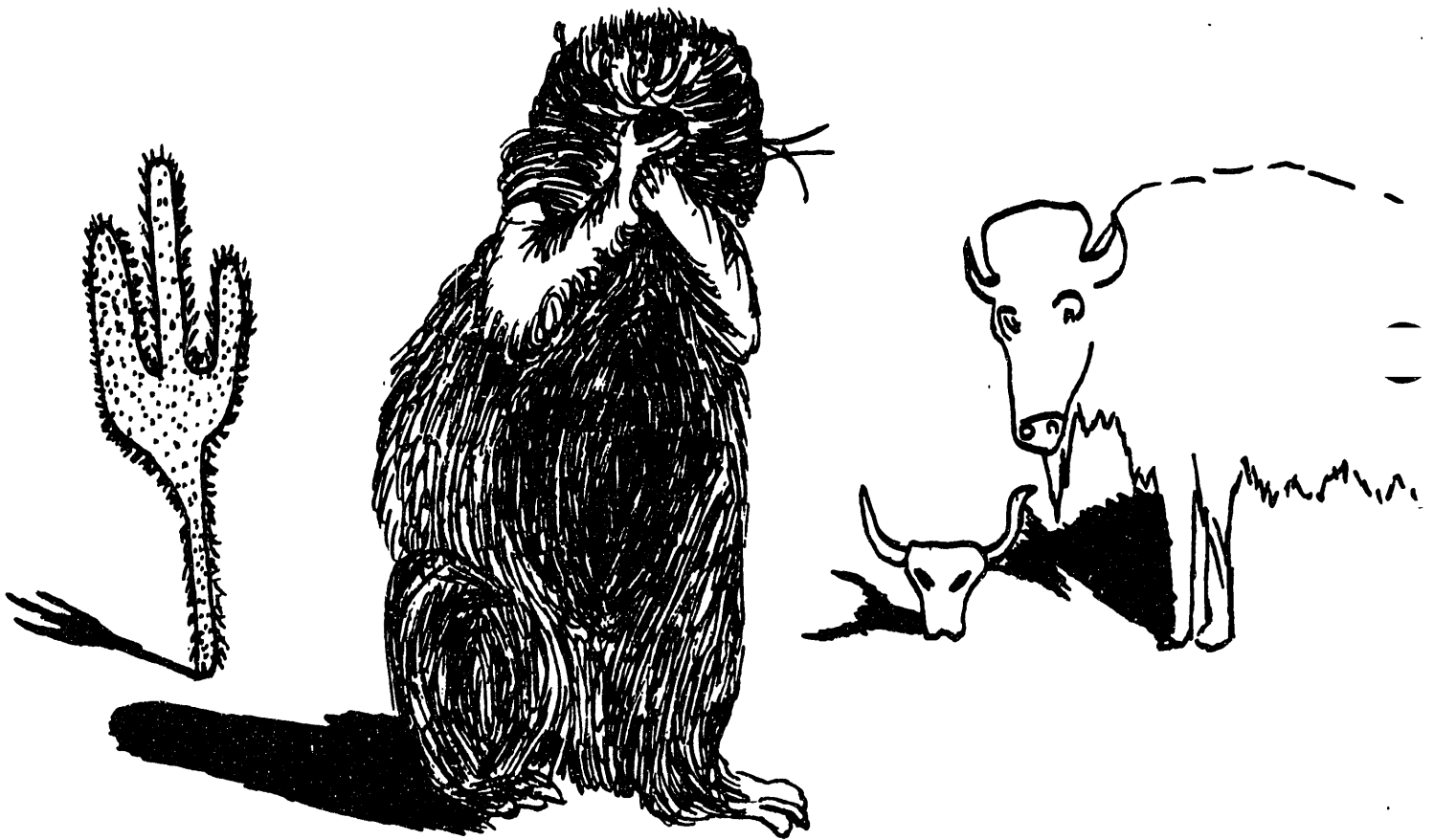
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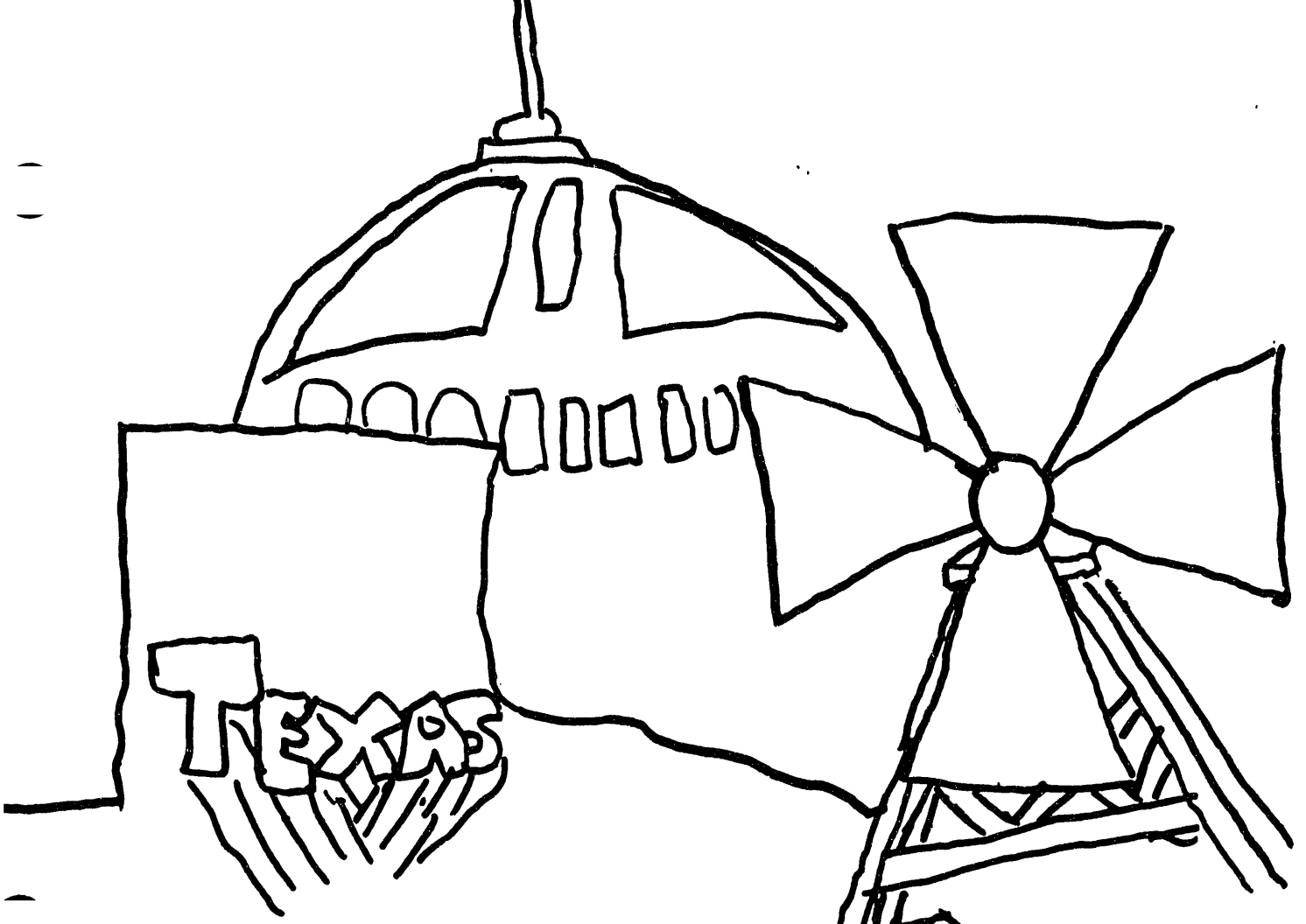
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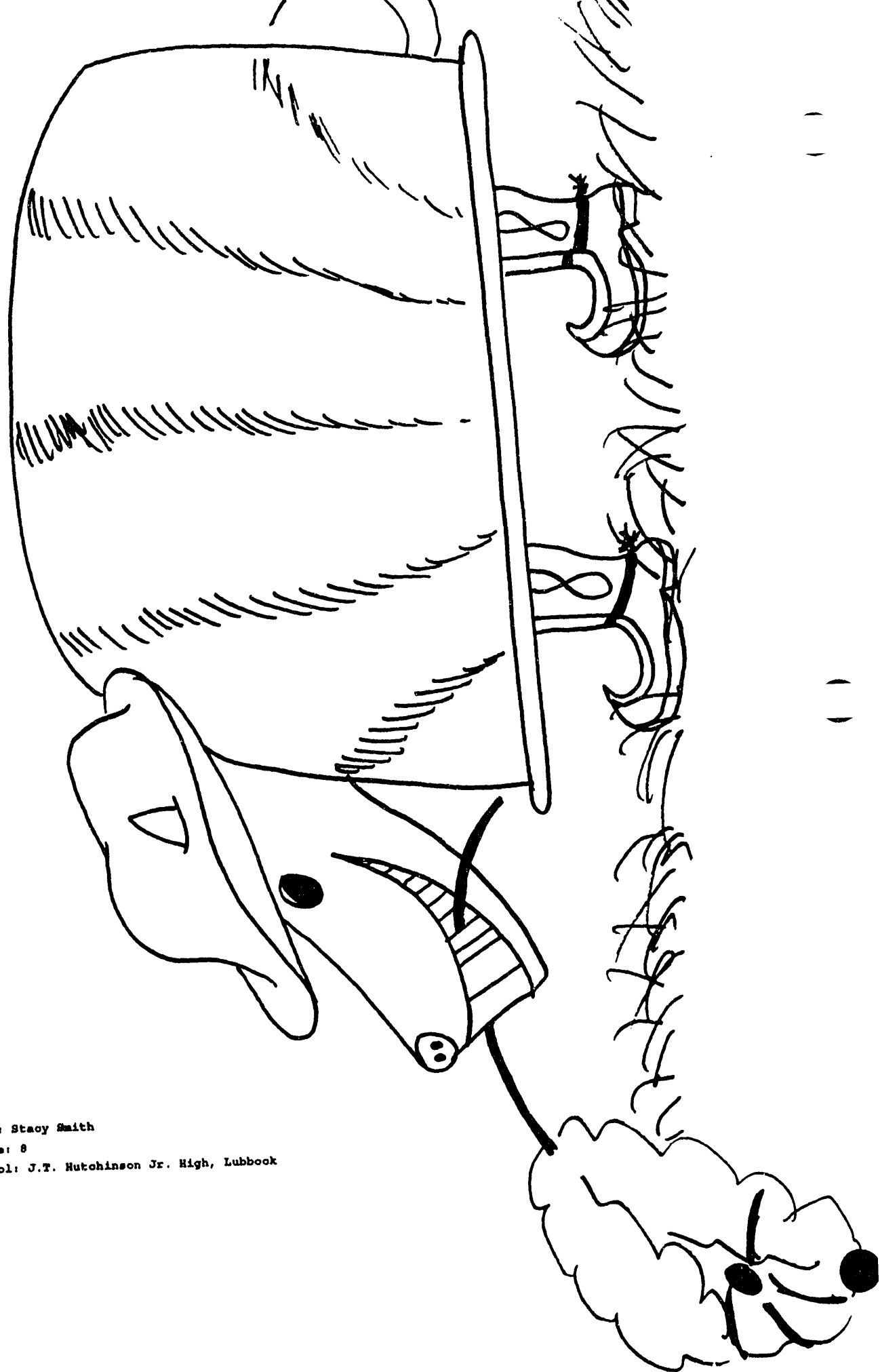
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TAC Titles Affected—October

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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 October 6, 1988

To be a member of the **Radiation Advisory Board** for a term to expire April 16, 1989: Rodolfo Lucas Villarreal, 11105 North Country Squire, Houston, Texas 77024. Dr. Villarreal will be filling the unexpired term of Dr. Johnson of Houston who is deceased.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1990: Geraldine Toliver Hester, 3514 Tanglewood Drive, Bryan, Texas 77801. Ms. Hester will be replacing Ms. Smith of Clarksville whose term expired.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1990: Lynda Calcote, 3499

Santa Monica, Abilene, Texas 79605. Ms. Calcote is being reappointed.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1990: Dr. Marion R. Zetzman, 11475 Cromwell Court, Dallas, Texas 75229. Dr. Zetzman is being reappointed.

To be a judge of the **141st Judicial District Court, Tarrant County**, to be effective November 2nd, 1988 until the general election in 1990 and until his successor shall be duly elected and qualified: Dixon W. Holman, 2322 Wild Goose Way, Arlington, Texas 76016. Mr. Holman will be replacing Judge James E. Wright of Arlington who resigned.

To be a member of the **Regional Community Development Review Committees: Coastal Bend Regional Review Committee** for a term to expire January 1, 1990:

Julio Garcia, Mayor, City of Robstown, P.O. Box 872, Robstown, Texas 78380. Mayor Garcia is replacing Ron Sadler of Kingsville who resigned.

Texoma Regional Review Committee for terms to expire January 1, 1989: Don Mullinix, Councilman, City of Bells, P.O. Box 95, Bells, Texas 75414. Mr. Mullinix is replacing Jerry Lewis of Dennison who resigned.

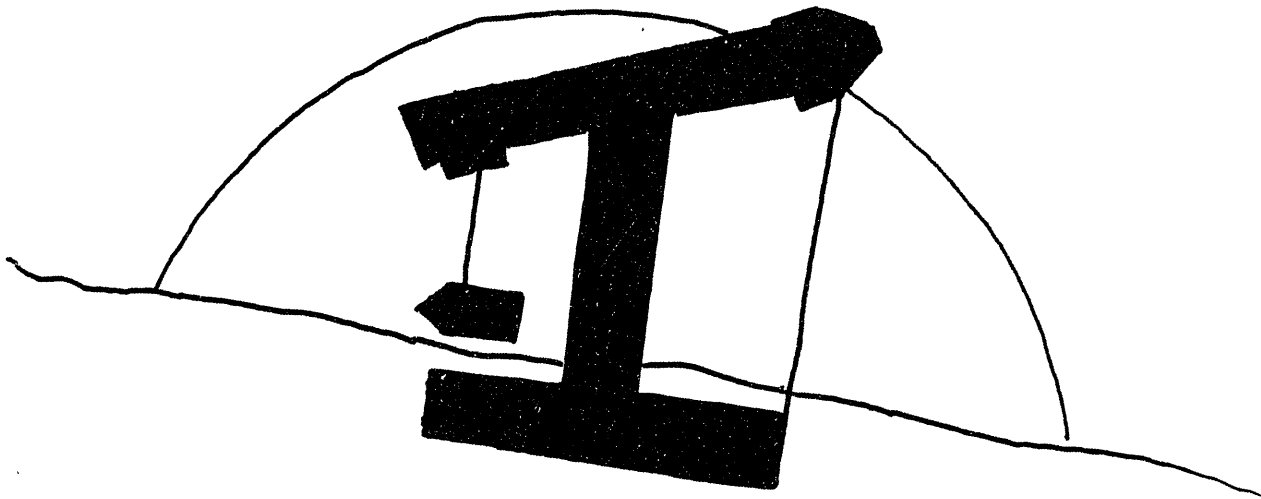
Becky Bryant, Mayor Pro Tem, City of Valley View, P.O. Box 352, Valley View, Texas 76272. Mrs. Bryant is replacing James Donohoe of Gunter who resigned.

Issued in Austin, Texas on October 10, 1988.

TRD-8810433

William P. Clements, Jr.
Governor of Texas





Name: James Wolfe
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Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes, Article 4399, 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-959 (RQ-1419). Request from John L. Barnhill, County Attorney, Crosby County, Crosbyton, concerning the authority of a justice of the peace to probate suspension of a driver's license when an individual refuses to take a breathalyzer test.

Summary of Opinion. The justice of the peace has the authority to probate the suspension of a drivers license in an administrative proceeding where the defendant has been found to have refused to take a breathalyzer test. TRD-8810414

JM-960 (RQ-1550). Request from William P. Clements, Jr., Governor, Austin, William P. Hobby, Lieutenant Governor, Austin, and Gibson D. "Gib" Lewis, Speaker of the House, Austin, concerning whether Texas Civil Statutes, Article 5115d, prohibits the use of the former Bexar County Jail as a privately operated jail for housing parole violators.

Summary of Opinion. Texas Civil Statutes, Article 5115d, subsection (h), does not prohibit the use of the former Bexar County jail building as a privately operated correctional facility for housing parole violators. TRD-8810413

JM-961 (RQ-1375). Request from Betty Strohacker, President, Upper Guadalupe River Authority, Kerrville, concerning the authority of the Upper Guadalupe River Authority to compel septic tank users within its service area to connect to a sewage gathering, transmission, and disposal facility.

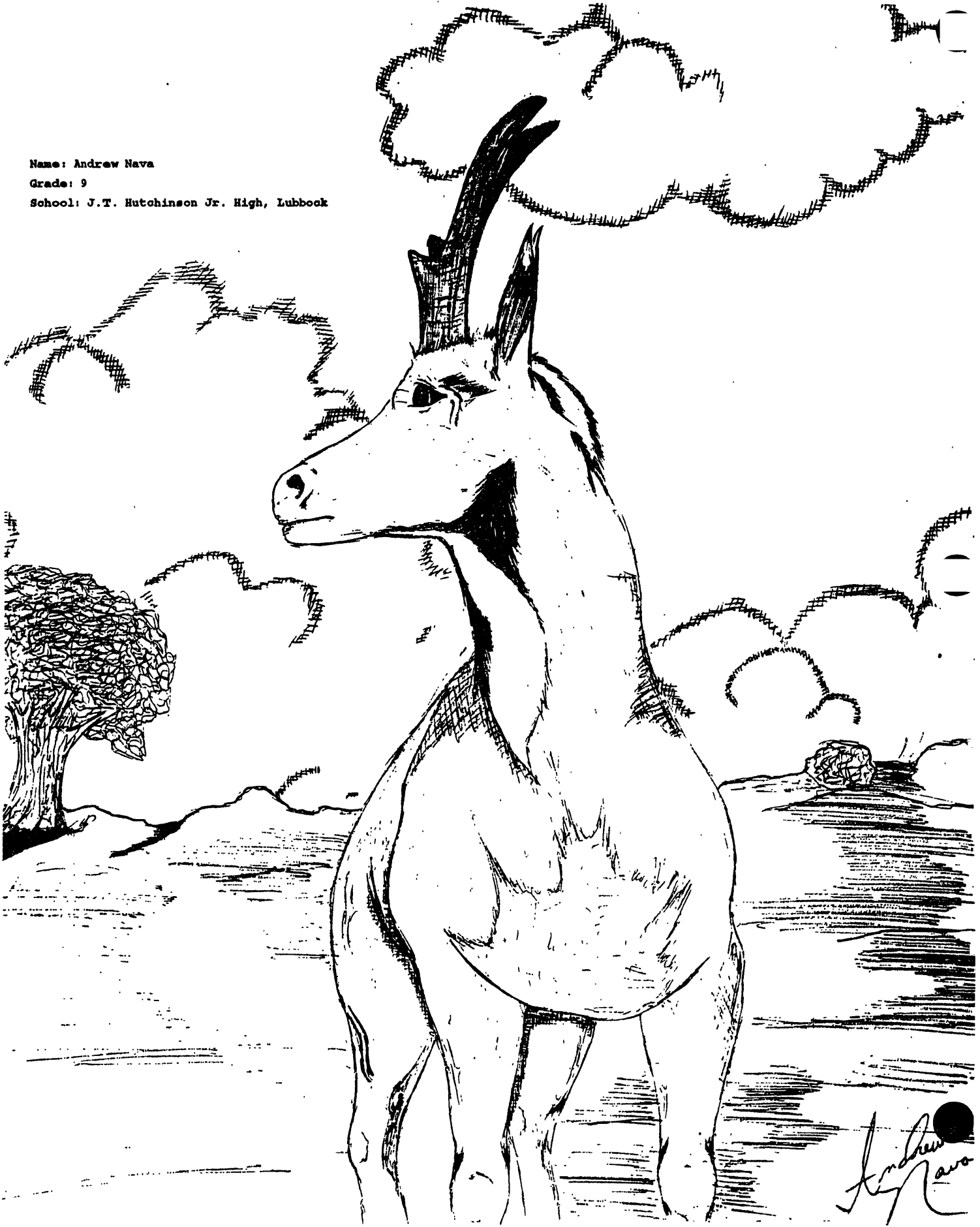
Summary of Opinion. The Upper Guadalupe River Authority, which possesses cumulatively the powers of a water control and improvement district and a municipal utility district, has no power to force septic tank users to connect to a sewage disposal system operated by the entity. Home rule cities may require septic tank users to connect to a sewage system operated by the

city inside of its corporate limits, but the city may not delegate that power to any other governmental entity or political subdivision. TRD-8810412

JM-962 (RQ-1318). Request from Pat D. Westbrook, Executive Director, Texas Commission for the Blind, Austin, concerning whether the Texas Commission for the Blind is required to provide services to blind children who are illegal aliens.

Summary of Opinion. The Texas Commission for the Blind must provide services to visually handicapped children eligible to receive such services without regard to their immigration status. The commission may not deny vocational rehabilitation services to adults who are undocumented aliens. TRD-8810411

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Andrew Nava

Emergency Rules

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 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Testing Newborn Children for Phenylketonuria, Other Heritable Diseases and Hypothyroidism

The Texas Department of Health adopts on an emergency basis the repeal of existing §§37.51-37.70, concerning the testing of newborn children for phenylketonuria, other heritable diseases, and hypothyroidism, and new §§37.51-37.69, concerning the newborn screening program. The new sections replace and update the repealed sections and restructure the existing newborn screening program by placing it within the department's Bureau of Chronically Ill and Disabled Children Program.

The new sections will cover purpose; definitions; conditions for which newborn screening tests are required; exemption from screening; responsibilities of persons attending a newborn; blood specimen collection for required screening tests; screening test procedures to be used; follow-up and recordkeeping on positive screens; coordination with Chronically Ill and Disabled Children's Services Program; scope of newborn screening program services; eligibility requirements; application process; calculation of financial participation obligation; denial of application—modification, suspension, termination of program services; advisory bodies and task forces; confidentiality of information; nondiscrimination; oral health pilot project; and effective dates.

The repeal and new sections are adopted on an emergency basis for the following reasons: the new sections require the screening of newborns for the inherited condition congenital adrenal hyperplasia. Early identification and referral for diagnosis will prevent the death of many infants who have the condition. In addition, the new sections enable more persons diagnosed with phenylketonuria to be financially able to afford the medically necessary special dietary formula used to treat the disease. The possibility of death exists for infants who do not have early identification and referral and for infants who do not have access to the medically necessary special dietary formula. Therefore, to reduce this imminent threat to public health and safety, the Board of Health adopts the repeal and new sections on an emergency basis.

• 25 TAC §§37.51-37.70

The repeal and new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4414c, §2, which provide the Texas Board of Health (board) with the authority to charge fees by rule to persons who receive public health services from the department; Article 4418f-1, §(a), which provides the department with the authority to provide funds by grant to contract to qualified entities for the purchase of services, equipment, and supplies to be used to promote and maintain public health; Article 4418g-2, §4, which provides the board with the authority to adopt rules to provide oral health services to eligible individuals; Article 4419c, §3, which provides the board with the authority to adopt rules covering the provision of services to chronically ill and disabled children; Article 4447e, §1, which provides the department with the authority to develop a program to combat mental retardation in children suffering from phenylketonuria and other heritable disease; Article 4447e-1, §2, which provides the board with the authority to adopt rules to establish a program to detect hypothyroidism in newborn infants; Article 6252-13a, §5, which provides the board with the authority to adopt rules on an emergency basis; and Article 4414b, §1.05, which provides the board with the authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§37.51. Purpose.

§37.52. Definitions.

§37.53. Persons Who Should be Tested for PKU, Other Heritable Diseases, and Hypothyroidism.

§37.54. Responsibilities of Physician or Other Persons Attending a Newborn Child.

§37.55. Testing for PKU, Galactosemia, Sickling Hemoglobinopathies, and Congenital Hypothyroidism.

§37.56. Testing Procedures to be Used.

§37.57. Department-Approved Laboratories.

§37.58. Department Approval of Laboratories to Participate in the Testing Program.

§37.59. Follow-up and Record Keeping on Positive Tests.

§37.60. Interpretive Memorandum.

§37.61. Effective Date.

§37.62. Purpose.

§37.63. Definitions.

§37.64. Scope of Services.

§37.65. Eligibility Requirements.

§37.66. Application Process.

§37.67. Calculation of Financial Participation Obligation.

§37.68. Denial of Application; Modification, Suspension, or Termination of Program Services.

§37.69. Confidentiality of Information.

§37.70. Nondiscrimination Statement.

Issued in Austin, Texas, on October 5, 1988.

TRD-8810438

Robert A. MacLean, M.D.
Commissioner for
Professional Services
Texas Department of
Health

Effective date: October 5, 1988.

Expiration date: February 2, 1989

For further information, please call: (512) 458-7321

Newborn Screening Program

• 25 TAC §§37.51-37.69

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4414c, §2, which provide the Texas Board of Health (board) with the authority to charge fees by rule to persons who receive public health services from the department; Article 4418f-1, §(a), which provide the department with the authority to provide funds by grant to contract to qualified entities for the purchase of services, equipment, and supplies to be used to promote and maintain public health; Article 4418g-2, §4, which provides the board

with the authority to adopt rules to provide oral health services to eligible individuals; Article 4419c, §3, which provide the board with the authority to adopt rules covering the provision of services to chronically ill and disabled children; Article 4447e, §1, which provides the department with the authority to develop a program to combat mental retardation in children suffering from phenylketonuria and other heritable disease; Article 4447e-1, §2, which provides the Board with the authority to adopt rules to establish a program to detect hypothyroidism in newborn infants; Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis; and Article 4414b, §1.05, which provide the board with the authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§37.51. Purpose. These sections describe the Newborn Screening Program administered by the Texas Department of Health. Under the authorization of the statutes listed in these sections, each newborn delivered in the state must be subjected to a panel of screening tests to identify the newborn that may be at risk of developing phenylketonuria, other heritable diseases, or hypothyroidism. The sections also identify program services which are available to individuals who have a confirmed diagnosis of a heritable disease or hypothyroidism and establish eligibility criteria, financial participation requirements and procedures for the orderly provision of the identified services to eligible individuals.

§37.52. Definitions. The following words and terms when used in these sections shall have the following meanings, unless the context clearly indicates otherwise.

Board—The Texas Board of Health.

Bona fide resident—An individual who:

(A) is physically present within the geographic boundaries of Texas; has an intent to remain within the state, either permanently or for an indefinite period; actually maintains an abode (e.g., house, apartment, etc., but not merely a post office box) within this state; and

(B) does not claim residency in any other state or country; is a minor child, residing in Texas, of a bona fide resident; is a legal dependent spouse, residing in Texas, of a bona fide resident; is an adult residing in Texas and his/her legal guardian is a bona fide resident.

Commissioner—The Commissioner of Health

Congenital adrenal hyperplasia—An inherited condition which may lead to serious illness and death if not treated.

Department—The Texas Department of Health.

Galactosemia—An inherited condition, which if not treated, may cause fatal infection or mental retardation.

Homocystinuria—An inherited condition, which if not treated, may cause mental retardation, blood clots, vision problems, skeletal abnormalities, and possibly death.

Hypothyroidism—A condition which, if not treated, leads to mental and physical retardation.

Phenylketonuria or PKU—An inherited condition, which if not treated may cause severe mental retardation.

Program—The Newborn Screening Program of the department.

Program coordinator—The individual who acts as administrator of program.

Satisfactory specimen—A blood specimen obtained by uniform absorption onto a filter paper target such that complete filling of the target is realized through to both front and back of the paper.

Services—Those benefits identified by the board in §37.60 of this title (relating to Scope of Newborn Screening Program Services).

Sickling Hemoglobinopathy (including sickle cell disease) —An inherited condition, which, if not known at the time a physician treats an already ill child, may lead to a fatal outcome.

Screening test, screen, or test—A test or battery of tests for the rapid determination of the need for a medical evaluation.

§37.53. Conditions for Which Newborn Screening Tests are Required. Except as permitted in §37.54 of this title (relating to Exemption From Screening), all newborns delivered in Texas shall be subjected to a screening test for the following conditions:

- (1) phenylketonuria;
- (2) galactosemia;
- (3) sickling hemoglobinopathies, including sickle cell disease;
- (4) congenital adrenal hyperplasia; and
- (5) hypothyroidism.

§37.54. Exemption from Screening. A newborn may not be screened if the parent, managing conservator, or guardian objects to the screening tests because the screening tests conflict with the religious tenets or practices of the parents, managing conservators, or guardians.

§37.55. Responsibilities of Persons Attending a Newborn.

(a) The physician or nonphysician attending the newborn has the primary responsibility for causing the screening tests to be performed according to these sections and that a satisfactory blood specimen is submitted to the department on a properly completed filter paper collection form obtained from the department.

(b) A peripheral blood specimen shall be collected by absorbing onto target circles on a filter paper collection form. Other body fluids, or blood from the placenta, umbilical cord, or mother are not acceptable.

(c) Specimens must air-dry on a flat surface for at least three hours and must be mailed to the department within 24 hours after collection. If multiple specimens are mailed in one envelope, care must be taken to avoid cross-contamination.

§37.56. Blood Specimen Collection for Required Screening Tests.

(a) Optimally, the blood specimen is to be obtained after 36 hours of age and 24 hours after the first protein feeding. If the newborn is discharged from the hospital or birthing center before the above criteria are met, the specimen must be obtained immediately prior to discharge. A second specimen is to be collected between one and two weeks of age.

(b) Premature or sick newborns may have the initial screen as late as seven days of age. The second screen on premature or sick newborns is to be done at hospital discharge, one month of age, or when the newborn attains a weight of 2,500 grams, which ever comes first.

(c) Newborns delivered outside of hospitals or birthing centers e.g. home deliveries, must be screened within the first 72 hours of life. The second screen must be done between one and two weeks of age.

(d) Screening for all conditions will be performed from a single filter-paper specimen.

(e) Antibiotic treatment or transfusions can cause invalid results. Transfused newborns must be retested 2-4 weeks following transfusion. Newborns receiving antibiotics should be retested when they are no longer on therapy, and sufficient time has elapsed for the antibiotic to be cleaned from the bloodstream.

§37.57. Screening Test Procedures To Be Used. Analysis of the blood specimens for the required screening tests must be performed by the department. The department is responsible for identifying and implementing proper laboratory procedures for the screening tests required in §37.53 of this title (relating to Conditions for Which Screening Tests are Required).

(1) The analysis of initial blood specimens and the analysis of the follow-up blood specimens are included in these responsibilities.

(2) The criteria for referring a newborn with a presumptive positive result on the screening tests are dependent upon the laboratory procedure employed by the department in performing the analysis of the specimens; therefore, the department is responsible for identifying and implementing the current referral criteria based upon the laboratory procedures selected by the department for the analysis.

(3) Upon completion of the laboratory determination by the department, laboratory results will be mailed to the person specified on the screening collection form. The department will establish a written policy for communicating the laboratory results to the specified person.

§37.58. Follow-up and Recordkeeping on Positive Screens.

(a) The department will maintain an active system of follow-up for suspected cases of each condition for which screening tests are required.

(b) Health Authorities, public health departments, public health districts, and the department's public health regions will provide follow-up and other needed assistance for individuals at risk from the conditions for which screening tests are required as requested by the department or the child's private physician.

(c) The department will identify pediatric specialists located throughout the state who are available to provide consultation to physicians regarding diagnosis and management of newborns with abnormal screening results. When appropriate, the program staff will provide the physician with the names of known consultants in the physician's geographic area. The program may provide the pediatric specialists who consult with the department with information about the child and the abnormal screening test result.

(d) Individuals are requested to report to the department all confirmed cases of the conditions for which screening tests are required that have been detected by other mechanisms.

(e) Data will be collected in order to derive incidence/prevalence rates from the various conditions. Such epidemiologic data will be obtained largely from information on the filter-paper form; thus completeness of the form is crucial. This data may identify high-risk population groups, with the ultimate goal of preventing severe sequelae of the conditions.

(f) The department will maintain a roster of children born in Texas who have been diagnosed as having one of the disorders for which screening tests are required.

§37.59. Coordination with Chronically Ill and Disabled Children's Services Program.

(a) All newborns and other individuals under the age of 21 years who have been screened and have been found to be presumptively positive through the screening program and deemed to be financially appropriate, will be referred to the department's Chronically Ill and Disabled Children's Services Program (CICD) for determination of eligibility for services through CICD's general eligibility criteria.

(b) Individuals who are determined to be eligible for CICD services will receive approved services, including special dietary formula for individuals who have phenylketonuria through CICD.

(c) Individuals who do not meet the CICD eligibility criteria, will be referred to the Newborn Screening Program for determination of eligibility for the newborn screening's services based upon a sliding scale of financial eligibility.

§37.60. Scope of Newborn Screening Program Services. In cooperation with the individual's attending physician and within the limits of funds appropriated by the legislature for this purpose, the program is authorized to provide the following services to individuals who are approved for Newborn Screening Program services:

(1) a dietary supplement at no cost or reduced cost to otherwise eligible individuals who have a diagnosis of phenylketonuria confirmed by a physician recognized by the department as an expert in metabolic disorders; and

(2) a dietary supplement at no cost or reduced cost to otherwise eligible individuals who have a diagnosis of homocystinuria confirmed by a physician recognized by the department as an expert in metabolic disorders and who were receiving such service on August 9, 1983.

§37.61. Eligibility Requirements.

(a) Except as otherwise provided for in these sections, to be eligible to receive program services, an individual must:

(1) have a confirmed diagnosis of a heritable disease or hypothyroidism;

(2) be a bona fide resident of the state;

(3) except as expressly permitted in these sections, remain in the State of Texas during the receipt of services;

(4) have a family income that is within the financial guidelines set by these sections;

(5) if required, tender financial participation payments in a timely manner;

(6) upon request from the program coordinator, provide updated medical,

financial, and residency information and/or documentation; and

(7) agree to abide by the requirements in these sections.

§37.62. Application Process.

(a) To be considered for program services, a complete application for admission to the program must be filed with the program coordinator by mailing to the following address: Coordinator, Newborn Screening Program, Bureau of Maternal and Child Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(b) The application must be signed by one of the following as appropriate:

(1) an adult individual seeking services;

(2) the parent(s), managing conservator(s), or guardian of a minor; or

(3) the guardian of an adult under a temporary, limited, or general guardianship.

(c) An application signed with a mark must be attested to before a notary public.

(d) A complete application for program services shall consist of the following:

(1) a properly completed and signed application form;

(2) a statement from the individual's attending physician that the individual has a confirmed diagnosis of a heritable disease or hypothyroidism and an order from the physician authorizing the provision of services;

(3) a social security card (or an allowable substitute) as follows:

(A) a copy of the individual's personal social security card issued by the Social Security Administration;

(B) a copy of a fully executed application for a replacement social security card;

(C) a copy of an application for a social security number, if the individual never had a number issued previously;

(4) a statement from the individual or, if the individual is a minor, from the individual's parent, managing conservator, or guardian that the individual is a bona fide resident of the state and if requested by the program coordinator, documentation of residency status;

(5) a statement disclosing the following:

(A) if the individual is an adult, the individual's gross income on the

latest Form 1040 filed with the Internal Revenue Service; or

(B) if the individual is a minor, the gross income of the individual's parent(s), managing conservator(s), or guardian on the latest Form 1040 filed with the Internal Revenue Service; or

(C) if the individual is a ward, the gross income of the guardian on the latest appropriate form filed with the Internal Revenue Service; or

(D) the income of any other person with the duty to support the individual; and

(E) if requested by the program coordinator, documentation of income.

(e) An application shall be deemed incomplete for any one of the following reasons:

(1) failure to provide information requested in the application form;

(2) lack of supporting documents, including the statement of medical eligibility and an order from the attending physician;

(3) failure to provide documentary evidence requested by the program coordinator, including documentation to verify residency or financial data; or

(4) lack of, or improper signatures.

(f) An application will be reviewed by the program coordinator and will be:

(1) denied if eligibility requirements are not met;

(2) returned, if incomplete, with the deficiencies noted to the individual or if the individual is a minor or a ward, to the individual's parent(s), managing conservator(s), or guardian as is appropriate, for completion and resubmission; or

(3) approved if all criteria are met.

(g) The program coordinator will notify the individual of the eligibility decision in writing within 30 days from the date on which a complete application is received. If the eligibility decision is in favor of the individual, in the notice letter, the program coordinator will specify the amount of financial participation that the individual, or if the individual is a minor or a ward, the individual's parent(s), managing conservator(s), or guardian, as appropriate, will be required to make for program services and provide additional detailed information concerning the services and financial participation procedures.

(h) An individual's date of eligibility will be considered to be the date on which the program coordinator determines that the application is substantially complete.

§37.63. Calculation of Financial Participation Obligation.

(a) The program coordinator shall base the calculation of an individual's financial participation obligation upon the current federal poverty income guidelines. The commissioner shall adjust the income guidelines as needed to conform to changes in the federal guidelines as those changes occur. The current income guideline will be filed with these sections in the program office and shall be available for public inspection during regular office hours. Income guideline adjustments will also be published in the *Texas Register* not later than 30 days after the date on which they have been adopted by the program coordinator.

(b) The following financial participation scale lists the co-payment obligation for program services.

FAMILY FINANCIAL PARTICIPATION SCALE

½ Poverty Income	Family Size	½ Co-Payment
000 - 200	1 - 8	00
201 - 250	1 - 8	25
251 - 300	1 - 8	50
301 - 350	1 - 8	75
351+	1 - 8	100

(c) The program coordinator will determine if an individual, or if the individual is a minor or a ward, the individual's parent(s), managing conservator(s), or guardian, as appropriate, is able to pay in accordance with the schedule for financial participation; however, the program coordinator will not deny services because of an individual's inability to pay.

(d) In cases in which the income is greater than 350% of the federal poverty income guideline, the individual, or if the individual is a minor or a minor, the individual's parent(s), managing conservator(s), or guardian, as appropriate, will be required to pay the entire cost of program services unless extenuating circumstances exist. Such circumstances include, but are not limited to, unusually high medical expenses or the unavailability of specific care needed. Individuals granted such exceptions may receive services in accordance with the adjusted financial participation schedule and these sections.

(e) The program coordinator may not require a financial participation which exceeds the cost to the program of providing the service.

§37.64. Denial of Application; Modification, Suspension, Termination of Program Services.

(a) An individual applying for or receiving services from the program may have his/her application denied or his/her benefits modified, suspended or terminated for any of the following reasons.

(1) Services will be denied, modified, suspended, or terminated if:

(A) it is determined that the individual does not have a confirmed diagnosis of a condition for which program services are available;

(B) the individual is not a bona fide resident of the state;

(C) the individual fails or refuses to provide the periodic information regarding residency and financial status when requested by the program coordinator;

(D) the individual refuses to reimburse the department after being notified of third-party benefits, financial participation obligations, or other sources of payment for program services;

(E) the individual sells, barter, exchanges, gives away special dietary supplement without the express consent of the program coordinator;

(F) the individual fails or refuses to abide by these sections, including the family financial participation when required;

(G) the individual notifies the program in writing that he or she no longer wants to claim program benefits. Such a statement does not free the individual, or persons with legal obligation to support the individual, of any financial participation obligation owing to the program at the time of withdrawal; or

(H) the individual dies.

(2) Services may be denied, modified, suspended, or terminated if:

(A) the individual submits an application form or any document required in support of the application or continued participation in the program, which contains a misstatement of fact which is material to the program coordinator's determination that the individual is eligible for program services; or

(B) program funds are curtailed.

(b) Procedure for denial, modification, suspension, or termination do not apply to adjustments made by the program in poverty income guidelines to conform to federal poverty income guidelines or to adjustments in the type and amount of program services available when such adjustments are necessary to conform to budgetary limitations as provided in §37.60 of this title (relating to Scope of Newborn Screening Program Services).

(1) An individual applying for program services will be notified in writing if their application has been denied. The notification will outline the reasons for denial.

(2) An individual receiving program services will be notified if the services are to be modified, suspended, or terminated. Notification will be by certified mail to the most recent address known to the program.

(3) Within 30 days after receiving notice as specified in paragraph (b)(2) of this section, the individual or the individual's representative may appeal the program's decision to deny, suspend, modify, or terminate the services to the department and request an administrative hearing before the department. Appeals and requests for hearings must be in writing and sent to the following address by certified mail: Coordinator, Newborn Screening Program, Bureau of Chronically Ill and Disabled Children's Services Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3190. Failure to respond will be deemed a waiver of the appeal and of the opportunity for a hearing.

(4) Appeals and administrative hearings will be conducted in accordance with the department's formal hearing rules, §§1.21-1.32 of this title (relating to Formal Hearing Procedures).

§37.65. Advisory Bodies and Task Forces. The commissioner may appoint both technical and lay advisory committees to assist in the administration of this program. The commissioner may also convene special task forces to assist the program and the advisory committees with special technical expertise or to address special emotional, social, educational, financial or other problems which arise in families having a family member with a confirmed diagnosis of phenylketonuria, other heritable disease, or hypothyroidism.

§37.66. Confidentiality of Information.

(a) All information required by these sections to be submitted may be verified at the discretion of the department with or without notice to any individual applying for or recipient of program benefits, or to the providers of program services. Except as necessary for the program coordinator to make timely and effective referral of new-

borns with presumptive positive screening test results for diagnostic services or to obtain necessary assistance for the management for individuals with confirmed diagnosis, the information received by the program in the administration of the program is confidential to the extent authorized by law.

(b) Information may be disclosed in summary, statistical, or other forms which do not identify particular individuals.

§37.67. Nondiscrimination Statement. The Texas Department of Health operates in compliance with Title VI, Civil Rights Act of 1964 (Public Law 88-352) and Part 80 of Title 45, Code of Federal Regulations, so that no person will be excluded from participation in the program, be denied benefits of the program, or be otherwise subjected to discrimination on the grounds of race, color, national origin, sex, creed, handicap, or age. **§37.68. Oral Health Pilot Project.** The department may undertake a pilot project to provide certain preventative oral health services to eligible individuals through the Dental Care Prevention and Administration Program of the Bureau of Dental and Chronic Disease Prevention.

(1) To be eligible to receive preventative health services under this section, an individual must:

(A) have a confirmed diagnosis of classic phenylketonuria (PKU) or a hyperphenylalanine variant;

(B) be receiving the prescribed dietary supplement for PKU;

(C) be under the age of 19 years; and

(D) be a bona fide resident of the state.

(2) The scope of the services is as follows.

(A) Under this subsection, the department may provide, at no cost to the eligible individual, preventative oral health services including the application of pit and fissure sealants in the first and second permanent molars and oral health home care instructions.

(B) The department may not provide for the transportation of the eligible individual to the dental treatment site.

(3) The procedure for providing services is as follows.

(A) Authorized preventative oral health services will be provided to eligible individuals through the dental director in each of the department's public health

regions by any one or a combination of the following entities:

- (i) public health clinics;
- (ii) mobile clinics and portable units; and/or
- (iii) private providers.

(B) The department will provide each eligible individual with a list of the nearest department of public health regional office.

(C) To receive authorized preventative oral health services, each eligible individual is responsible for:

(i) contacting the nearest department of public health regional office to obtain information about the location of the nearest dental treatment facility operated by the department;

(ii) obtaining appropriate authorization prior to seeking the authorized preventative oral health services; and

(iii) obtaining appropriate transportation to the established treatment site.

(4) The pilot program will begin on the effective date of these sections or April 1, 1988, whichever is later. The pilot program will end on August 31, 1989.

§37.69. Effective Dates.

(a) Except as provided in Subsection (b) of this section, these sections become effective according to the terms of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(b) Analysis of blood specimens for congenital adrenal hyperplasia will begin upon prior notice from the program but not later than June 1, 1989.

Issued in Austin, Texas, on October 5, 1988.

TRD-8810437

Robert A. MacLean, M.D.
Commissioner for
Professional Services
Texas Department of
Health

Effective date: October 5, 1988.

Expiration date: February 2, 1988

For further information, please call: (512) 458-7321

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

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

Chapter 27. Intermediate Care Facility for Mentally Retarded

Support Documents

• 40 TAC §27.9801

The Texas Department of Human Services (DHS) adopts on an emergency basis an amendment to §27.9801, concerning reimbursement methodology, in its intermediate care facilities for the mentally retarded (ICF-MR) chapter.

The amendment deletes the restriction that prevents small facilities from receiving supplemental rate payments for clients with unusually heavy care requirements.

On September 20, 1988, DHS adopted on an emergency basis an amendment to §27.9801 which established a new, experimental class of ICF-MR providers who serve level V and VI clients in facilities with six or less Medicaid-contracted beds. The methodology for rate-setting for these providers contains a statement which excludes them from receiving supplemental rate payments for residents whose care needs are unusually high.

Additional information has become available to the department which indicates that the methodology adopted in that amendment should not have included this restriction. Consequently, the department is deleting it.

The department adopts this amendment on an emergency basis because a failure to delete the restriction would threaten the availability and quality of resident care in small facilities. This threat to the availability and quality of care constitutes an imminent peril to the public health, safety, and welfare.

The amendment is adopted on an emergency basis 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.

§27.9801. Reimbursement Methodology for Intermediate Care Facilities for the Mentally Retarded.

(a)-(f) (No change.)

(g) Rate setting methodology.

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

(4) Experimental class. TDHS may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group or providers. Reimbursement for an experimental class is not implemented, however, unless the Texas Board of Human Services and the Health Care Financing Ad-

ministration (HCFA) approve the experimental methodology.

(A)-(M) (No change.)

(N) Small-facility rates. TDHS defines community-based ICFs-MR certified for level V or VI and having no more than six Medicaid-contracted beds as an experimental class.

(i)-(ii) (No change.)

((iii) Small-facility rates represent payment-in-full for Medicaid ICF-MR services. Small-facility providers may not receive supplemental reimbursement rate payments for higher-than-average needs for Medicaid-covered services.]

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

(h) (No change.)

Issued in Austin, Texas, on October 7, 1988.

TRD-8810415

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: October 7, 1988.

Expiration date: January 18, 1989

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

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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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 15. Consumer Services Division

• 4 TAC §15.2

The Texas Department of Agriculture proposes an amendment to §15.2, concerning the definitions of key terms relating to Texas weights and measures. The proposed amendment will define NBS as the national Bureau of Standards or its successor organization, the National Institute of Standards and Technology and which will reflect the name change of this office as promulgated by the Omnibus Trade and Competitiveness Act signed on August 23, 1988. The proposed amendment will also correct an incorrectly spelled word located in the definition of the term "in package form".

Susan Raleigh, director, Consumer Services Program, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Imelda Martinez Escobar, attorney, Consumer Services Program, 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 a current and improved system of standardized weights and measures for the State of Texas. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Imelda Martinez Escobar, Attorney, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. All comments should be in writing and substantially comply with the Texas Administrative Code, Title 4, §1.4(b).

The amendment is proposed under the Texas Agriculture Code, §13.114 (1981), which provides the Texas Department of Agriculture with the authority to establish standards and specifications for commercial weighing and measuring apparatus in this state.

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

In package form—A commodity, article, or thing in package, carton, case, can, box, bag, barrel, bottle, phial, or on a spool

or similar holder, or in a container or band, or in a roll, ball, coil, skein, or other receptacle [recepticle], or in coverings or wrappings of any kind, put up by the manufacturer or packer, or when put up prior to the order of the commodity, by the vendor, which may be suitable for labeling, branding, or marking, and which makes one complete package of the commodity. The term "in package form" shall be construed to include both the retail and wholesale package. The term "in package form" shall not include a box or carton used for shipping purposes which contains a number of packages which are individually marked as to net content or name and address of manufacturer on package in accordance with labeling laws and regulations.

NBS—Refers to National Bureau of Standards or its successor organization, the National Institute of Standards and Technology.

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

Issued in Austin, Texas, on October 4, 1988.

TRD-8810376

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Earliest possible date of adoption: November 14, 1988

For further information, please call: (512) 463-7583

TITLE 10. COMMUNITY DEVELOPMENT

Part II. Texas Department of Commerce

Chapter 178. Texas Community Development Program

Subchapter A. Allocation of Program Funds

• 10 TAC §178.13

The Texas Department of Commerce (Commerce) proposes new §178.13, concerning the allocation of Community Development Block Grant (CDBG) nonentitlement area funds under the Texas Community Development

Program (TCDP). The new section establishes the standards and procedures by which Commerce will allocate Texas capital funds to eligible units of general local government in Texas beginning with the expenditure of federal fiscal year 1988 funds. The new section includes application requirements and selection procedures and criteria.

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

Ruth Cedillo, Texas Community Development Program director, 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 the equitable allocation of CDBG Texas Capital funds to eligible units of general local government in Texas. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Bruce W. Anderson, General Counsel, P.O. Box 12728, Austin, Texas 78711 within 30 days of the date of this publication.

The new section is proposed under Texas Civil Statutes, Article 4413(301), §12.002, which provide the Texas Department of Commerce with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities according to department rules.

§178.13. Texas Capital Fund.

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. All jobs being created or maintained must primarily benefit low and moderate income persons.

(1) No assistance will be provided for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one unit of general local government within Texas to another unit of general local government within Texas unless the relocating industrial or commercial plant or facility provides the department with satisfactory documentation

that it will move out of the State of Texas without such assistance or unless the chief elected official of the unit of general local government from which such plant or facility is relocating provides the department with satisfactory documentation that such unit of general local government has no objections to the relocation.

(2) The department will not consider any application for funding which would result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

(3) The department will only consider providing funding for an economic development project proposed by a city that is in the city's corporate limits or extraterritorial jurisdiction and will only consider a project proposed by a county that is in the unincorporated area of the county.

(4) The department will not consider any application for funding in which the business to be assisted thereunder has filed under the Federal Bankruptcy Code, Chapter 7 or Chapter 11, and the matter is in the process of being adjudicated or in which such business has been adjudicated bankrupt.

(5) The department will only consider applications that provide funding for one business.

(b) **Funding Cycle.** This fund will be allocated bi-monthly to eligible units of general local government on a statewide competitive basis. A local government may only submit one application for each competition. An applicant may only receive one contract during a program year. Applications for funding for each competition must be received by the department by 5 p.m. on the dates specified in the most recent application guide or notice for this fund.

(c) **Selection procedures.** Scoring and recommended rankings of projects is done by department staff. The Texas Capital Advisory Committee, consisting of staff of the department selected by the director of the Texas Community Development Program, assists the Texas Capital Fund staff in evaluating the design of the projects. The application and selection procedures consist of the following steps.

(1) Prior to the submission deadline, each eligible jurisdiction may submit one application for funding under the Texas Capital Fund. Copies of the applications should be provided to both the regional review committee and the department. An unsuccessful application from a previous competition will only be considered for funding if it is submitted as a new application with updated attachments and financial information.

(2) Upon receipt of an application, the department staff performs an initial review to determine whether the application

is complete and whether the activities proposed are eligible for funding. In those instances where the department staff determines that the application is either incomplete or that the activities are ineligible for funding, the applicant may correct any deficiencies in the application as long as it is resubmitted prior to the application deadline. Results of this initial staff review are provided to the applicant. The department staff then conducts a review of each application to make five threshold determinations with respect to:

(A) the financial strength of the business to be assisted based on a credit analysis;

(B) the strength of commitments from all other public and/or private investments identified in the application;

(C) the ability of the applicant to operate or maintain any public facility or service assisted with Texas Community Development Program funds, if infrastructure improvements are requested;

(D) whether Texas Capital funds are necessary or appropriate, as defined in the application package for this fund, to carry out the project proposed in the application; and

(E) whether there is evidence that at least 60% of the permanent jobs created or retained will benefit low and moderate income persons.

(3) Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by the department provided such comments are received by the department within 21 days after the application deadline.

(4) The department staff generates scores on selection criteria related to economic distress, minority hiring, cost per job, equity participation, private leveraging, and the quality of jobs for low and moderate income persons. Scores on factors in these categories are derived from standardized data from the Texas Employment Commission and from information provided by the applicant. An applicant that receives at least 210 points on such criteria is invited to send a representative to make a presentation to staff and the Texas Capital Advisory Committee.

(5) Each application is then scored based on factors related to the soundness and feasibility of the proposed project. This information and comments provided by the regional review committees are used by the department staff, with the assistance of the Texas Capital Advisory

Committee, to generate scores on project design.

(6) Scores on all factors are totaled to obtain project rankings. The projects are then ranked based on the total score for each application. An applicant must receive at least 560 points out of a possible 800 points to be considered for funding.

(7) Based on a final technical review of the highest ranked applications, the department staff makes recommendations for project selection to the State Review Committee. The State Review Committee reviews the work of the department staff and the Texas Capital Advisory Committee and provides funding recommendations to the executive director of the department.

(8) The executive director of the department reviews the recommendations and announces the projects selected for funding.

(9) The department staff works with the recipients to execute contract agreements. While the contract award must be based on the information provided in the application, the department may negotiate any element of the final contract agreement with the recipient.

(d) **Selection criteria.** The following is an outline of the selection criteria used for selection of projects under the Texas Capital Fund. Eight hundred points are available.

(1) **Economic distress (total-150 points).** All economic distress factor scores are based on the applicant's jurisdiction, except for the unemployment rate factor, which is based on the most recent annual average county unemployment data. Negative job growth is defined as the percentage job growth in the applicant's jurisdiction divided by the percentage job growth for all applicants in the competition:

(A) unemployment rate-75;

(B) negative job growth-75.

(2) **Minority hiring (total-50 points).**

(A) Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community (25 points). In the event less than 5.0% of the applicant's population base is composed of minority residents or the applicant has less than five permanent employees, the applicant will be assigned the average score on this factor for all applicants in the competition.

(B) The business to be assisted agrees to hire a percentage of minority employees equal to the percentage em-

ployed by the applicant (25 points).

(3) Project design (total-600 points). The terms and criteria used in this paragraph, are further defined in the current application package. A minimum of 5.0% equity injection is required for each application.

(A) Quantitative scores (250 points):

- (i) cost per job-50;
- (ii) personal/corporate equity participation-100;
- (iii) leveraging of other private investment-50;
- (iv) quality of jobs based on proposed salaries-50.

(B) Project feasibility (350 points). The feasibility of each project is evaluated and scored based on factors such as the financial structure of the project, including firm commitments for financial investments and the jobs to be created or retained; the history of the business; the current financial condition of the business, including a full review of the credit analysis; cash flow projections; the business or marketing plan, including letters of intent to purchase products or services; and the management experience of the business's principals. Projects located in designated enterprise zones will receive special consideration.

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

Issued in Austin, Texas, on October 7, 1988.

TRD-8810445

J. William Lauderback
Executive Director
Texas Department of
Commerce

Earliest possible date of adoption: November 14, 1988

For further information, please call: (512) 320-9666

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

The Railroad Commission of Texas proposes amendments to §§9.1-9.3, 9.6, 9.9, 9.15, 9.21, 9.28, and 9.29, concerning definitions of terms, categories of licenses offered, examination and certification requirements, required forms and filings, public notice and hearing requirements, and application requirements and procedures for filing exceptions to any of the LP-Gas Safety Rules. In addition, new §9.5 entitled Course of Instruction, is proposed.

The commission proposes the amendments to §§9.1-9.3, 9.6, 9.9, 9.15, 9.21, 9.28, and 9.29 to clarify the existing rules and to assure uniformity with current department of transportation regulations and other current national LP-Gas licensing and safety standards.

New §9.5 would require prospective operations supervisors and representatives of Category D, E, F, G, I, J, K, and L licensees to complete an approved safety instruction course no more than one year before taking the LP-Gas management examination. Under the section as proposed, the Category E (relating to retail and wholesale dealers) instruction course would be a minimum of 40 classroom hours in duration. The Category D, F, G, I, J, K, and L courses would be a minimum of one hour in duration. Category A, B, C, and H representatives and operations supervisors would be exempt from the course instruction requirements under the new section. Finally, under the newly proposed section, the LP-Gas division director would be allowed, for good cause shown, to grant conditional qualification as a Category D, E, F, G, I, J, K, or L representative or operations supervisor, if within 100 days of taking and passing the management examination, the individual seeking conditional qualification had completed the appropriate course of instruction.

Mark E. Foster, assistant director, legal division, has determined that for each of the first five years the sections as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Foster also has determined that for each of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing or administering the sections as proposed will be increased compliance due to the more clearly understandable rules and increased safety due to the updated and revised licensing requirements. The anticipated economic cost to individuals who are required to comply with the proposed sections is as follows:

Category E 40 Hour
Instruction Course

	1989	1990	1991	1992	1993
Course Fee	\$125.00	\$131.00	\$138.00	\$145.00	\$152.00
Travel by car	\$45.00	\$47.00	\$50.00	\$53.00	\$56.00
Lodging for six days	\$210.00	\$221.00	\$231.00	\$243.00	\$255.00
Meals for six days	<u>\$87.00</u>	<u>\$91.00</u>	<u>\$96.00</u>	<u>\$101.00</u>	<u>\$106.00</u>
TOTAL	\$467.00	\$490.00	\$515.00	\$542.00	\$569.00

Public comments are invited and may be submitted in writing to Thomas 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*.

Subchapter A. General Applicability and Requirements

- 16 TAC §§9.1-9.3, 9.6, 9.9, 9.15, 9.21, 9.28, 9.29

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.

§9.1. Application of Rules. The Liquefied Petroleum Gas Division (LP-Gas) safety rules are intended to apply to the design, construction, location, and operation of LP-gas systems, equipment, and appliances. These standards do not apply to marine terminals, natural gasoline plants, refineries, tank farms, gas manufacturing plants, plants engaged in processing liquefied petroleum gases, or to railroad loading racks used in connection with such establishments; provided that such standards shall apply to truck loading racks.

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

(5) Division IV. Division IV applies to nonspecification cargo tanks [transport trucks, semitrailer tanks, bobtail units, or any other type of LP-gas cargo tank] used in the transportation and distribution of LP-gas, and each truck used principally for transporting LP-gas in portable containers.

(6)-(14) (No change.)

(15) Division XIV. Division XIV applies to cargo tanks constructed to MC-330 and 331 Department of Transportation (DOT) specifications used in the transportation and distribution of LP-gas.

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

Container—Any receptacle, (i.e. American Society of Mechanical Engineers (ASME) container or Department of Transportation (DOT) container) designed for the transportation or storage of LP-gas, or any receptacle designed for the purpose of receiving injections of LP-gas for use or consumption by or through an LP-gas system.

Division Director—The division's executive head appointed by the commission to execute and enforce the LP-Gas Safety Rules and the Texas Natural Resources Code.

Outlet—A site operated by an LP-gas licensee at which the business conducted materially duplicates the operations for which the licensee is initially granted a license. A final determination as to what constitutes an outlet will be made by the director as per §9.8(a) of this title (relating to Designation of Operations Supervisor).

PSI, PSIG, and PSIA—Pounds per square inch, pounds per square inch gauge, and pounds per square inch absolute, respectively.

§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)-(4) (No change.)

(5) Category E—Retail and wholesale dealers, which cover the storage, sale, transportation, and distribution of LP-gas at retail and wholesale, and all other activities included in this section except the manufacture, fabrication, assembly, repair, and subframing of LP-gas containers. [The service and repair of an LP-gas appliance not required by the manufacturer to be vented to the atmosphere is exempt from Category E licensing. The installation of these unvented appliances to LP-gas systems by means of LP-gas appliance connectors is also exempt from Category E licensing.]

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

(7) (No change.)

(8) Category H—cylinder [bottle] dealers, which cover the transportation and sale of [bottled] LP-gas[;] in cylinders.

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

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

(11)-(12) (No change.)

§9.6. Examination and Notification Generally.

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

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

(1) The requirements of this subsection shall be immediately effective for those persons who qualified by examination on or after January 1, 1983.

(2) The division shall formulate a schedule of renewal for those qualified by examination on or before December 31, 1982. This schedule shall be posted in the division's Austin office, shall be mailed by regular United States mail to all division licensees, and shall be available to any individual who requests one, no later than November 15, 1985. The renewal schedule shall not extend past December 31, 1986. On January 1, 1987, all those covered by this section shall have current or renewed qualification, or they will suffer a lapse in qualified status.]

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

§9.9. Examination for Certification.

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

(d) A trainee who continues to work in violation of this section may be held responsible for the [its] violation. An employer who employs an individual in violation of this section may be held responsible for the [its] violation. Possible penalties for violation are set forth in the Texas Natural Resources Code, Chapter 113, [and include prosecution in the local justice courts with a possible fine of \$200 per day for each day of violation,] or an administrative hearing to show cause why a license should not be subject to revocation, suspension, or probation, or a combination of these penalties.

§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)-(15) (No change.)
- (16) LPG Form 22.—report of LP-gas safety rule violation(s);
- (17) LPG Form 23.—statement in lieu of container testing;
- (18)[(16)] LPG Form 500.—application for tentative approval;
- (19)[(17)] LPG Form 500a.—notice of LP-gas installation;
- (20)[(18)] LPG Form 501.—completion report;
- (21)[(19)] LPG Form 996A.—certificate of insurance, worker's compensation and employer's liability;
- (22)[(20)] LPG Form 996B.—statement in lieu of worker's compensation and employer's liability insurance;
- (23)[(21)] LPG Form 997A.—certificate of insurance, motor vehicle [automobile] bodily injury, and property damage liability;
- (24)[(22)] LPG Form 997B.—statement in lieu of motor vehicle [automobile] bodily injury, and property damage liability insurance;
- (25)[(23)] LPG Form 998A.—certificate of insurance, general liability;
- (26)[(24)] LPG Form 998C.—statement in lieu of general liability insurance [manufacturers' and contractors'] and/or completed operations and products liability insurance.
- (27)[(25)] LPG Form 999.—notice of insurance cancellation.

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

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

(b) (No change.)

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

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

(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)-(7) (No change.)

(d) Notice.

(1) The applicant shall send [mail] a copy of the application by certified mail, return receipt requested, to all affected [interested] 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 requirement, 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 [interested] parties to whom the applicant must give notice shall include, but not be limited to:

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

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

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

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

(4) (No change.)

(e) Division review. The division director or his delegate shall review the application when it is complete. If the commission has received no objections [waivers] from any affected [all interested] 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 objections [does not receive waivers] from any affected party [all interested parties], or when the applicant requests one following an administrative denial. To be granted a hearing the applicant must file a request for hearing within two weeks of receiving notice of the administrative denial.

(2) Notice.

(A) The division shall prepare a notice of hearing which shall be

delivered to the applicant by certified mail, return receipt requested, not less than 10 days prior to the date of the hearing [at such a time as will permit the applicant to give 10 days' notice prior to the date of the hearing to interested persons in the cause]. A copy of the notice attached to the application shall be posted in a conspicuous place in the division's office in Austin, not less than 10 days prior to the date of hearing.

(B) The division [applicant] shall mail copies of the notice of hearing by certified mail to all affected [interested] parties, return receipt requested, at such time that affected [interested] parties should receive copies at least 10 days prior to the date of hearing, and shall forward to the LP-Gas Division.[:]

(i) the certified mail receipts; and

(ii) an affidavit stating that, to the best of the applicant's knowledge, all interested persons have been notified as required in this subparagraph. If all interested persons have not been notified, the reason for such failure to notify shall be stated in the affidavit and the name(s) and last known address(s) of such person(s) shall be stated. The affidavit must be signed by the applicant or his authorized representative.[:]

(3) (No change.)

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

§9.28. Public Hearing.

(a) (No change.)

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

"hot-mix" plants or sites for asphalt paving, need not file the LPG Form 500a, notice of installation, provided proof is submitted to the division that such "hot-mix" operations will not exceed one year at the specified location, and that fire marshal approval has been obtained if operations are within a city's limits or the extra-territorial jurisdiction of a city.

(c)-(g) (No change.)

§9.29. Filings Required for LP-Gas Installations.

(a) Prior to the installation of any LP-gas container at a school, convalescent home, hospital, licensed 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 [LP-gas container and/or piping system] must be submitted on LPG Form 500 to the LP-Gas Division for tentative approval. The LP-Gas Division must be notified prior to implementation of any field [Any] alterations or additions during construction (except maintenance and repairs) which may [will] necessitate resubmission of plans and specifications for reapproval consideration. [approval] No LP-gas shall be introduced into any LP-gas container at a school, convalescent home, or hospital which 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. 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 [the installation is found to be in] compliance with all applicable LP-Gas Safety Rules [LP-gas safety rules].

(b) (No change.)

(c) A manufacturer's data report, 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.

(d) The LP-Gas Division shall determine restrictions on individual LP-gas container capacity, and total storage capacity for any LP-gas installation in a heavily populated or congested area.

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

(g) If application is made for a license under any category where plans or specifications are submitted for installation of bulk storage and/or dispensing equipment, the license to operate shall not be issued before final approval of the installation has been granted by the division. Final approval will follow a physical

inspection of the completed installation in accordance with subsection (a) of this section.

(h) The requirements of plans and specifications as noted in subsections (a), (d), (e), and (g) of this section shall not apply to existing LP-gas installations previously approved by the division. Plans and specifications are not required prior to installation of bulkheads and emergency shutoff valves (ESV's), where maintenance and improvements are being made to existing piping systems, and where LP-gas container replacements of the same size or less are being installed in the exact same location. Upon completion of the tank replacements, a LPG Form 501, completion report, must be filed with the division in accordance with subsections (b) and (f) of this section.

(i) 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 shall either request withdrawal of the original application or shall request an extension of time to complete the installation. The division director shall make final determination on the request for extension of time.

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810311 Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187

• 16 TAC §9.5

The new section 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.

§9.5. Course of Instruction.

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

(b) However, any prospective Category D, E, F, G, I, J, K, and L representative or operations supervisor who has been in a qualified status for a minimum of

three years with an active licensee immediately prior to taking the management examination for the category of his qualified status shall not have to attend the course of instruction.

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

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

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

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

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810310 Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187

Subchapter B. Basic Rules

• 16 TAC §§9.31, 9.34, 9.36, 9.46, 9.50, 9.59, 9.61, 9.64, 9.65

The Railroad Commission of Texas proposes amendments to §§9.31, 9.34, 9.36, 9.46, 9.50, 9.59, 9.61, 9.64, and 9.65, concerning the odorization of gases, LP-Gas container specifications (including pressure and temperature valves, fittings, and other equipment), LP-gas container safety examination and testing requirements, the uniform safety requirement, and forms and procedures used in reporting LP-Gas safety rule violations. In addition, the commission proposes new §9.53 and §9.68, concerning the proper purging of LP-Gas containers and cylinders and approved gauging devices for LP-Gas containers.

The commission proposes these amend-

ments and new sections to clarify the existing rules and to ensure uniformity with current department of transportation regulations and other current national LP-Gas licensing and safety standards.

Mark E. Foster, assistant director, legal 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 or small businesses as a result of enforcing or administering the sections.

Mr. Foster also has determined that for each of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing the sections will be increased compliance due to the more clearly understandable rules and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Thomas 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.

§9.31. Odorizing Gases.

(a) All LP-gases shall be odorized by the refinery, processing plant, loading rack, pipeline terminal, marine terminal, or underground storage facility prior to delivery to a distributing plant, distributing point, or an industrial plant by the addition of a warning agent of such character that they are detectable by a distinct odor, down to a concentration in air of not over one-fifth of the lower limits of flammability. The odorization requirements shall be considered to be met by the use of 1.0 pound of ethyl mercaptan per 10,000 gallons of LP-gas. However, this listing of odorant and quantity shall not exclude the use of other odorants that meet the odorization requirements. [From and after the effective date of this order each person, firm, corporation, or association, including municipal corporations engaged in the business of handling, storing, selling, or distributing liquefied petroleum gas for private or commercial uses, or supplying the same by pipelines or other means to any public building or buildings or to the general public, shall continuously odorize such gas by means of a malodorant agent to be introduced into the gas in either its gaseous or liquid state so as to indicate by a distinctive odor the presence of gas when such gas is present in air in concentrations of not over B of the 1.0% by volume. Such odor must be readily perceptible to normal or average olfactory senses of a person

coming from fresh ungasified air.]

(b) It is not intended by these rules to require the odorization of liquefied petroleum gas used, or to be used, in natural gasoline extraction plants, recycling plants, chemical plants, carbon black plants, pipelines connected thereto or where liquefied petroleum gas to be used is harmful to the end product [in industrial plants, or pipelines connected thereto]. Provided, however, in such [chemical] plants[, carbon black plants, natural gasoline extraction plants, recycling plants, and industrial plants] where any liquefied petroleum gas is used, or to be used, for [space] heating, domestic water heating, cooking, and/or liquefied petroleum gas used primarily for furnishing heat for office or living quarters, or vehicular use, shall be odorized.

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

(e) When in the opinion of the commission there exists the possibility of insufficient odorization, testing may be required to determine its sufficiency. The testing shall be performed by a recognized testing laboratory equipped for and experienced in testing of odorization. [The odorization requirement of subsection (a) of the section shall be considered to be met by the use of 1.0 pounds of ethyl mercaptan or 1.4 pounds of amyl mercaptan per 10,000 gallons of LP-gas. However, this listing of odorants and quantities shall not exclude the use of other odorants that meet the odorization requirement of subsection (a) of this section.]

(f) The malodorant agent shall be introduced by a closed measuring injection system.

(g) The person odorizing the gas shall be responsible for completing the required information on the manifest as set forth in §9.148 and §9.518 of this title (relating to Filling Containers and Transfer of Liquids, Manifest).

§9.34. Examination of Containers.

(a) At the request of the division director [commission], when in his [the] opinion [of the commission] such action is necessary, containers and assemblies shall be examined by a recognized testing laboratory equipped for and experienced in the testing of liquefied petroleum gas containers and equipment and a comprehensive report on the findings of such testing laboratory shall be submitted to the Railroad Commission for its consideration.

(b) Any LP-gas container which has not been subject to continuous LP-gas vapor pressure must be retested by at least two of the following non-destructive test methods recognized by the American Society of Mechanical Engineers (ASME) to determine if the container or assembly is safe for LP-gas use in the State of Texas. The test results must be submitted on an LPG Form 8

(Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing):

- (1) hydrostatic test;
- (2) ultrasonic thickness test; or
- (3) wet particle fluorescent or magnaflux.

(c) An LP-gas container which has been subject to continuous LP-gas vapor pressure need not be tested prior to installation, provided an acceptable LPG Form 23 (statement in lieu of container testing) is filed with the division at the time an LPG Form 500, application for tentative approval of LP-Gas Installation, is submitted for any facility requiring submission of plans and specifications in accordance with §9.29 of this title (relating to Fillings Required for LP-Gas Installations).

(d) Any LP-gas container brought into Texas from out-of-state and intended for stationary LP-gas installation in Texas at any facility requiring submission of plans and specifications, must be tested in accordance with subsection (b) of this section prior to tentative approval being granted by the division.

§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 subject to approval [approved] by the Railroad Commission of Texas. Applications for approval shall be accompanied by such drawings, specifications, laboratory test reports, and other data as the commission may require. Exception: Such 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 (UL), Factory Mutual (FM), or American Gas Association (AGA), etc., provided the LP-Gas safety rules do not prohibit their use in LP-gas service and provided further that all other requirements of federal and state agencies are satisfied.

§9.46. *Installation of Pressure [Safety] Relief Valves.*

(a) Pressure [Safety] relief valves shall be installed directly to the appropriate nozzle opening [so as to communicate directly with the vapor space] of the container.

(b) Each pressure relief valve on all aboveground (AG) stationary containers of 2,000 water gallons capacity or more shall be vented upward and unobstructed to a minimum of seven feet above the top of the container. Each vent shall be metallic pipe or tubing, threaded and secured in place with proper relief valve pipeway adapters and shall be of

adequate size not to restrict discharge flow. Exception: vertical containers 15 feet or more in height shall be exempt from such venting requirement. [Safety relief valves shall be installed on the container in such a manner that the net discharge capacity of the valves is not restricted in any way.]

(c) All exposed pressure relief valves on stationary ASME containers shall discharge vertically upward and shall be fitted with loose fitting rain caps. A drain shall be provided to prevent any liquid or condensate that may accumulate inside the relief valve or its vents from rendering the relief valve inoperative. If a bottom drain is used, where necessary a weep hole deflector shall be installed to protect the container, adjacent containers, piping, or equipment against impingement of flame resulting from ignition of product escaping from the drain.

(d)[(c)] No shut-off valve shall be placed between the container and pressure [safety] relief valves except where a positive mechanical means is provided to prevent the reduction of relieving capacity below that required for the vessel to which it is attached.

(e) Where there is a possibility of the discharge from any pressure relief valve creating a hazardous condition in an adjacent building, by entering openings in such buildings, the discharge pipe shall be extended vertically upward to a point which will ensure thorough dissipation of all escaping gas before it can reach the openings in the building.

§9.50. Minimum Design Working Pressure and Temperature.

(a) All ASME containers constructed after January 1, 1988, for use in the State of Texas shall have a minimum design working pressure of not less than 250 psig. All DOT containers constructed after January 1, 1988, for use in the State of Texas shall have a minimum design working pressure of not less than 240 psig.

(b) All ASME, Division I, Section VIII, containers constructed after February 1, 1989, for use in Texas shall have a minimum design material temperature (MDMT) in accordance with the ASME Code.

§9.59. Filling Unsafe Containers.

(a) No licensee shall introduce liquefied petroleum gas into any container if he has knowledge or reason to believe that such container or the piping or the appliances attached thereto are in an unsafe operating condition[.], or fall in any way to meet the requirements of the LP-Gas safety rules or the provisions of the Natural Resources Code, Chapter 113.

(b) Any unsafe LP-gas installation may be reported to the LP-Gas Division by the use of LPG Form 22, report of LP-Gas safety rule violation(s). Upon receipt of a LPG Form 22, the division shall contact the licensee servicing said installation or owner or occupant thereof by letter, and at the discretion of the director a physical inspection may be ordered.

§9.61. Report of Accident.

(a) In case of accident at any location where a liquefied petroleum gas (LP-gas) is the cause or is suspected to be the cause, [system or equipment is installed, or an accident involving liquefied petroleum gas mobile equipment,] the dealer owning, operating, or servicing the [equipment or] installation shall notify the [director of the] LP-Gas Division. This notification shall be by telephone [or telegraph and shall be forwarded] as soon as feasilably possible after the dealer has knowledge of the accident [in order that an inspection may be made by the Railroad Commission before the site has been disturbed].

(b) Information which must be reported to the division must include: type of structure or equipment involved; resident's or operator's name; physical location; number of injuries and/or fatalities; whether a 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 their name, and telephone number where 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 where there is damage to the tank, piping, appurtenances, or a loss of LP-gas liquid must be reported to the commission in accordance with this section regardless of the accident location.

§9.64. Uniform Safety Requirement.

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

(e) Storage of LP-gas next to flammable liquids. Suitable means shall be taken by diking, diversion curbs, and grading to prevent the accumulation of flammable liquids such as gasoline, diesel, etc., under LP-gas containers. LP-gas containers shall not be located within a diked area. The minimum separation between LP-gas containers and flammable liquid containers [tanks] shall be 20 feet, and the minimum separation between a container and the center line to the dike shall be 10 feet. Note: This applies to aboveground LP-gas containers as described in Division II (commercial), III, IX, and XI. The minimum separation between LP-gas containers and oxygen or gaseous hydrogen containers shall be in

accordance with Table 1, except that lesser distances are permitted where protective structures having a minimum fire resistance rating of two hours interrupt the line of sight between uninsulated portions of the oxygen or hydrogen containers and the LP-gas containers.

(f) (No change.)

(g) Any portion of either liquid piping or hose designed to operate up to 350 psig shall be equipped with a hydrostatic relief valve having a pressure setting of not less than 400 psig or more than 500 psig, or an approved bypass valve communicating directly with the storage container. Liquid piping or hose designed to operate above 350 psig shall be equipped with a hydrostatic relief valve having a pressure setting of not less than 110% or more than 125% of the system design pressure, or an approved bypass valve communicating directly with the storage container.

(h) Pumps, when used, shall be secured against displacement and shall be mounted on a noncombustible support or base.

(i) Flexible connectors in excess of 3/4 inch in diameter shall not exceed 42 inches in length and shall not be used in lieu of pipe fittings to change direction in liquid or vapor piping.

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

(k) Filling and vapor return outlets shall be provided with valves to prevent back flow.

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

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

(1) the flow through the valve exceeds a predetermined flow, which flow must be less than the pipeline capacity to and from such excess flow valve; or

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

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

(o) Excess flow and back-pressure check valve, where required by these standards, shall be located inside the container, or at a point outside where the line enters the containers; in the latter case, installation shall be made in

such manner that any undue strain beyond the excess flow or back-pressure check valve will not cause breakage between the container and such valve. Gauging devices which do not involve the flow of liquid or which are so constructed that outward flow of container contents shall not exceed that passed by a Number 54 drill size need not be equipped with an excess flow valve.

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	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* 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.

§9.65. LP-Gas Storage Distance Requirements.

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

(e) LP-gas installations completed on or after February 1, 1989, involving container installations of 1,000 water gallon individual container capacity or greater shall have a minimum three feet separation from adjacent LP-gas containers. LP-gas containers shall not be positioned end to end or perpendicular to other LP-gas containers. The division director shall determine limits on close proximity or aggregate capacity 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 October 3, 1988.

TRD-8810309

Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187

• 16 TAC §9.53, §9.68

The new sections 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.

§9.53. *Proper Purging of LP-Gas Containers or Cylinders.* Prior to any new container having a water capacity of 2,000 gallons or less (or a container having a water capacity of 2,000 gallons or less which has been opened to the atmosphere) being placed into service, the container shall be properly purged.

§9.68. *Approved Gauging Devices.*

(a) All ASME containers manufactured after February 1, 1989, shall be equipped with a fixed or rotary tube liquid level gauging device. Such devices shall be

readily accessible and shall be used at time of filling operation to ensure the container is not filled in excess of the maximum permitted filling density as required by §9.47 of this title (relating to Filling Density). Refer to §9.923 of this title (relating to Appendix C) or Figure 1 in this section for method of calculating length of fixed tube. Gauging devices of the fixed or rotary tube may be used without the installation of an excess flow valve, provided bleed valve opening is not larger than a Number 54 drill size.

(b) Approved gauging devices for ASME containers constructed prior to February 1, 1989, are a slip tube, fixed tube, rotary-magnetic, or rotary tube. Refer to §9.923 of this title (relating to Appendix C), or Figure 1 in this section for method of calculating length of fixed tube. Gauging devices of the slip tube, or rotary tube may be used without the installation of an excess flow valve provided the bleed valve opening is not larger than a Number 54 drill size.

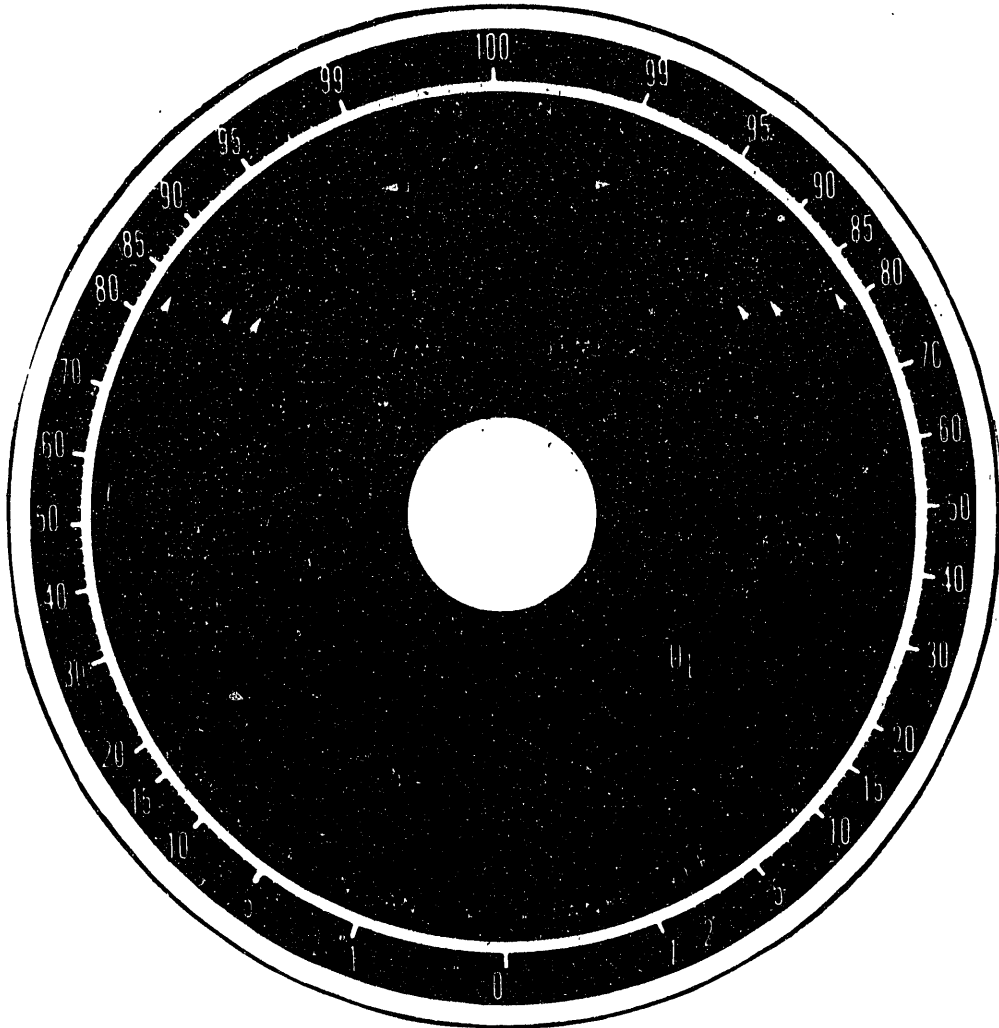


Figure 1

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 January 1, 1988.

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Robert F. Biard
Staff Attorney, Legal
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Railroad Commission of
Texas

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For further information, please call: (512) 463-7187

The Railroad Commission of Texas proposes amendments to §§9.72, 9.77, and 9.79, concerning the required markings to be placed on Department of Transportation (DOT) LP-Gas containers, the weighing procedures to be utilized in filling DOT LP-Gas containers, and the proper disposition of rejected containers. In addition, the commission proposes, concerning new §9.73, requalifications requirement.

The commission proposes amendments to §§9.72, 9.77, and 9.79 to clarify the existing rules and assure uniformity with current Department of Transportation Regulations and other current national LP-Gas licensing and safety standards.

New §9.73 would require that DOT containers be refilled, transported, or continued in service only if they have been qualified or requalified before filling in accordance with DOT regulations. Additionally, containers must, under the section as proposed, at all times be clearly stamped in order to show they have been properly requalified for use. The section as proposed, would provide three methods or tests by which containers could be requalified for use. Under the hydrostatic expansion test, a container would requalify for a period of twelve years. Under the internal hydrostatic test, a container would requalify for a period of seven years, while under the external visual inspection test, a container would requalify for only a five year period of use before having to be reinspected.

Mark E. Foster, assistant director, legal 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 or small businesses as a result of enforcing or administering the sections.

Mr. Foster 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 increased compliance due to the more clearly understandable rules and increased safety due to the more stringent safety requirements. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Thomas 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*.

Subchapter C. Division I

• 16 TAC §§9.72, 9.77, 9.79

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.

§9.72. Markings on Containers. All Department of Transportation (DOT) containers for use with LP-gas must be marked in accordance with the regulations current at the time of fabrication. [Such containers shall at all times be plainly stamped to show that they have been requalified within the required test period.]

§9.77. Filling of Department of Transportation Containers.

(a) DOT containers of less than 101 [100] pounds LP-gas capacity [or less] shall be filled by weight only. The weighing of such containers shall be with commercial scales bearing the current State Agriculture Weights and Measures stamp, except as provided in §9.305 of this title (relating to Charging of Containers).

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

§9.79. Examination of Containers.

(a) Before filling a [United States Department of Transportation] DOT container, the person servicing shall examine such container. Where the container is found to be dented or bulged, where the metal is gouged, or where there is evidence of corrosion which substantially reduces the integrity of the containers, such container may not be filled.

(b) (No change.)

(c) The following disposition is to be made of rejected containers.

(1) Containers subjected to fire must be requalified, or repaired in accordance with §9.78 of this title (relating to Repair of Containers), or permanently removed from service except that DOT 4E (aluminum) containers must be permanently removed from service.

(2) Containers showing serious physical damage or leaks must be retested in accordance with §9.73 of this title (relating to Requalification Requirements) and, if necessary, repaired in accordance with §9.78 of this title (relating to Repair of Containers).

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810307

Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

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For further information, please call: (512) 463-7187

• 16 TAC §9.73

The new section 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.

§9.73. Requalification Requirement.

(a) DOT containers may not be refilled, continued in service, or transported unless they are properly qualified or requalified for LP-gas service in accordance with the DOT regulation.

(b) Such containers shall at all times be plainly stamped to show that they have been requalified within the required test period.

DOT SPECIFICATION NUMBERS FOR LP-GAS

COMMONLY USED

DOT 4B
" 4BA
" 4BW
" 4E
" 4B_ _ _ FLW
ICC 26-240
" 26-300

MAY BE USED

DOT 3A
" 3AA
" 3B
" 3E
" 4B_ _ _ ET

(c) DOT containers must be requalified before filling after the expiration of 12 years from the original manufacturer's inspection date. This retest and/or inspection may be performed as follows:

	REQUALIFIES	
	FOR A	TYPICAL
METHOD	PERIOD OF	MARK
Hydrostatic Expansion Test	12 years	1-80
Internal Hydrostatic Test	7 years	1-80S
External Visual Inspection	5 years	1-80E

(d) A container manufactured in January 1980, requires test or inspection prior to January 1992. If it is then stamped 1-92 it is qualified until January 2004 (expansion test method); if it is stamped 1-99S (internal hydrostatic test method), it is qualified until January 1999; and, if it is stamped 1-92E, it is qualified until January 1997 (external visual inspection method).

(e) Regardless of tests performed, each container must be carefully inspected for defects at the time of each filling and removed from service if any signs of defects are observed as set forth in §9.79 of this title (relating to Examination of Containers).

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

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TRD-8810306 Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
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For further information, please call: (512) 463-7187

Subchapter D. Division II

• 16 TAC §9.91

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.

§9.91. Container Valves and Accessories.

(a) (No change.)

[(b) Filler connections and vapor return connections shall be provided with approved automatic valves to prevent backward flow in case the connection is broken.]

(b)[(c)] Every container shall be equipped with a manually operated shutoff valve of a type approved by the Railroad Commission of Texas; such valves shall be installed on the service outlet of the container in such position as to be readily accessible at all times.

(c)[(d)] All liquid and vapor connections to the container except filler connections, and safety relief connections shall be equipped with approved automatic excess flow valves.] Where the orifice of the shutoff valve on the tank does not exceed 5/16 inch for vapor withdrawal systems or 1/8 inch for liquid withdrawal systems, an excess flow valve will not be required, provided the regulator is directly attached to

the valve outlet, or attached to the valve outlet with an approved connection of minimum practical length, and is rigidly supported.

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810305 Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187

The Railroad Commission of Texas proposes the repeal of §§9.94-9.96, and 9.98, concerning discharge from safety relief valves, rain caps, regulator relief valves, and liquid level gauging devices. In addition, the commission proposes an amendment to §9.91, concerning the specifications for LP-Gas container valves and accessories. Sections 9.94-9.96 are proposed to be repealed in their entirety. With regard to §9.91, subsection (a) would remain unchanged. Subsection (b) as currently written would be deleted in its entirety. Subsection (c) as currently written would be re-designated as subsection (b) and subsection (d) as currently written would be re-designated as subsection (c).

Sections 9.94-9.96 have been incorporated into other sections and hence the repeal of these sections and the amendment to §9.91, concerning regulator relief valves will serve to clarify the existing rules and to assure uniformity with current Department of Transportation regulations and other current national LP-Gas licensing and safety standards.

Mark E. Foster, assistant director, legal 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 or small businesses as a result of enforcing or administering the sections.

Mr. Foster 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 increased compliance due to the more clearly understandable rules and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Thomas 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*.

• 16 TAC §§9.94-9.96, 9.98

(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 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.

§9.94. Discharge from Safety Relief Valves.

§9.95. Rain Caps.

§9.96. Regulator Relief Valves.

§9.98. Liquid Level Gauging Devices.

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

Issued in Austin, Texas, on September 3, 1988.

TRD-8810305 Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187

The Railroad Commission of Texas proposes the repeal of §§9.127, 9.129, and 9.132, concerning discharge from relief valves on bulk storage containers, specifications for container valves and accessories, and the testing of relief and excess flow valves of bulk storage containers. In addition, the commission proposes new §9.129, which would require a pressure gauge to be placed on all bulk storage containers.

Section 9.127 and §9.132 have been incorporated into other sections and hence the commission proposes the repeal of these sections, as well as the adoption of new §9.129 in order to clarify the existing rules and to assure uniformity with current Department of Transportation regulations and other current national LP-Gas licensing and safety standards.

Mark E. Foster, assistant director, legal 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 or small businesses as a result of enforcing or administering the sections.

Mr. Foster 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 increased compliance due to the more clearly understandable rules and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to indi-

viduals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Thomas 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*.

Subchapter E. Division III

• 16 TAC §§9.127, 9.129, 9.132

(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 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.

§9.127. *Discharge from Relief Valves.*

§9.129. *Container Valves and Accessories.*

§9.132. *Testing Relief and Excess Flow Valves.*

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

Issued in Austin, Texas, on September 3, 1988.

TRD-8810303 Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187

• 16 TAC §9.129

The new section 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.

§9.129. *Pressure Gauge.* A pressure gauge shall be required on all bulk storage containers. Container openings to which a pressure gauge is attached need not be equipped with a shutoff valve or excess flow valve if such openings are restricted to not larger than a number 54 drill size opening, and are piped to the vapor space 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 October 3, 1988.

TRD-8810302 Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187

The Railroad Commission of Texas proposes the repeal of §§9.143, 9.146, 9.148-9.150, 9.152, 9.157, 9.159, 9.161, 9.164-9.168, concerning safety regulations for trucks used to transport and distribute LP-Gas; new §9.139, and §9.140, concerning the requirements for the construction and design of nonspecification cargo containers which would allow certain cargo containers not meeting the requirements of proposed new §§9.499-9.526 to continue to be used to transport LP-Gas in the State of Texas; new §§9.143, 9.146, 9.148-9.150, 9.152, 9.157, 9.159-9.161, and 9.164-9.170, concerning clarification purposes in order to cross reference relevant safety regulations in proposed new Subchapter P, §§9.499-9.526; and amendments to §§9.144, 9.153, and 9.154, concerning thermometer wells, liquid level gauging devices, and brake requirements for LP-gas truck and semi-trailer containers.

Subchapter F in its present form contains rules and regulations concerning the design and construction of cargo containers used primarily for the transportation and distribution of LP-Gas. In addition, Subchapter F contains safety rules and regulations for trucks and trailers used primarily for transporting LP-Gas in portable cargo containers.

In order to update the present rules and regulations to comply with current MC330 and 331 Department of Transportation specifications, the commission proposes new Subchapter P, §§9.499-9.526. If adopted, the specifications in the new §§9.499-9.526 would be the standards by which cargo containers and trucks used in transport those containers would be licensed.

Under Subchapter F as proposed, certain nonspecification cargo containers (i. e. those not meeting the proposed standards in the new Subchapter P, §§9.499-9.526) could continue to be used for the transportation and distribution of LP-Gas in Texas. Specifically, those containers with a minimum working pressure of 250 psig or more could continue to be used for the transportation and distribution of LP-Gas. In addition, under the proposed sections those nonspecification units in excess of 3,500 water gallons could also continue to be used even though such units are not exempted under DOT regulations. Those nonspecification cargo containers with a minimum working pressure of less than 250 psig or those nonspecification containers not otherwise conforming with the requirements of §9.140 (relating to Cargo Container Specifications) would be phased out of use for transportation of LP-Gas over a five year period ending September 1, 1993. These phased-

out, nonspecification containers could, however, under Subchapter F as proposed, continue to be utilized for stationary installations.

Mark E. Foster, assistant director, legal 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 or small businesses as a result of enforcing or administering the sections.

Mr. Foster 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 increased compliance due to the more clearly understandable rules and increased safety due to the updated and revised safety standards. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

	1989	1990	1991	1992	1993	5 year	TOTAL
Replacement of 326 cargo con- tainers at cost per con- tainer of \$21,750	\$1,418,100	\$1,418,100	\$1,418,100	\$1,418,100	\$1,418,100	\$1,418,100	\$7,090,500
Replacement of chassis on 293 cargo containers at cost per chassis of \$17,500	\$1,025,500	\$1,025,500	\$1,025,500	\$1,025,500	\$1,025,500	\$1,025,500	\$5,127,500
Replacement of 8 trans- port trail- ers at cost per trailer of \$53,500	\$ 85,600	\$ 85,600	\$ 85,600	\$ 85,600	\$ 85,600	\$ 85,600	\$428,000
Less salvage value of used cargo containers, chassis and transports	\$ -119,220	\$ -119,220	\$ -119,220	\$ -119,220	\$ -119,220	\$ -119,220	\$-596,100
TOTAL	\$2,409,980	\$2,409,980	\$2,409,980	\$2,409,980	\$2,409,980	\$2,409,980	\$12,049,900

• 16 TAC §§9.143, 9.146, 9.148-9.150, 9.152, 9.157, 9.159, 9.164-9.168

(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 repeals are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards relate 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.

§9.143. Container Valves and Accessories.

§9.146. Piping and Fittings.

§9.148. Filling Containers.

§9.149. Mounting and Connecting Pumps.

§9.150. Hose Specifications.

§9.152. Electrical Equipment and Lighting.

§9.157. Metallic Connection.

§9.159. Extinguishers Required.

§9.161. Testing Excess Flow and Relief Valves.

§9.164. Parking of Liquefied Petroleum Gas Transports.

§9.165. Filling Containers on Highways, Roads, Streets, or Alleys.

§9.166. Filling Unapproved Truck and Trailer Tank Prohibited.

§9.167. Painting.

§9.168. Lettering.

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810300

Robert F. Biard
Staff Attorney, Legal
Division
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Texas

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For further information, please call: (512) 463-7187

Subchapter F. Division IV

- 16 TAC §§9.139, 9.140, 9.143, 9.146, 9.148-9.150, 9.152, 9.157, 9.159-9.161, 9.164-9.170

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.

§9.139. Subchapter F. Division IV applies to nonspecification cargo containers, used in the transportation and distribution of LP-gas and to each truck used principally for transporting LP-gas in portable containers.

§9.140. Cargo Containers.

(a) A nonspecification cargo container meeting, and marked in conformance with, the edition of the ASME Code in effect when it was fabricated, may be used for the transportation of liquefied petroleum gas provided the container:

(1) has a minimum design pressure no lower than 250 psig;

(2) was manufactured in conformance with the ASME Code prior to January 1, 1981, according to its ASME nameplate and manufacturer's data report;

(3) conforms to the safety rules of the LP-Gas Division;

(4) is operated in conformance with all other requirements of this subchapter; and

(5) has been inspected and tested in accordance with the following.

(A) All emergency devices and valves must be free from corrosion, distortion, and any damage which will prevent their normal operation.

(B) In addition to the visual inspection requirements, hydrostatic testing of cargo containers is required if the cargo container has been out of service one year or more.

(C) Prior to the test all relief devices shall be removed and the container plugged. Relief devices shall be reinstalled immediately after the tests are completed.

(D) The prescribed pressure test must hold its pressure for at least 10 minutes. All container valves, piping, and other accessories in communication with the lading must be pressure tested and proven tight at the container design pressure.

(E) The month and year of the latest date(s) on which a retest was conducted shall be legibly marked on the

container(s) in numerals not less than 1 1/4 inch in height.

(b) All nonspecification cargo containers that do not comply with this section cannot be utilized in the transportation of LP-gas in the State of Texas after September 1, 1993.

§9.143. Labels. All container inlets and outlets, except relief valves, liquid level gauging devices, and pressure gauges, shall be labeled to designate whether they communicate with vapor or liquid space. Labels may be on valves.

§9.146. Piping and Fittings. Refer to §9.510 in Division XIV of this title (relating to Protection, Piping, and Fittings).

§9.148. Transfer of Liquids, Manifest. Refer to §9.518 in Division XIV of this title (relating to Transfer of Liquids, Manifest).

§9.149. Mounting of Transfer Equipment. Refer to §9.503 in Division XIV of this title (relating to Mounting of Transfer Equipment).

§9.150. Securing of Portable Containers. Portable containers shall be braced or otherwise secured in such position that the relief valve communicates with the vapor space of the container on the container delivery unit, so as to prevent relative motion while in transit.

§9.152. Electrical Equipment and Lighting. Refer to §9.514 in Division XIV of this title (relating to Electrical Equipment and Lighting).

§9.157. Testing Requirements Refer to §9.501 in Division XIV of this title (relating to Testing Requirements).

§9.159. Extinguishers Required. Refer to §9.517 in Division XIV of this title (relating to Extinguishers Required).

§9.160. Maintenance of Equipment. Refer to §9.521 in Division XIV of this title (relating to Uniform Protection Standards).

§9.161. Protection Against Contamination. Refer to §9.507 in Division XIV of this title (relating to Protection Against Contamination).

§9.164. Parking of Liquefied Petroleum Gas Transports. Refer to §9.520 in Division XIV of this title (relating to Parking of LP-Gas Transports and Container Delivery Units).

§9.165. Filling Containers on Highways, Roads, Streets, or Alleys. Refer to §9.519 in Division XIV of this title (relating to

Transfer of Fuel on Highways, Streets, or Alleys).

§9.166. Issuance of LPG Form 4 Decal. Refer to §9.524 in Division XIV of this title (relating to Issuance of LPG Form 4 Decal).

§9.167. Painting. Refer to §9.512 in Division XIV of this title (relating to Painting).

§9.168. Lettering. Refer to §9.502 in Division XIV of this title (relating to Markings and Placarding).

§9.169. Delivery of Inspection Report to Licensee. Refer to §9.523 in Division XIV of this title (relating to Delivery of Inspection Report to Licensee).

§9.170. Inspection of Cargo Containers. Refer to §9.522 in Division XIV of this title (relating to Inspection of Cargo Containers).

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

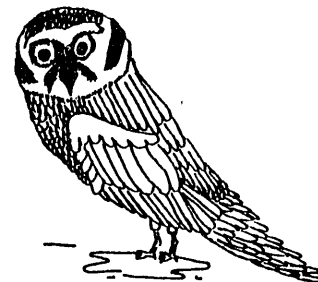
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Robert F. Biard
Staff Attorney, Legal
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For further information, please call: (512) 463-7187



Name: Matt Hyatt

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Comments on the proposal may be submitted to Thomas 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*.

• 16 TAC §§9.144, 9.153, 9.154

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.

§9.144. Thermometer Well. All truck or trailer containers shall be equipped with a thermometer well, in order that the internal temperature of the content may be easily determined. A thermometer must be installed in the thermometer well at all times.

§9.153. Liquid Level Gauging Devices. Each truck and trailer container shall be equipped with a [an accurate] liquid level gauging device of approved design, for example, a rotary gauge, slip tube, or a fixed tube device. [A fixed tube device consists of a dip pipe of small size, equipped with a valve at the outer end.] Fixed tube devices shall be so arranged that the maximum liquid level to which the container may be filled is not in excess of the maximum permitted under the filling density table in §9.47 of this title (relating to Filling Density), but based on an initial liquid temperature not to exceed 40 degrees Fahrenheit. Liquid level gauging devices of the rotary tube, fixed tube, and slip tube type may be used without installation of an excess flow valve, provided the [that] bleed valve opening is not larger than a Number 54 drill size. (Refer to §9.923 of this title (relating to Appendix C) [Refer to Appendix C LP-Gas Docket 1], which is incorporated herein and made a part hereof for any and all purposes for method of calculating length of fixed tube).

§9.154. Truck Containers [Tanks] and Semi-Trailer Containers [Tanks].

(a) All semi-trailer containers [tanks] shall be of the fifth wheel type and shall be attached to the tractor in such manner as to positively prevent separation of the tractor and semi-trailer while the combination is in motion. All semi-trailer containers shall be equipped with air brakes or an approved equal as provided in §9.527 in Division XIV of this title (relating to Brakes).

(b) Every tank truck or semi-trailer tank shall be equipped with a system of brakes in full compliance with the require-

ments of Texas Uniform Traffic Code, §132 as promulgated by the Texas Department of Public Safety.]

(b)[(c)] Every truck or semi-trailer shall be provided with lighting equipment as required by the Texas Uniform Traffic Code, Article 14, §§108-131 and the requirements of the Texas Department of Public Safety.

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-8810301 Robert F. Biard
Staff Attorney, Legal
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For further information, please call: (512) 463-7187

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Subchapter G. Division V

• 16 TAC §9.177

The Railroad Commission of Texas proposes an amendment to §9.177, concerning gauging devices. The section as currently written contains a reference to Appendix E §9.325. Under the section as proposed the reference is changed to Appendix C §9.923. The commission proposes this amendment to clarify the existing rule.

Mark E. Foster, assistant director, legal division, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Foster 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 as proposed are increased compliance due to the more clearly understandable rule and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Thomas 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.

§9.177. Gauging Devices.

(a) LP-gas motor fuel containers shall be fabricated so that they may be equipped with a fixed liquid level gauge capable of indicating the maximum permitted filling level computed in accordance with procedures contained in §9.923 of this title (relating to Appendix C) [Appendix E (§9.325 of this title)].

(b) (No change.)

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

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TRD-8810298 Robert F. Biard
Staff Attorney, Legal
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Texas

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For further information, please call: (512) 463-7187

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Subchapter H. Division VI

• 16 TAC §9.201, §9.203

The Railroad Commission of Texas proposes amendments to §9.201 and §9.203, concerning safety valves on both indirect heating vaporizers and direct gas-fired vaporizers. The amendments as proposed provide a formula for calculating a safe and effective rate of discharge.

Mark E. Foster, assistant director, legal 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 or small businesses as a result of enforcing or administering the sections.

Mr. Foster 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 increased compliance due to the more clearly understandable rule and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Thomas 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.

§9.201. Indirect Heating Vaporizers.

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

(h) In the case of vaporizers employing artificial heat, at or near discharge of vaporizer, a relief [safety] valve shall be provided having an effective discharge complying with §9.203(d) of this title (relating to Direct Gas-Fired Vaporizers). [area as determined by the method described in Appendix B of the LP-Gas Docket 1, which is incorporated herein and made a part hereof for any and all purposes.]

(i)-(j) (No change.)

§9.203. Director Gas-Fired Vaporizers

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

(d) Vaporizers shall have a [at or near the discharge a safety] relief valve providing an effective rate of discharge in accordance with the following formula:

(1) obtain the total surface area by adding the surface area of the vaporizer shell in square feet directly in contact with LP-gas and the heat exchange surface in square feet directly in contact with LP-gas;

(2) obtain the minimum required ratio of discharge in cubic feet of air per minute, at 60 degrees Fahrenheit and (at atmospheric pressure 14.7 psia) from §9.921 of this title (relating to Appendix A). [Appendix B of the LP-Gas Docket Number 1, which is incorporated in this section and made a part of this section for any purpose, except as provided in §9.2 of this title (relating to Application of Basic Rules).]

(e)-(j) (No change.)

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

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TRD-8810297 Robert F. Biard
Staff Attorney, Legal
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For further information, please call: (512) 463-7187

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Subchapter I. Division VII

• 16 TAC §9.210

The Railroad Commission of Texas proposes new §9.210, concerning low-pressure and high-pressure gas piping. This section will define low-pressure and high-pressure gas piping and list those sections of the safety rules pertaining to each. The commission proposes this new section to clarify the existing rules.

Mark E. Foster, assistant director, legal division, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Foster 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 as proposed will be increased compliance due to the more clearly understandable rule and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Thomas 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 new section 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.

§9.210. Low Pressure-High Pressure Gas Piping.

(a) Sections 9.211-9.222 of this subchapter pertain to low pressure gas piping.

(b) Low pressure gas piping covers materials and installation methods for piping with pressures to 50 psig or less.

(c) Section 9.223 and §9.224 of this subchapter pertain to high pressure gas piping.

(d) High pressure gas piping covers gas piping for conveying liquid LP-gas or vapor with pressures in excess of 50 psig.

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

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TRD-8810296 Robert F. Biard
Staff Attorney, Legal
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Texas

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For further information, please call: (512) 463-7187

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Subchapter K. Division IX

• 16 TAC §9.263

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §9.263, concerning general guidelines for safety devices for all LP-Gas containers, and an amendment to §9.270, concerning dispensing devices on LP-Gas storage containers.

The commission proposes the repeal of §9.263 because the contents of this section have been incorporated into other sections of the safety rules. The commission proposes the amendment to §9.270 in order to clarify the existing section.

Mark E. Foster, assistant director, legal 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 or small businesses as a result of enforcing or administering the repeal.

Mr. Foster 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 increased compliance due to the more clearly understandable rules and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Thomas 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.

§9.263. Safety Devices General.

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810295 Robert F. Biard
Staff Attorney, Legal
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Railroad Commission of
Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187

◆ ◆ ◆
• 16 TAC §9.270

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.

§9.270. Dispensing Devices.

(a) (No change.)

(b) LP-gas shall be transferred from the storage containers [tanks] by means of pumps so designed and equipped as to allow control of the flow and to prevent leakage or accidental discharge. No pump shall be required when the installation is operated by an ultimate consumer, except in circumstances where added safeguards are needed, as determined by the division director. 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.

(c) (No change.)

(d) Dispensing Hose Specifications. (see §9.54(a)-(e) of this title (relating to Hose Specifications)).

(1) (No change.)

(2) Hose used for transferring liquid from one container to another shall be equipped with [suitable] shutoff valves at the discharge end. [Provision shall be made to prevent excessive hydrostatic pressure in the hose by installation of an approved spring-loaded relief valve, or an approved bypass valve communicating with the tank.]

(e) Location.

(1) (No change.)

(2) LP-gas dispensing devices shall be installed on a concrete island or as part of a complete storage and dispensing assembly and shall be adequately protected from physical damage by guardrails or fencing. Guardrails and fencing must be installed in accordance with §9.63 of this title (relating to Uniform Protection Standards). [crash posts or guard rails.]

(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-8810294 Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

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For further information, please call: (512) 463-7187.



• 16 TAC §9.288

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §9.288, concerning hose specifications set forth in §9.54 of the safety rules, and an amendment to §9.290, concerning liquid level gauging devices. The amendment clarifies a reference to §9.923 of this title (relating to Appendix C) and seeks to incorporate §9.923 into §9.290 for all purposes as the method for calculating the length of a fixed tube.

The commission proposes both the repeal of §9.288 and the amendment to §9.290 in order to clarify the existing rules.

Mark E. Foster, assistant director, legal 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 or small businesses as a result of enforcing or administering the repeal.

Mr. Foster 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 as proposed are increased compliance due to the more clearly understandable rules and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Thomas 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.

§9.288. Hose Specifications.

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810293 Robert F. Biard
Staff Attorney, Legal
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Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187



• 16 TAC §9.290

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 pro-

tect the health, safety, and welfare of the general public.

§9.290. Liquid Level Gauging Devices. Each farm cart container shall be equipped with a [an accurate] liquid level gauging device of approved design; for example, a rotary gauge, slip tube, or a fixed tube device. A fixed tube device consists of a dip pipe of small size, equipped with a valve at the outer end. Fixed tube devices shall be so arranged that the maximum liquid level to which a container may be filled is not in excess of the maximum permitted under the filling density table in §9.47(a) of this title (relating to Filling Density), but based on an initial temperature not to exceed 40 degrees Fahrenheit. Liquid level gauging devices of the rotary tube and slip tube type may be used without installation of an excess flow valve, provided that the bleed valve opening is not larger than a Number 54 drill size. (Refer to §9.923 of this title (relating to Appendix C), which is incorporated herein and made a part hereof for any and all purposes for method of calculating length of fixed tube.) [(Refer to Appendix C).]

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-8810292 Robert F. Biard
Staff Attorney, Legal
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Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187



Subchapter M. Division XI

• 16 TAC §9.309

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

The Railroad Commission of Texas proposes the repeal of §9.309, concerning hose specifications, and new §9.310, concerning dispensing devices. The new section would require that a pump be utilized in all cases when needed to ensure that LP-gas is transferred safely. The new section grants the division director the authority to make a final determination on this matter.

The commission proposes the repeal of §9.309 because it has been incorporated into other rules and hence is no longer necessary. The commission proposes new §9.310 in order to protect the public safety.

Mark E. Foster, assistant director, legal 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 or small businesses as a result of enforcing or administering the repeal.

Mr. Foster 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 increased compliance due to the more clearly understandable rules and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Thomas 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.

§9.309. *Hose Specifications.*

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810291 Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
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For further information, please call: (512) 463-7187

• 16 TAC §9.310

The new section 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.

§9.310. *Dispensing Devices.* A pump shall be used in all instances, when necessary to ensure the safe transfer of LP-gas. A final determination will be made by the division director.

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810290 Robert F. Biard
Staff Attorney, Legal
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For further information, please call: (512) 463-7187

Subchapter N. Division XII Automatic Dispensers

• 16 TAC §9.340

The Railroad Commission of Texas proposes an amendment to §9.340, concerning the installation of automatic dispensers on fuel storage containers. The amendment to §9.340(a) would delete the requirement that a manufacturer's data report on the fuel storage container be submitted to the LP-Gas Division for review prior to the installation of an automatic dispenser. In addition, the amendment would delete the language in §9.340(a) which states that a manufacturer's data report on the fuel storage container is not required to be submitted if the container has been previously approved for service for its present use and location. Finally, the amendment to §9.340(a) substitutes the word "container" for the word "tank". The commission proposes this amendment in order to clarify the existing rules.

Mark E. Foster, assistant director, legal division, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Foster 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 increased compliance due to the more clearly understandable rule and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Thomas 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.

§9.340. *Automatic Dispenser Installation.*

(a) Prior to the installation of an automatic dispenser, plans (drawings) for the installation [and a manufacturer's data report on the fuel storage container] shall be submitted to the LP-Gas Division for examination. [(No manufacturer's data report is needed on the fuel storage container if the container was previously approved for service in its present location and use.)] Tenta-

tive approval shall be granted if the plans indicate [that] the installation will meet the requirements of the division. Final approval shall be issued only after a field inspection confirms that the dispenser, as installed, meets all the requirements of the safety rules. Plans shall detail the area within 150 feet of the dispenser and the fuel storage container [tank], including the following information:

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

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

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

Issued in Austin, Texas, on October 3, 1988.

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Staff Attorney, Legal
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Subchapter O. Division XIII

• 16 TAC §9.410, §9.414

The Railroad Commission of Texas proposes amendments to §9.410 and §9.414, concerning appurtenances and regulators of LP-gas containers installed in recreational vehicles. The amendment to §9.410 concerns the location of vents, air inlets, and flue gas outlets within a recreational vehicle for gas systems which are vapor tight to the inside of the vehicle. The amendment to §9.414 would add new subsection (f) requiring fuel storage regulators to be equipped on the low-pressure side with relief valves. The commission proposes these amendments to assure uniformity with current national standards for LP-gas fuel systems installed on recreational vehicles.

Mark E. Foster, assistant director, legal 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 or small businesses as a result of enforcing or administering the sections.

Mr. Foster 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 increased compliance due to the more clearly understandable rule and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Thomas 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.

§9.410. LP-gas Container Appurtenances.

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

(c) The discharge from safety relief devices shall not be less than five [three] feet horizontally measured along the surface of the vehicle, fuel-burning appliances intake and exhaust vents, and from all the internal combustion engine exhaust terminations below the level of such discharge. When the safety relief devices are located in a compartment vapor tight to the vehicle interior, discharge from these devices shall be considered to be located at the compartment vents and shall meet the location requirements of this paragraph. **When a system is located in a recess, vapor tight to the inside, vent openings in such recess shall not be less than three feet horizontally measured along the surface of the vehicle away from any opening into the recreational vehicle below the level of these vents.** Doors not having openable windows or screens below the level of the gas compartment vents are exempt from this requirement.

(d) The provisions of subsection (c) of this section need not be complied with if a means is provided for the automatic shutdown of appliances having combustion air inlets and flue gas outlets within the five feet separation, including extinguishment of pilots and interruption of electric current to these appliances before and throughout the filling operation.

(e) Any portion of a combustion air inlet or a flue gas outlet of a gas appliance shall be located at least five feet in any direction from the discharge outlet of safety relief devices on LP-gas containers mounted on the vehicle. When the relief device outlets are located in a

compartment vapor tight to the vehicle interior, discharge from these devices shall be considered to be located at the compartment vents.

(f)(d) Each ASME mobile fuel container manufactured on or after September 1, 1990, shall be fitted with a full internal spring-loaded relief valve. The use of a container [cylinder]-type valve incorporating a spring-loaded relief valve is prohibited.

§9.414. LP-gas Regulators.

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

(f) Final stage regulators shall be equipped on the low pressure side with a relief valve having a start-to-leak pressure setting of not less than 1.7 times nor more than three times the delivery pressure of the regulator.

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-8810288 Robert F. Biard
Staff Attorney, Legal
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For further information, please call: (512) 463-7187

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Subchapter P. Division XIV

• 16 TAC §§9.499-9.512, 9.514-9.526

The Railroad Commission of Texas proposes new §§9.499-9.512, 9.514-9.526, (Subchapter P), concerning the design and construction of cargo containers according to MC 330 and 331 Department of Transportation (DOT) specifications which are used in the transportation and distribution of LP-gas.

Subchapter F in its present form contains rules and regulations, concerning the design and construction of cargo containers used

primarily for the transportation and distribution of LP-gas. In addition, Subchapter F contains safety rules and regulations for trucks and trailers used primarily for transporting LP-gas in portable cargo containers.

In order to update the present rules and regulations to comply with current MC 330 and 331 Department of Transportation specifications, the commission proposes new Subchapter P, §§9.499-9.526. If adopted, the specifications in the new §§9.499-9.526 would be the standards by which cargo containers and trucks used to transport those containers would be licensed.

Under Subchapter F as proposed, certain nonspecification cargo containers (i. e. those not meeting the proposed standards in the new Subchapter P, §§9.499-9.526) could continue to be used for the transportation and distribution of LP-gas in Texas. Specifically, those containers with a minimum working pressure of 250 psig or more could continue to be used for the transportation and distribution of LP-gas. In addition, under the proposed sections those nonspecification units in excess of 3,500 water gallons could also continue to be used even though such units are not exempted under DOT regulations. Those nonspecification cargo containers with a minimum working pressure of less than 250 psig or those nonspecification containers not otherwise conforming with the requirements of §9.140 of this title (relating to Cargo Container Specifications) would be phased out of use for transportation of LP-gas over a five year period ending September 1, 1993. These phased-out, nonspecification containers could, however, under Subchapter F as proposed, continue to be utilized for stationary installations.

Mark E. Foster, assistant director, legal 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 or small businesses as a result of enforcing or administering the sections.

Mr. Foster 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 increased compliance due to the more clearly understandable rules and increased safety due to the updated and revised safety standards. The possible economic costs to persons who are required to comply with the sections as proposed are as follows:

	1989	1990	1991	1992	1993	5 year TOTAL
Replacement of 326 cargo con- tainers at cost per con- tainer of \$21,750	\$1,418,100	\$1,418,100	\$1,418,100	\$1,418,100	\$1,418,100	\$7,090,500
Replacement of chassis on 293 cargo containers at cost per chassis of \$17,500	\$1,025,500	\$1,025,500	\$1,025,500	\$1,025,500	\$1,025,500	\$5,127,500
Replacement of 8 trans- port trail- ers at cost per trailer of \$53,500	\$ 85,600	\$ 85,600	\$ 85,600	\$ 85,600	\$ 85,600	\$ 428,000
Less salvage value of used cargo containers, chassis and transports	\$ -119,220	\$ -119,220	\$ -119,220	\$ -119,220	\$ -119,220	\$ -596,100
TOTAL	\$2,409,980	\$2,409,980	\$2,409,980	\$2,409,980	\$2,409,980	\$12,049,900

Comments on the proposal may be submitted to Thomas 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 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.

§9.499. Subchapter P. Division XIV applies to cargo containers constructed to MC-330 and 331 Department of Transportation (DOT) specifications used in the transportation and distribution of LP-gas.

§9.500. MC-330, MC-331 Department of Transportation Specification Requirements. All transports not currently registered with this division prior to September 1, 1989, must meet MC-330 or MC-331 DOT specifications.

§9.501. Testing Requirements.

(a) Each cargo container unit required to be registered with this division must be tested at least once every five years and each test prescribed in this section must be conducted in accordance with the applicable provision(s) of the ASME Code and in accordance with the quality procedures documentation approved by the division. Any cargo container which has been out of LP-gas service for a period of one year or more shall not be returned to LP-gas service until it has fulfilled the testing requirements in this section (which shall include any test

the division director may reasonably require). Such documentation must be filed by either an ASME Code fabricator licensed by the division or by a testing laboratory registered with the division. Upon completion of any test or repairs required under this section, the results of any such test or repair must clearly indicate whether such unit is safe for LP-gas service and must be submitted by the licensed fabricator or registered testing laboratory that tested or repaired the affected cargo container unit on a LPG Form 8 (Manufacturer's Report of Pressure Vessel Repair, Modification, and Testing) and must be received at the division within 30 days of the date of repair or the due date of the test(s) required under this section. If evidence of any unsafe condition is discovered as a result of any of the tests performed under this section, the cargo container unit must be immediately removed from LP-gas service. Such units may not be returned to LP-gas service until an official communication is received from the division, which will include written notice that authorizes returning such unit to LP-gas service.

(b) Each container without fittings must be subjected to a hydro-static chart-recorded test for a continuous period of 30 minutes. During such test, the internal pressure must be hydraulically generated to 1B times the working pressure of the container.

(1) The container shall be inspected for corroded areas, dents, or other conditions (including leakage under test pressure) which could indicate weakness that might render the container unsafe for LP-gas service.

(2) When testing insulated cargo containers, the insulation and jacketing need not be removed unless it is otherwise impossible to reach test pressure and maintain a condition of pressure equilibrium after

test pressure is reached.

§9.502. Markings and Placarding.

(a) Each LP-gas transport and each container delivery unit in LP-gas service shall be lettered with the name of the licensee or in the name of the ultimate consumer operating the unit. Such lettering shall be placed in accordance with the table in §9.502 of this title (relating to Marking, Placarding, and Inspection Requirements). The name shall be in legible letters not less than two inches in height in sharp color contrast to the background. Note: A final determination as to whether the name of such unit is sufficient to properly identify the name of the operator will be made by the director.

(b) Each LP-gas transport in LP-gas service shall be lettered "liquefied petroleum gas" with "propane" or "butane" as acceptable substitutes and shall be placed in accordance with the table in §9.502 of this title (relating to Marking, Placarding, and Inspection Requirements). Such lettering shall be in legible letters not less than two inches in height in sharp color contrast to the background.

(c) The month and year of the latest date(s) on which a retest was conducted as required by §9.501 of this title (relating to Testing Requirements) shall be legibly marked on the tank(s) in numerals not less than 1 1/4 inches in height and placed near the DOT specification plate.

(d) Each LP-gas transport and each container delivery unit in LP-gas service shall have placards bearing United Nations (UN) Identification Number 1075 (which identifies liquefied petroleum gas) and hazardous classification number three (which identifies flammable gases) as follows:



Except: Container delivery units not carrying LP-gas containers. Such placards shall be placed in accordance with the table in §9.502 of this title (relating to Marking, Placarding, and Inspection Requirements). Any unit transporting more than one type of flammable gas (in addition to LP-gas) may post a flammable placard in the location indicated in this subsection in lieu of the United Nation Identification Number 1075. Such flammable placard is of the following type:



(e) All markings and placards required under this section must be maintained in good, legible condition, and visible at all times.

(f) Where a transport unit is loaned or leased for a period of time not to exceed 30 days, the unit may have painted or permanently affixed thereon, in lieu of the name of the licensee operating the transport unit, the name of the owner of the transport unit in letters not less than six inches in height.

Table 9.502

Markings, Placarding, and Inspection Requirements

Cylinder Delivery Units	Name of Licensee or Ultimate Consumer	Placards with UN 1075 I.D.			Content			Re-test every _____ years	Visual Requalification every _____ years
		Both Sides or Rear	Front	Both Sides	Rear	Front	Both Sides		
X			X	X	X			5	5
LP-Gas Transports	X	X	X	X	X	X		5	5

§9.503. Mounting of Transfer Equipment.

(a) Transfer equipment, including pumps or compressors, may be mounted on a cargo unit, but shall not be located forward of the cab. Transfer equipment must be either hydraulically driven, or must be powered by the engine (which does not include an auxiliary engine) to which it is attached.

(b) When flexible connectors are necessary, pumps shall be connected to the container(s) by means of an approved flexible stainless steel wire braided reinforced hose connector.

(c) All flexible hose connector(s) shall be protected against abrasion or wear.

§9.504. Pressure Gauge. Each cargo container must be equipped with a pressure gauge for LP-gas service which must be maintained in good operating condition at all times. The container opening for the pressure gauge must have an orifice no larger than .060 inch in diameter.

§9.505. Thermometers and Thermometer Wells Required. Each cargo container unit shall be equipped with a thermometer well that is threaded and oil filled to adequately determine the temperature of the product. A 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 a MC-330/331 cargo container must be equipped with a remotely controlled internal shutoff valve. However, an engine fuel line on a truck-mounted container opening of not over 3/4 inch National Pipe Thread shall be equipped with a valve having an integral excess flow valve.

(b) Each remotely controlled internal valve must comply with the following requirements.

(1) The seat of the valve shall be inside the container, or in the nozzle opening or flange, or in a companion flange bolted to the nozzle or flange.

(2) All parts of the valve inside the container, nozzle, or companion flange shall be made of material not subject to corrosion or other deterioration due to the presence of the product.

(3) Parts shall be arranged so that the valve will be effectively seated in the event of damage to the parts exterior to the container.

(4) The valve shall be operated normally by mechanical means, by hydraulic means, by air, or by gas pressure.

(5) On a container over 3,500 gallons water capacity, each internal shutoff valve must be provided with remote means of automatic closure, both mechanical and thermal, that are installed at the ends of the container in at least two diagonally opposite locations. If the discharge connection at the container is not in the general vicinity of one of the two locations specified above, one additional fusible element must be installed so that heat from a fire in that area will activate the emergency control system. Fusible elements shall not have a melting point exceeding 250 degree Fahrenheit.

(6) Each filling and discharge line must be provided with a manual shutoff valve located as close to the cargo container as practicable. However, when an internal shutoff valve that closes automatically is used, a manual shutoff valve must be located in the line ahead of the hose connection. The use of a so-called "stop-check" or excess flow valve is prohibited except as otherwise provided for in this section.

(7) On a container of 3,500 gallons water capacity or less, each internal shutoff valve shall be provided with at least one remote control station, and the actuating means may be mechanical. This station shall be at one end of the container, away from the discharge connection area.

§9.507. Protection Against Contamination.

(a) Any cargo 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 cargo container. Noncorrosive 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. All materials of construction used in cargo containers and their appurtenances shall not be subject to destructive attack by the contents of the container.

(b) Any LP-gas introduced into a transport cargo container shall not contain anhydrous ammonia or hydrogen sulfide. When such a possibility exists the LP-gas shall be tested using the following tests:

- (1) litmus paper test for NH₃;
- (2) lead acetate test for H₂S; and
- (3) test contained in for contaminants GPA 2140.

§9.508. Rear Bumper Protection. Each transport shall be provided with at least one rear bumper designed to protect the container(s), piping, and other LP-gas related appurtenances. The bumpers shall be designed

to withstand the impact of the fully loaded vehicle with a deceleration of 2 "g" (i. e. two times the force of gravity), using a safety factor of four based on the ultimate strength of the bumper material.

§9.509. Safety Relief Devices. Safety relief valves shall be of the spring-loaded full internal type and protected so that in the event of overturn of the vehicle onto a hard surface, their opening will not be prevented and their discharge will not be restricted. Such protection shall be designed, fabricated, repaired, and maintained to withstand static loading in any direction equal to twice the weight of the container and attachments when filled with product, using a safety factor of not less than four, based on the ultimate strength of the material to be used, without damage to the fittings protected, and must be made of metal at least 3/16 inch thick.

§9.510. Protection, Piping, Valves, and Fittings.

(a) All piping, valves, relief devices, and fittings shall be securely mounted and shall be protected against damage and breakage.

(b) All piping shall be a minimum of Schedule 80. Fittings shall be forged steel.

§9.511. Supports-120 Degree Arc Required. Cargo containers must be supported by external cradles with pads, both of which are continuously welded and support at least 120 degrees of the shell circumference. The design calculations for the supports must include beam stress, shear stress, torsion stress, bending moment, and acceleration stress for the loaded vehicle as a unit, using a safety factor of four based on the ultimate strength of the material and on a two "g" longitudinal and lateral loading and three times the static weight in vertical loading.

§9.512. Painting.

(a) All cargo transport containers shall be painted white or aluminum. Undercarriage painting, if of contrasting color, shall not extend above the 120 degrees support cradle.

(b) Insulated cargo containers equipped with either a stainless steel or aluminum outer shell or insulation cover, need not be painted.

§9.514. Electrical Equipment and Lighting. LP-gas transports and container delivery units shall not be equipped with an artificial light other than electrical. Lighting circuits shall have suitable overcurrent protection (fuses or automatic circuit breakers); the wiring shall have sufficient current car-

rying capacity and mechanical strength, and shall be secured, insulated, and protected against physical damage.

§9.515. Liquid Level Gauging Devices. Each truck and trailer container shall be equipped with a liquid level gauging device of approved design, for example, a rotary gauge, or a fixed tube device. Fixed tube devices shall be so arranged that the maximum liquid level to which the container may be filled is set at the maximum permitted under the filling density table in §9.47 of this title (relating to Filling Density), but based on an initial liquid temperature not to exceed 40 degrees Fahrenheit. Liquid level gauging devices of the rotary tube type may be used without installation of an excess flow valve, provided the bleed valve opening is not larger than .060 inch in diameter. The container opening for the fixed liquid gauging device shall be restricted inside the container with an opening not larger than .060 inch in diameter. (Refer to §9.923 of this title (relating to Appendix C for Method of Calculating Length of Fixed Tube)).

§9.516. Exhaust System. No part of the exhaust system on any LP-gas transport or container delivery unit shall be located less than six inches unless shielded from any piping, pump, and/or compressor. The exhaust system discharge shall not impinge on the container(s), piping, or related appurtenances.

§9.517. Extinguishers Required.

(a) Each transport power unit shall be equipped with a fire extinguisher having an Underwriter's Laboratory (UL) rating of 10 B:C or more. Each fire extinguisher must be labeled or marked with its Underwriter's Laboratory rating.

(b) Fire extinguishers shall be fully charged and kept in good mechanical condition and located so as to be accessible for use. Fire extinguisher shall be mounted with a mounting bracket which will permit visual determination of being fully charged.

§9.518. Transfer of Liquids, Manifest. All manifest or bills of lading shall indicate the amount and type of odorant per gross gallons, the vapor pressure of the product at 100 degrees Fahrenheit, the net gallons, the loading temperature, specific gravity at 60 degrees Fahrenheit, the type of product, and United Nations number with verification by the loading entity and loader. Exception: Excluding those loads covered by permanent shipping paper(s) authorized by DOT.

§9.519. Transfer of Fuel on Highways, Streets, or Alleys. Transferring LP-gas on highways, streets, or alleys, is prohibited except in an emergency or where such containers are on machinery being used for the

construction or maintenance of such highways, streets, or alleys.

§9.520. Parking of LP-Gas Transports and Container Delivery Units. LP-gas transport or container delivery units (except in emergency) shall not be parked at night on any street, highway, or alley. This does not prevent the driver from necessary absences from the vehicle in connection with normal duties, nor shall it prevent parking for meals and rest stops. Such units must not be parked in a congested area and must be parked a minimum distance of 50 feet from any building, except buildings devoted exclusively to the transaction of LP-gas business operations.

§9.521. Uniform Protection Standards.

(a) All LP-gas transport units and container delivery units (including appurtenances) shall be maintained in a safe operating condition at all times.

(b) Any transport unit or container delivery unit discovered to be in an unsafe condition while being operated on a public roadway may be continued in operation only to the nearest place where repairs can safely be made. Such operation shall be conducted only if it is less hazardous to the public than to permit the transport unit or container delivery unit to remain on the public roadway.

§9.522. Inspection of Cargo Containers. Every cargo container shall receive an external visual inspection by division personnel at least once in every four fiscal years. (September 1-August 31).

§9.523. Delivery of Inspection Report to Licensee. The transport driver of any transport unit receiving an inspection report from the commission shall deliver it to the licensee in whose name the transport unit is registered.

§9.524. Issuance of LPG Form 4 Decal.

(a) An LPG Form 4 shall not be issued to any transport that has not been tested as required by §9.501 of this title (relating to Testing Requirements) at least once in the preceding five years, or physically inspected by the division as required by §9.522 of this title (relating to Inspection of Cargo Containers). An LPG Form 4 shall not be issued to any transport that has been determined as unsafe for LP-gas service by the division or a testing agency registered with this division in accordance with §9.501 of this title (relating to Testing Requirements).

(b) LPG Form 4, when issued by the director of the LP-Gas Division, Railroad Commission of Texas, and properly affixed in accordance with placement instructions, shall authorize the licensee or

ultimate consumer to whom it has been issued and to no other person to operate such unit in the transportation of LP-gas and further shall authorize the filling of the cargo container(s).

(c) No person shall operate an LP-gas transport unit or container delivery unit in this state unless an LPG Form 4 authorizing its operation has been affixed in accordance with placement instructions or unless its operation has been specifically approved by a communication from the Railroad Commission of Texas.

(d) No person shall introduce LP-gas into a cargo container(s) unless an LPG Form 4 issued for that unit is properly affixed in accordance with placement instructions or unless specifically approved by communication from the Railroad Commission of Texas.

(e) The LPG Form 4 is not transferrable by the person, firm, or corporation to whom it has been issued, but must be registered by any subsequent licensee or ultimate consumer prior to being placed into LP-gas service.

§9.525. Container Appurtenances and Related Equipment.

(a) All transport containers shall be equipped with full baffles, adequate to prevent surging of container contents.

(b) Stops or other means must be provided to prevent relative motion between the container and the vehicle chassis when the vehicle is in operation.

(c) Cargo container(s) shall be mounted on vehicle frame with minimum grade of 8, 5/8 inch, hold down bolts. "U" or "J" bolts are prohibited.

(d) Acme-threaded adapters or hose couplings must be of brass material.

(e) All transport trailers shall be of the fifth wheel type and shall be directly attached to the tractor; the towing of additional trailers is prohibited.

(f) Each cargo container constructed after September 1, 1988, shall meet the following requirements.

(1) The minimum gross vehicle weight (GVW) must be stamped in letters not less than 3/8 inches in height on the DOT specification plate by the cargo container manufacturer.

(2) The chassis manufacturer's stated gross vehicle weight rating (GVWR) shall not be exceeded.

(3) The completed delivery unit (with chassis mounted cargo container) must have a container length to container diameter ratio of 2.25 or greater to one.

(g) Each cargo container mounted after September 1, 1988, must meet the following requirements.

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

(2) Tilt cab chassis must equal to 33 3/10% (+ -5%) of the (GAWR) and 66 66/100 (+ -5%) for the (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.

§9.526. *Brakes.* Each cargo container chassis shall be equipped with air brakes or an approved equal.

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810287 Robert F. Biard
Staff Attorney, Legal
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Railroad Commission of
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For further information, please call: (512) 463-7187



Subchapter Z. Appendices

• 16 TAC §§9.921, 9.923, 9.926, 9.927

The Railroad Commission of Texas proposes amendments to §§9.921, 9.923, 9.926, and 9.927, concerning the calculation of the minimum required relieving capacity for pressure relief valves for containers not constructed to Department of Transportation specifications, the method for calculating the length of fixed tubes, the method for calculating the maximum volume of LP-gas which can be placed in a container for which the length of the fixed dip tube is set, and the flow of LP-gas through fixed orifices; the repeal of §9.922 and §9.924, concerning the minimum required rate of discharge of relief valves for LP-gas vaporizers and the method of calculating the maximum liquid volume which can be placed in a container at any liquid temperature; and new §§9.922, 9.924, and 9.928, concerning the approximate properties of LP-gases, formulas for calculating the maximum LP-gas capacity of containers, and an illustration of the distance requirements for LP-gas tank placement at residences and public buildings.

The commission proposes these amendments, repeals, and new sections to clarify the existing rules and to assure uniformity with current national safety standards as set forth in the National Fire Protection Association (NFPA) manual entitled *Standards for the Storage and Handling of LP-Gas*.

Mark E. Foster, assistant director, 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 or small businesses as a result of enforcing or administering the sections.

Mr. Foster 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 increased compliance due to the more clearly understandable rules and increased safety due to the updated and revised safety requirements. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Thomas 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.

§9.921. Spring Loaded Pressure Relief Valve(s) for Aboveground and Cargo Containers. [Appendix A]. Minimum required relieving capacity [rate of discharge] in cubic feet per minute of air at 120% of the maximum [minimum] permitted start-to-leak [start to discharge] pressure for [safety] relief valves to be used on containers other than those constructed in accordance with Department of Transportation [Interstate Commerce Commission] specifications.

Surface area = Total outside area of container in square feet. When the surface area is not stamped on the nameplate [name plate] or when the marking is not legible, the area can be calculated by using one of the following formulas:

(1) Cylindrical container with hemispherical heads: Surface area [Area]
 = Overall length x outside diameter x 3.1416.

(2) Cylindrical container with other than hemispherical heads [semi-ellipsoidal]: Surface area [Area] = (Overall length + 0.3 [.3] outside diameter) x outside diameter x 3.1416.

(3) Spherical container: Surface area [Area] = Outside diameter squared x 3.1416.

Flow rate CFM [SCFM] Air = Cubic Feet per minute of air required at standard conditions, 60°F. and atmospheric pressure (14.7 PSIA).

<i>Surface Area Sq Ft</i>	<i>Flow Rate SCFM Air</i>	<i>Surface Area Sq Ft</i>	<i>Flow Rate SCFM Air</i>	<i>Surface Area Sq Ft</i>	<i>Flow Rate SCFM Air</i>
20	626	170	3620	600	10170
25	751	175	3700	650	10860
30	872	180	3790	700	11550
35	990	185	3880	750	12220
40	1100	190	3960	800	12880
45	1220	195	4050	850	13540
50	1330	200	4130	900	14190
55	1430	210	4300	950	14830
60	1540	220	4470	1000	15470
65	1640	230	4630	1050	16100
70	1750	240	4800	1100	16720
75	1850	250	4960	1150	17350
80	1950	260	5130	1200	17960
85	2050	270	5290	1250	18570
90	2150	280	5450	1300	19180
95	2240	290	5610	1350	19780
100	2340	300	5760	1400	20380
105	2440	310	5920	1450	20980
110	2530	320	6080	1500	21570
115	2630	330	6230	1550	22160
120	2720	340	6390	1600	22740
125	2810	350	6540	1650	23320
130	2900	360	6690	1700	23900
135	2990	370	6840	1750	24470
140	3080	380	7000	1800	25050
145	3170	390	7150	1850	25620
150	3260	400	7300	1900	26180
155	3350	450	8040	1950	26750
160	3440	500	8760	2000	27310
165	3530	550			

[(1)] The rate of discharge may be interpolated for intermediate values of surface area. For containers with total outside surface area greater than 2,000 [2000] sq. ft. the required flow rate can be calculated using the formula. Flow Rate CFM Air = $53.632 A^{0.82}$, Where A = total outside surface area of container in square feet.

Air Conversion Factors

(Factors by which discharge rates for LP-gas [LP Gas] are to be multiplied in order to get corresponding discharge rates for air.)

Container Type

100	125	150	175	200	250
1.162	1.142	1.113	1.078	1.010	1.010

\$9.923. APPENDIX C

METHOD FOR CALCULATING LENGTH OF FIXED TUBES

1. Calculate the Maximum Volume, for which length fixed tubes [length tube] shall be set by the following formula:

$$\frac{\text{Total Capacity of Container (Gals.)} \times \text{Filling Density}}{\text{Specific Gravity of L.P. Gas} \times \text{Volume Correction Factor} \times 100} = \text{Maximum Volume for which [fixed] length that fixed tube shall be set.}$$

NOTE: Volume Correction Factor shall be based on the thermal coefficient of expansion of the liquefied petroleum gas from 40°F for aboveground containers (or 50°F for underground containers) to 60°F (for example, propane with specific gravity of 0.510 has a Volume Correction Factor of 1.031 from 40°F to 60°F). The following table gives representative Volume Correction

Factors:

VOLUME CORRECTION FACTORS.

Specific Gravity									
0.500	0.510	0.520	0.530	0.540	0.550	0.560	0.570	0.580	0.590
(Aboveground) From 40°F to 60°F									
1.034	1.031	1.028	1.026	1.025	1.023	1.021	1.020	1.019	1.018
(Underground) From 50°F to 60°F									
1.018	1.016	1.014	1.013	1.012	1.011	1.010	1.009	1.009	1.009

2. (No change.)

§9.926. APPENDIX F

METHOD OF CALCULATING MAXIMUM VOLUME OF LP-GAS [L.P.GAS] WHICH CAN BE PLACED
IN A CONTAINER FOR WHICH LENGTH OF FIXED DIP TUBE IS SET.

[1. It is impossible to set out in a table the length of a fixed tube for various capacity tanks because of the varying tank diameters and lengths and because the tank may be installed either in a vertical or horizontal position. Knowing the maximum permitted filling volume in gallons, however, the length of the fixed tube can be determined by the use of a strapping table obtained from the container manufacturer. The length of the fixed tube should be such that when its lower end touches the surface of the liquid in the container, the contents of the container will be the maximum permitted volume as determined by the following formula:]

(1) [2.] Formula for determining maximum volume of Liquefied Petroleum Gas

for which a fixed length of [pf] dip tube shall be set.

$$\frac{\text{Water Cap. (Gals) of Container (a)} \times \text{Filling Density (b)}}{\text{Sp. G. of LP Gas (a) x Volume Correction Factor (c) x 100}} = \text{Maximum Volume of L.P. Gas}$$

NOTE: (a) Measured at 60°F.

(b) From §9.47 [Section B.17] "Filling Densities"

(c) For aboveground containers the liquid temperature is assumed to be 40°F. and for underground containers the liquid temperature is assumed to be 50°F. To correct the liquid volumes at these temperatures to 60°F. the following factors shall be used:

[(See Section)]

VOLUME CORRECTION FACTORS

Specific Gravity	Aboveground	Underground
0.500	1.033	1.107
.510	1.031	1.016
.520	1.029	1.015
.530	1.028	1.014
.540	1.026	1.013
.550	1.025	1.013
.560	1.024	1.012
.570	1.023	1.011
.580	1.021	1.011
.590	1.020	1.010

TABLE A

Orifice or Drill Size	Propane	Butane or Butane-Propane Mixtures	Orifice or Drill Size	Propane	Butane or Butane-Propane Mixtures
.008	500	554	51	35,300	39,400
.009	641	709	50	38,500	42,800
.010	791	875	49	41,850	45,350
.011	951	1,053	48	45,450	50,300
.012	1,130	1,250	47	48,400	53,500
80	1,430	1,590	46	51,500	57,000
79	1,655	1,830	45	52,900	58,500
78	2,015	2,230	44	58,050	64,350
77	2,545	2,815	43	62,200	69,000
76	3,140	3,480	42	68,700	76,200
75	3,465	3,840	41	72,450	80,200
74	3,985	4,410	40	75,400	83,500
73	4,525	5,010	39	77,850	86,200
72	4,920	5,450	38	81,000	89,550
71	5,320	5,900	37	85,000	94,000
70	6,180	6,830	36	89,200	98,800
69	6,710	7,430	35	95,000	105,300
68	7,560	8,370	34	97,000	107,200
67	8,040	8,910	33	101,000	111,900
66	8,550	9,470	32	105,800	117,000
65	9,630	10,670	31	113,200	125,400
64	10,200	11,300	30	129,700	143,600
63	10,800	11,900	29	145,700	163,400
62	11,360	12,530	28	154,700	171,600
61	11,930	13,280	27	163,100	180,000
60	12,570	13,840	26	169,900	187,900
59	13,220	14,630	25	175,500	194,600
58	13,840	15,300	24	181,700	201,600
57	14,550	16,090	23	186,800	206,400
56	16,990	18,790	22	193,500	214,500
55	21,200	23,510	21	198,600	220,200
54	23,850	26,300	20	203,700	225,000
53	27,790	30,830	19	217,100	241,900
52	31,730	35,100	18	225,600	249,800

TABLE B

EQUIVALENT ORIFICE SIZES AT HIGH ALTITUDES
 (Includes 4% input reduction for each 1,000 feet)

Orifice Size at Sea Level	Orifice Size Required at Other Elevations										Orifice Size at Sea Level	Orifice Size Required at Other Elevations									
	200'	300'	400'	500'	600'	700'	800'	900'	1000'	200'		300'	400'	500'	600'	700'	800'	900'	1000'		
1	2	2	3	3	4	5	7	8	10		41	42	42	42	43	43	44	44	45	46	
2		3	3	4	5	6	7	9	10	12		42	42	43	43	44	44	45	46	47	
3		4	5	7	8	9	10	12	13	15		43	44	44	44	45	45	46	47	48	
4		6	7	8	9	10	12	13	14	16		44	45	45	45	46	47	47	48	49	
5		7	8	9	10	12	13	14	15	17		45	46	47	47	47	48	48	49	50	
6		8	9	10	11	12	13	14	16	17		46	47	47	47	48	48	49	50	50	
7		9	10	11	12	13	14	15	16	18		47	48	48	49	49	49	50	50	51	
8		10	11	12	13	13	15	16	17	18		48	49	49	49	50	50	50	51	52	
9		11	12	12	13	14	16	17	18	19		49	50	50	50	51	51	51	52	52	
10		12	13	13	14	15	16	17	18	19		50	51	51	51	52	52	52	53	53	
11		13	13	14	15	16	17	18	19	20		51	51	52	52	52	52	53	53	54	
12		13	14	15	16	17	17	18	19	20		52	52	53	53	53	53	54	54	54	
13		15	15	16	17	18	18	19	20	22		53	54	54	54	54	54	55	55	55	
14		16	16	17	18	18	19	20	21	23		54	54	55	55	55	55	56	56	56	
15		16	17	17	18	19	20	20	22	24		55	55	55	55	56	56	56	56	57	
16		17	18	18	19	19	20	22	23	26		56	56	56	57	57	57	58	59	60	
17		18	19	19	20	21	22	23	24	26		57	58	58	58	60	60	61	62	63	
18		19	19	20	21	22	23	24	26	27		58	58	60	60	61	62	62	63	64	
19		20	20	21	22	23	25	26	27	28		59	60	61	61	62	62	63	64	65	

20	22	22	23	24	25	26	27	28	29	60	61	61	62	63	63	64	64	65	65
21	23	23	24	25	26	27	28	28	29	61	62	62	63	63	64	65	65	66	66
22	23	24	25	26	27	27	28	29	29	62	63	63	64	64	65	65	66	66	67
23	25	25	26	27	27	28	29	29	30	63	64	64	65	65	66	66	67	68	68
24	25	26	27	27	28	28	29	29	30	64	65	65	65	65	66	66	66	67	68
25	26	27	27	28	28	29	29	30	30	65	65	66	66	66	67	67	68	68	69
26	27	28	28	28	29	29	30	30	30	66	67	67	68	68	68	69	69	69	70
27	28	28	28	29	29	29	30	30	31	67	68	68	68	69	69	69	70	70	70
28	29	29	29	30	30	30	30	31	31	68	68	69	69	69	70	70	70	71	71
29	29	30	30	30	30	31	31	31	32	69	70	70	70	70	71	71	71	72	72
30	30	31	31	31	31	32	32	33	35	70	70	71	71	71	71	72	72	73	73
31	32	32	32	33	34	35	36	37	38	71	72	72	72	73	73	73	74	74	74
32	33	34	35	35	36	36	37	38	40	72	73	73	73	73	74	74	74	74	75
33	35	35	36	36	37	38	38	40	41	73	73	74	74	74	74	75	75	75	76
34	35	36	36	37	37	38	39	40	42	74	74	75	75	75	75	76	76	76	76
35	36	36	37	37	38	39	40	41	42	75	75	76	76	76	76	77	77	77	77
36	37	38	38	39	40	41	41	42	43	76	76	76	77	77	77	77	77	77	77
37	38	39	39	40	41	42	42	43	43	77	77	77	77	78	78	78	78	78	78
38	39	40	41	41	42	42	43	43	44	78	78	78	78	79	79	79	79	80	80
39	40	41	41	42	42	43	43	44	44	79	79	80	80	80	80	.013	.012	.012	012
40	41	42	42	43	43	44	44	45	45	80	80	.013	.013	.013	.012	.012	.012	.012	.011

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810285 Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187

◆ ◆ ◆
• 16 TAC §§9.922, §9.924

(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 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.

§9.922. *Appendix B Minimum Required Rate of Discharge of Relief Valves for Liquefied Petroleum Gas Vaporizers*

§9.924. *Appendix D Method of Calculating Maximum Liquid Volume Which Can Be Placed in a Container at Any Liquid Temperature.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 3, 1988.

TRD-8810286 Robert F. Biard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187

◆ ◆ ◆
• 16 TAC §§9.922, 9.924, 9.928

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.

§9.922. APPENDIX B

APPROXIMATE PROPERTIES OF LP-GASES

	Commercial Propane	Commercial Butane
Vapor Pressure in psig at:		
70°F	127	17
100°F	196	37
105°F	210	41
130°F	287	69
Specific Gravity of Liquid		
at 60°F	0.504	0.582
Initial Boiling Point at		
14.7 psia, Degrees F	-44	15
Weight per Gallon of Liquid,		
at 60°F, lb	4.20	4.81
Specific Heat of Liquid,		
Btu/lb at 60°F	0.630	0.549
Cu. ft. of Vapor per Gallon		
at 60°F	36.38	31.26
Cu. ft. of Vapor per Pound		
at 60°F	8.66	6.51
Specific Gravity of Vapor (Air = 1) at 60°F	1.50	2.01
Ignition Temperature in Air,		
Degrees °F	920-1120	900-1000
Maximum Flame Temperature in		
Air, Degrees °F	3,595	3,615
Limits of Flammability in Air		
Percent of Vapor in Air-Gas		
Mixture:		
(a) Lower	2.15	1.55
(b) Upper	9.60	8.60
Latent Heat of Vaporization		
at Boiling Point:		
(a) Btu per pound	184	167
(b) Btu per gallon	773	808
Total Heating Values after		
Vaporization:		
(a) Btu per Cubic Foot	2,488	3,280
(b) Btu per Pound	21,548	21,221
(c) Btu per Gallon	90,502	102,032

Appendix D

Table 1

LIQUID VOLUME CORRECTION FACTORS

SPECIFIC GRAVITIES AT 60°F 60°F

Observed Temperature Degrees Fahrenheit	SPECIFIC GRAVITIES AT 60°F 60°F												
	0.500	Propane 0.5079	0.510	0.520	0.530	0.540	0.550	0.560	2nd Butane 0.5631	0.570	0.580	normal Butane 0.5844	0.590
VOLUME CORRECTION FACTORS													
-30	1.160	1.155	1.153	1.146	1.140	1.133	1.127	1.122	1.120	1.116	1.111	1.108	1.106
-45	1.153	1.148	1.146	1.140	1.134	1.128	1.122	1.117	1.115	1.111	1.106	1.103	1.101
-40	1.147	1.142	1.140	1.134	1.128	1.122	1.117	1.111	1.110	1.106	1.101	1.099	1.097
-35	1.140	1.135	1.134	1.128	1.122	1.116	1.112	1.106	1.105	1.101	1.096	1.094	1.092
-30	1.134	1.129	1.128	1.122	1.116	1.111	1.106	1.101	1.100	1.096	1.092	1.090	1.088
-25	1.127	1.122	1.121	1.115	1.110	1.105	1.100	1.095	1.094	1.091	1.087	1.085	1.083
-20	1.120	1.115	1.114	1.109	1.104	1.099	1.095	1.090	1.089	1.086	1.082	1.080	1.079
-15	1.112	1.109	1.107	1.102	1.097	1.093	1.089	1.084	1.083	1.080	1.077	1.075	1.074
-10	1.105	1.102	1.100	1.095	1.091	1.087	1.083	1.079	1.078	1.075	1.072	1.071	1.069
-5	1.098	1.094	1.094	1.089	1.085	1.081	1.077	1.074	1.073	1.070	1.067	1.066	1.065
0	1.092	1.088	1.088	1.084	1.080	1.076	1.073	1.069	1.068	1.066	1.063	1.062	1.061
2	1.089	1.086	1.085	1.081	1.077	1.074	1.070	1.067	1.066	1.064	1.061	1.060	1.059
4	1.086	1.083	1.082	1.079	1.075	1.071	1.068	1.065	1.064	1.062	1.059	1.058	1.057
6	1.084	1.080	1.080	1.076	1.072	1.069	1.065	1.062	1.061	1.059	1.057	1.055	1.054
8	1.081	1.078	1.077	1.074	1.070	1.066	1.063	1.060	1.059	1.057	1.055	1.053	1.052
10	1.078	1.075	1.074	1.071	1.067	1.064	1.061	1.058	1.057	1.055	1.053	1.051	1.050
12	1.075	1.072	1.071	1.068	1.064	1.061	1.059	1.056	1.055	1.053	1.051	1.049	1.048
14	1.072	1.070	1.069	1.066	1.062	1.059	1.056	1.053	1.053	1.051	1.049	1.047	1.046
16	1.070	1.067	1.066	1.063	1.060	1.056	1.054	1.051	1.050	1.048	1.046	1.045	1.044
18	1.067	1.065	1.064	1.061	1.057	1.054	1.051	1.049	1.048	1.046	1.044	1.043	1.042
20	1.064	1.062	1.061	1.058	1.054	1.051	1.049	1.046	1.046	1.044	1.042	1.041	1.040
22	1.061	1.059	1.058	1.055	1.052	1.049	1.046	1.044	1.044	1.042	1.040	1.039	1.038
24	1.058	1.056	1.055	1.052	1.049	1.046	1.044	1.042	1.042	1.040	1.038	1.037	1.036
26	1.055	1.053	1.052	1.049	1.047	1.044	1.042	1.039	1.038	1.037	1.036	1.036	1.034
28	1.052	1.050	1.049	1.047	1.044	1.041	1.039	1.037	1.037	1.035	1.034	1.034	1.032
30	1.049	1.044	1.046	1.044	1.041	1.039	1.037	1.035	1.035	1.033	1.032	1.032	1.030
32	1.046	1.044	1.043	1.041	1.038	1.036	1.035	1.033	1.033	1.031	1.030	1.030	1.028
34	1.043	1.041	1.040	1.038	1.036	1.034	1.032	1.031	1.030	1.029	1.028	1.028	1.026
36	1.039	1.038	1.037	1.035	1.033	1.031	1.030	1.028	1.028	1.027	1.025	1.025	1.024
38	1.036	1.035	1.034	1.032	1.031	1.029	1.027	1.026	1.025	1.025	1.023	1.023	1.022
40	1.033	1.032	1.031	1.029	1.028	1.026	1.025	1.024	1.023	1.023	1.021	1.021	1.020
42	1.030	1.029	1.028	1.027	1.025	1.024	1.023	1.022	1.021	1.021	1.019	1.019	1.018
44	1.027	1.026	1.025	1.023	1.022	1.021	1.020	1.019	1.019	1.018	1.017	1.017	1.017
46	1.023	1.022	1.022	1.021	1.020	1.018	1.018	1.017	1.016	1.016	1.015	1.015	1.014
48	1.020	1.019	1.019	1.018	1.017	1.016	1.015	1.104	1.014	1.013	1.013	1.013	1.012
50	1.017	1.016	1.016	1.015	1.014	1.013	1.013	1.012	1.012	1.011	1.011	1.011	1.010
52	1.014	1.013	1.012	1.012	1.011	1.010	1.010	1.009	1.009	1.009	1.009	1.009	1.008
54	1.010	1.010	1.009	1.009	1.008	1.008	1.007	1.007	1.007	1.007	1.006	1.006	1.006
56	1.007	1.007	1.006	1.006	1.005	1.005	1.005	1.005	1.005	1.005	1.004	1.004	1.004
58	1.003	1.003	1.003	1.003	1.003	1.003	1.002	1.002	1.002	1.002	1.002	1.002	1.002
60	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
62	0.997	0.997	0.997	0.997	0.997	0.997	0.997	0.998	0.998	0.998	0.998	0.998	0.998
64	0.993	0.993	0.994	0.994	0.994	0.994	0.995	0.995	0.995	0.995	0.996	0.996	0.996
66	0.990	0.990	0.990	0.990	0.991	0.992	0.992	0.993	0.993	0.993	0.993	0.993	0.993
68	0.986	0.986	0.987	0.987	0.988	0.989	0.990	0.990	0.990	0.990	0.991	0.991	0.991
70	0.983	0.983	0.984	0.984	0.985	0.986	0.987	0.988	0.988	0.988	0.989	0.989	0.989
72	0.979	0.980	0.981	0.981	0.982	0.983	0.984	0.985	0.986	0.986	0.987	0.987	0.987
74	0.976	0.976	0.977	0.978	0.980	0.980	0.982	0.983	0.983	0.984	0.985	0.985	0.985
76	0.972	0.973	0.974	0.975	0.977	0.978	0.979	0.980	0.981	0.981	0.982	0.982	0.983
78	0.969	0.970	0.970	0.972	0.974	0.975	0.977	0.978	0.978	0.979	0.980	0.980	0.981
80	0.965	0.967	0.967	0.969	0.971	0.972	0.974	0.975	0.976	0.977	0.978	0.978	0.979
82	0.961	0.963	0.963	0.966	0.968	0.969	0.971	0.972	0.973	0.974	0.976	0.976	0.977
84	0.957	0.959	0.960	0.962	0.965	0.966	0.968	0.970	0.971	0.972	0.974	0.974	0.975
86	0.954	0.956	0.956	0.959	0.961	0.964	0.966	0.967	0.968	0.969	0.971	0.971	0.972
88	0.950	0.952	0.953	0.955	0.958	0.961	0.963	0.965	0.966	0.967	0.969	0.969	0.970
90	0.946	0.949	0.949	0.952	0.955	0.958	0.960	0.962	0.963	0.964	0.967	0.967	0.968
92	0.942	0.945	0.946	0.949	0.952	0.955	0.957	0.959	0.960	0.962	0.964	0.964	0.966
94	0.938	0.941	0.942	0.946	0.949	0.952	0.954	0.957	0.958	0.959	0.962	0.962	0.964
96	0.935	0.938	0.939	0.942	0.946	0.949	0.952	0.954	0.955	0.957	0.959	0.960	0.961
98	0.931	0.934	0.935	0.939	0.943	0.946	0.949	0.952	0.953	0.954	0.957	0.957	0.959
100	0.927	0.930	0.932	0.936	0.940	0.943	0.946	0.949	0.950	0.952	0.954	0.954	0.957
105	0.917	0.920	0.923	0.927	0.931	0.935	0.935	0.943	0.943	0.946	0.949	0.949	0.951
110	0.907	0.911	0.913	0.918	0.923	0.927	0.932	0.936	0.937	0.939	0.943	0.944	0.946
115	0.897	0.902	0.904	0.909	0.915	0.920	0.925	0.930	0.930	0.933	0.937	0.938	0.940
120	0.887	0.892	0.894	0.900	0.907	0.912	0.918	0.923	0.924	0.927	0.931	0.932	0.934
125	0.876	0.881	0.884	0.890	0.898	0.903	0.909	0.916	0.916	0.920	0.925	0.927	0.928
130	0.865	0.871	0.873	0.880	0.888	0.895	0.901	0.908	0.909	0.913	0.918	0.921	0.923
135	0.854	0.861	0.863	0.871	0.879	0.887	0.894	0.901	0.902	0.907	0.912	0.914	0.916
140	0.842	0.850	0.852	0.861	0.870	0.879	0.886	0.893	0.895	0.900	0.905	0.907	0.910

APPENDIX D
TABLE 2
MAXIMUM PERMITTED LIQUID VOLUME
(PERCENT OF TOTAL WATER CAPACITY)

Aboveground Containers 0 to 1,200 Gallons													
Liquid Temperature of	Specific Gravity												
	.496 to .503	.504 to .510	.511 to .519	.520 to .527	.528 to .536	.537 to .544	.545 to .552	.553 to .560	.561 to .568	.569 to .576	.577 to .584	.585 to .592	.595 to .600
-50	70	71	72	73	74	75	75	76	77	78	79	79	80
-45	71	72	73	73	74	75	76	77	77	78	79	80	80
-40	71	72	73	74	75	75	76	77	78	79	79	80	81
-35	71	72	73	74	75	76	77	77	78	79	80	80	81
-30	72	73	74	75	76	76	77	78	78	79	80	81	81
-25	72	73	74	75	76	77	77	78	79	80	80	81	82
-20	73	74	75	76	76	77	78	79	79	80	81	81	82
-15	73	74	75	76	77	77	78	79	80	80	81	82	83
-10	74	75	76	76	77	78	79	79	80	81	81	82	83
- 5	74	75	76	77	78	78	79	80	80	81	82	82	83
0	75	76	76	77	78	79	79	80	81	81	82	83	84
5	75	76	77	78	78	79	80	81	81	82	83	83	84
10	76	77	77	78	79	80	80	81	82	82	83	84	84
15	76	77	78	79	80	80	81	81	82	83	83	84	85
20	77	78	78	79	80	80	81	82	83	84	84	84	85
25	77	78	79	80	80	81	82	82	83	84	84	85	85
30	78	79	79	80	81	81	82	83	83	84	85	85	86
35	78	79	80	81	81	82	83	83	84	85	85	86	86
40	79	80	81	81	82	82	83	84	84	85	86	86	87
45	80	80	81	82	82	83	84	84	85	85	86	87	87
50	80	81	82	82	83	83	84	85	85	86	86	87	88
55	81	82	82	83	84	84	85	85	86	86	87	87	88
60	82	82	83	84	84	85	85	86	86	87	87	88	88
65	82	83	84	84	85	85	86	86	87	87	88	88	89
70	83	84	84	85	85	86	86	87	87	88	88	89	89
75	84	85	85	85	86	86	87	87	88	88	89	89	90
80	85	85	86	86	87	87	87	88	88	89	89	90	90
85	85	86	87	87	88	88	88	89	89	89	90	90	91
90	86	87	87	88	88	88	89	89	90	90	90	91	91
95	87	88	88	88	89	89	89	90	90	91	91	91	91
100	88	89	89	89	89	90	90	90	91	91	92	92	92
105	89	89	90	90	90	90	91	91	91	92	92	92	93
110	90	90	91	91	91	91	92	92	92	92	93	93	93
115	91	91	92	92	92	92	92	92	93	93	93	94	94
120	92	92	93	93	93	93	93	93	93	94	94	94	94
125	93	94	94	94	94	94	94	94	94	94	94	95	95
130	94	95	95	95	95	95	95	95	95	95	95	95	95

APPENDIX D

TABLE 3

MAXIMUM PERMITTED LIQUID VOLUME
(PERCENT OF TOTAL WATER CAPACITY)

Aboveground Containers Over 1,200 Gallons

Specific Gravity

.496 to .503	.504 to .510	.511 to .519	.520 to .527	.528 to .536	.537 to .544	.545 to .552	.553 to .560	.561 to .568	.569 to .576	.577 to .584	.585 to .592	.593 to .600
75	76	77	78	79	80	80	81	82	83	83	84	85
76	77	78	78	79	80	81	81	82	83	84	84	85
76	77	78	79	80	80	81	82	83	83	84	85	85
77	78	78	79	80	81	82	82	83	84	84	85	86
77	78	79	80	80	81	82	83	83	84	85	85	86
78	79	79	80	81	82	82	83	84	84	85	86	86
78	79	80	81	81	82	83	83	84	85	85	86	87
79	79	80	81	82	82	83	84	85	85	86	87	87
79	80	81	82	82	83	84	84	85	86	86	87	87
80	81	81	82	83	83	84	85	85	86	87	87	88
80	81	82	82	83	84	84	85	86	86	87	88	88
81	82	82	83	84	84	85	86	86	87	87	88	89
81	82	83	83	84	85	85	86	87	87	88	88	89
82	83	83	84	85	85	86	87	87	88	88	89	90
82	83	84	85	85	86	86	87	88	88	89	89	90
83	84	84	85	86	86	87	88	88	89	89	90	90
83	84	85	86	86	87	87	88	89	89	90	90	91
84	85	86	86	87	87	88	89	89	90	90	91	91
85	86	86	87	87	88	88	89	90	90	91	91	92
85	86	87	87	88	88	89	89	90	91	91	92	92
86	87	87	88	88	89	90	90	91	91	92	92	92
87	88	88	89	89	90	90	91	91	92	92	92	93
88	88	89	89	90	90	91	91	92	92	93	93	93
88	89	90	90	91	91	91	92	92	93	93	93	94
89	90	90	91	91	91	92	92	93	93	94	94	94
90	91	91	91	92	92	92	93	93	94	94	94	95
91	91	92	92	92	93	93	93	94	94	95	95	95
92	92	93	93	93	93	94	94	95	95	95	96	96
93	93	93	94	94	94	95	95	95	95	96	96	96
94	94	94	95	95	95	95	96	96	96	96	97	97
94	95	95	95	95	96	96	96	96	97	97	97	98
96	96	96	96	96	97	97	97	97	97	98	98	98
97	97	97	97	97	97	97	98	98	98	98	98	99
98	98	98	98	98	98	98	98	98	99	99	99	99

APPENDIX D
TABLE 4

MAXIMUM PERMITTED LIQUID VOLUME
(PERCENT OF TOTAL WATER CAPACITY)

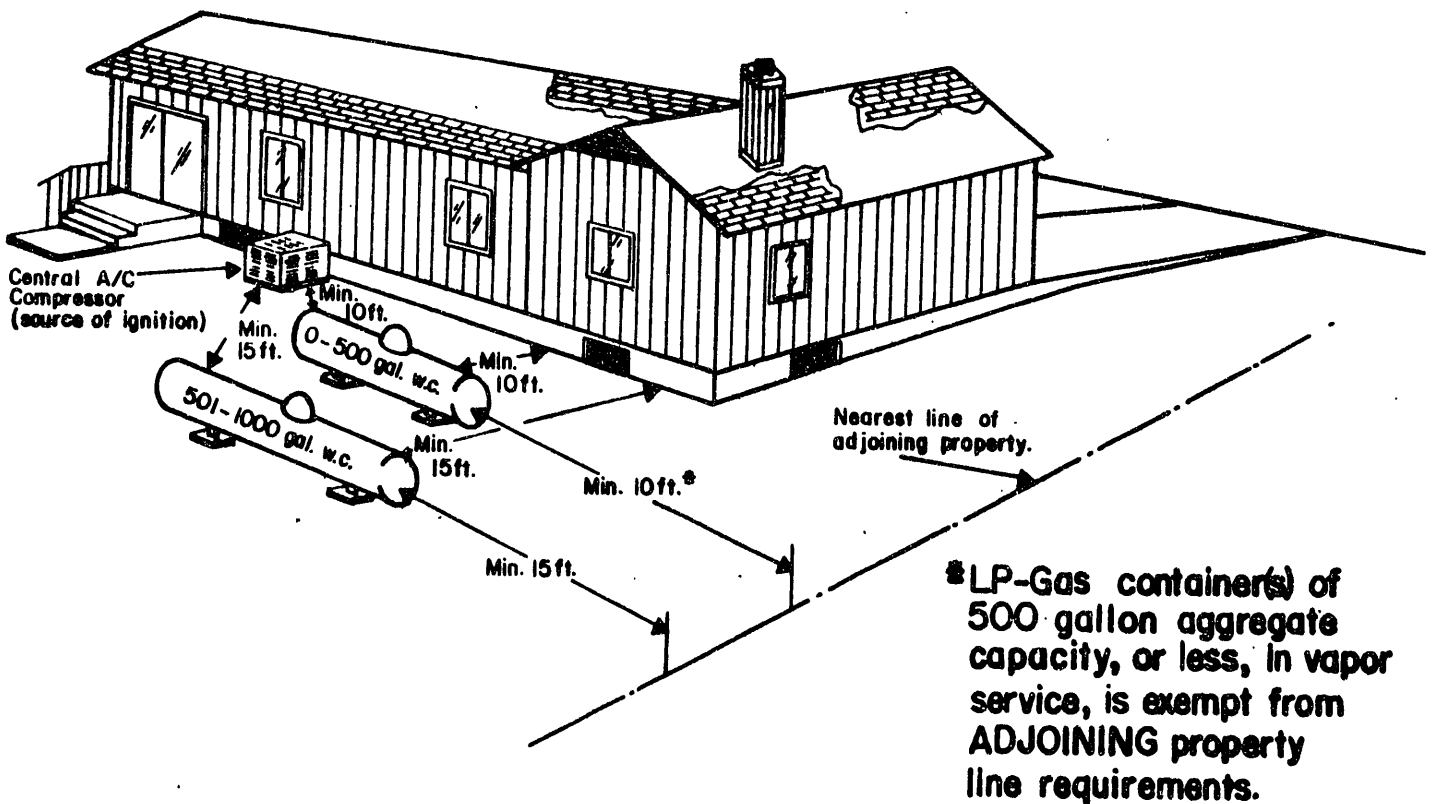
All Underground Containers												
Specific Gravity												
.496 to .503	.504 to .510	.511 to .519	.520 to .527	.528 to .536	.537 to .544	.545 to .552	.553 to .560	.561 to .568	.569 to .576	.577 to .584	.585 to .592	.593 to .600
77	78	79	80	80	81	83	83	83	84	85	85	86
77	78	79	80	81	82	82	83	84	84	85	86	87
78	79	80	81	81	82	83	83	84	85	86	86	87
78	79	80	81	82	82	83	84	85	85	86	87	87
79	80	81	81	82	83	84	84	85	86	86	87	88
79	80	81	82	83	83	84	85	85	86	87	87	88
80	81	82	82	83	84	84	85	86	86	87	88	88
80	81	82	83	84	84	85	86	86	87	87	88	89
81	82	83	83	84	85	85	86	87	87	88	88	89
81	82	83	84	84	85	86	86	87	88	88	89	89
82	83	84	84	85	85	86	87	87	88	89	89	90
82	83	84	85	85	86	87	87	88	88	89	90	90
83	84	85	85	86	86	87	88	88	89	90	90	91
84	84	85	86	86	87	88	88	89	89	90	91	91
84	85	86	86	87	88	88	89	89	90	90	91	91

85	86	86	87	87	88	89	89	90	90	91	91	92
85	86	87	87	88	89	89	90	90	91	91	92	92
86	87	87	88	88	89	90	90	91	91	92	92	93
87	87	88	88	89	90	90	91	91	92	92	93	93
87	88	89	89	90	90	91	91	92	92	93	93	94
88	89	89	90	90	91	91	92	92	93	93	94	94
89	89	90	91	91	91	92	92	93	93	94	94	95
90	90	91	91	92	92	92	93	93	94	94	95	95
90	91	91	92	92	93	93	94	94	94	95	95	96
91	91	92	93	93	93	94	94	94	95	95	96	96
92	93	93	93	94	94	94	95	95	95	96	96	97
93	93	94	94	94	95	95	95	96	96	96	97	97
94	94	95	95	95	95	96	96	96	97	97	97	98
95	95	95	95	96	96	96	97	97	97	98	98	98
96	96	96	96	97	97	97	97	98	98	98	98	98
97	97	97	97	97	98	98	98	98	99	99	99	99
98	98	98	98	98	98	99	99	99	99	99	99	99

§9.928

APPENDIX H Example of Distance Requirements at Residence and Public Bldgs.

(This figure for illustrative purposes only; text shall govern)



ASME Containers

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810284 Robert F. Bjard
Staff Attorney, Legal
Division
Railroad Commission of
Texas

Proposed date of adoption: December 13, 1988

For further information, please call: (512) 463-7187

Part VIII. Texas Racing Commission

Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Operations

• 16 TAC §309.65

The Texas Racing Commission proposes new §309.65, concerning prohibiting loans from certain organizations to racetracks licensed by the commission to conduct racing with parimutuel wagering. The section applies to horse racetracks and to greyhound racetracks. The section prohibits a racetrack licensee from soliciting or accepting a loan from a person providing management, concession, or totalisator services at the racetrack.

Paula Cochran Carter, legal counsel, Texas Racing Commission, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Ms. Carter 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 the assurance that the persons licensed to operate racetracks with pari-mutuel wagering will be of the highest integrity. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted before December 1, 1988, to Paula Cochran Carter, Legal Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

§309.65. Certain Loans Prohibited. An association may not solicit or accept a loan of anything of value from a person who is providing management, concession, or totalisator services at a racetrack for which

the association is licensed.

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

Issued in Austin, Texas, on October 5, 1988.

TRD-8810317 Paula Cochran Carter
Legal Counsel
Texas Racing Commission

Earliest possible date of adoption: November 14, 1988

For further information, please call: (512) 476-7223

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 25. Administrative Council

Subchapter B. Administration of the Texas State College and University Employees Uniform Insurance Benefits Program

• 19 TAC §§25.32, 25.34, 25.49, 25.50, 25.51, 25.57, 25.58

The Texas Higher Education Coordinating Board proposes amendments to §§25.32, 25.34, 25.49, 25.50, and 25.52, and new §§25.57 and §25.58, concerning administration of the Texas State College and University Employees Uniform Insurance Benefits Program. The purpose of these amendments and new sections is to incorporate into the rules and regulations provisions of state law which authorize the governing boards of all institutions to establish Internal Revenue Code, §125, cafeteria plans.

James McWhorter, executive secretary to the administrative council, 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 or small businesses as a result of enforcing or administering the sections.

Mr. McWhorter 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 provide ease of access of information available to the institutions in the establishment of Internal Revenue Code, §125 cafeteria plans. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to James McWhorter, Executive Secretary to the Administrative Council, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The amendments and new sections are proposed under the Texas Insurance Code, Article 3.50-3, which provides the administrative council with the authority to adopt rules and

regulations consistent with the provision of the Act to carry out its statutory responsibilities.

§25.32. Definitions. The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Cafeteria Plan—A plan as defined and authorized by the Internal Revenue Code of 1986, §125, (26 U.S.C. §125).

§25.34. Basic Procedural and Administrative Practices.

(a) Basic coverage shall be made available to all eligible employees upon their first day in a pay status. Such coverage shall become automatic unless waived in writing by the employee. A pre-existing conditions exclusion may be applied to employees, retired employees, and their eligible dependents for initial coverage or coverage changes. The exclusion may provide that no benefits be available during [limit benefit payments to not less than \$500 for] the first 12 months of coverage for any diagnosed condition for which the insured was seen by a physician or received treatment during the six months [90 days] prior to the effective date of coverage. The exclusion will not apply to children born on or after the effective date of the employee's coverage.

(b)-(n) (No change.)

§25.49. Automatic Coverage.

(a)-(b) (No Change)

(c) No eligible active employee shall be denied enrollment in any of the coverages provided by the Act; provided, however, that the employee may waive in writing any or all such coverages. From the first day of employment, each active full-time employee who has not waived basic coverage or selected optional coverages shall be protected by a basic plan of insurance coverage automatically. If the cost of an active employee's basic coverage exceeds the amount appropriated by the legislature for an employee, the institution must provide optional coverage at no cost to the employee. If the employee chooses the basic coverage rather than optional coverage, the institution may deduct from or reduce the monthly compensation of the employee up to one-half of the amount that exceeds the state's contribution for an employee, and the institution shall pay the difference. Each active employee who is automatically covered under this section may subsequently retain or waive the basic plan and may make application for any other coverages provided under the Act within institutional and Administrative Council standards.

(d) An active employee who is inel-

igible for an employer contribution adequate to pay the full premium for the basic plan is eligible for coverage only after appropriate payroll deduction or reduction is authorized.

§25.50. Coverage for Dependents.

(a) Any employee or retired employee enrolled in an institution's uniform group health insurance plan shall be entitled to secure for his dependents any uniform group health insurance coverages provided under §25.33 of this title (relating to Basic Coverage Standards). Premium payments required of the employee or retired employee in excess of the employer contribution shall be deducted from the monthly pay of the employee, or the employee's monthly pay shall be reduced in the appropriate amount, or paid in such other manner and form as the Administrative Council may approve.

(b)-(c) (No Change)

§25.51. *Payment of Premiums.* Each institution and agency covered under the provisions of the Act shall contribute monthly to the cost of each insured employee's coverage no less than the amount appropriated therefore by the legislature in the General Appropriations Act. An amount equal to the amount appropriated for an employee under the General Appropriations Act shall be appropriated for each employee by the governing board of the institution in its respective official operating budget, if the employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act. Except for a participant in a cafeteria plan. The employee shall authorize in writing and in a form satisfactory to the institution a deduction from his monthly compensation of the difference between the total cost of premiums and the amount contributed therefore by the institution or agency. An employee who is participating in a cafeteria plan shall execute a salary reduction agreement under which his monthly compensation will be reduced in an amount that is equal to the difference between the amount appropriated by the General Appropriations Act or the institution's budget and the cost of the employee's selected coverages for which he is eligible to pay under the cafeteria plan. Also, the electing employee shall execute a salary deduction agreement for any portion of the cost that is not covered by the state or institutional appropriations and cafeteria plan contributions.

§25.57. Cafeteria Plan.

(a) The governing board of each institution providing benefits under this Act may study the feasibility of establishing a cafeteria plan and may design, develop, adopt, implement, and administer a cafeteria plan if the governing board deter-

mines that the establishment of a cafeteria plan is feasible, would be beneficial to the institution and to employees who would be eligible to participate in the cafeteria plan, and would not adversely affect the insurance program established under this Act. The governing board may include in a cafeteria plan any benefit that may be included in a cafeteria plan under federal law. The governing board shall make child-care salary reduction options available to employees of their institutions not later than September 1, 1988.

(b) The governing board may cooperate and work with and may enter into necessary contracts and agreements with one or more independent and qualified agencies, persons, or entities to design, develop, adopt, implement, or administer or to assist in the design, development, adoption, implementation, or administration of a cafeteria plan under this Act. A cafeteria plan may be designed, developed, adopted, implemented, and administered by or on behalf of an institution in accordance with the basic guidelines adopted by the Administrative Council.

(c) If the governing board determines that a cafeteria plan adopted under this section is no longer advantageous to the institution and its employees, the governing board may adopt an order terminating the cafeteria plan and providing a procedure for the orderly withdrawal of the institution and its employees from that plan. On issuing a termination order under this subsection, the governing board of the institution shall submit a written report to the Administrative Council stating the reasons for the termination and outlining the procedures for withdrawal from the plan.

§25.58. Cafeteria Plan Fund.

(a) The governing board of each institution may establish a cafeteria plan fund that shall be administered by the governing board. Salary reduction payments for benefits included in a cafeteria plan adopted under this Act other than coverages under the Texas State College and University Employees Uniform Insurance Benefits Program and appropriations by the state for the administration of a cafeteria plan adopted under this Act shall be paid into the fund. The fund is available without fiscal year limitation:

(1) for all payments for any benefits included in a cafeteria plan adopted under this Act other than coverages under the Texas State College and University Employees Uniform Insurance Benefits Program; and

(2) to pay expenses for administering the cafeteria plan adopted under this Act.

(b) The governing board may establish a monthly charge to be paid by each employee who elects to participate in a

cafeteria plan adopted under this Act for the purpose of paying the expenses of administering the cafeteria plan. The governing board shall establish the amount of the monthly charge. If the governing board establishes a monthly charge, each employee who participates in the cafeteria plan shall authorize payment of the charge by executing a payroll deduction agreement or as part of the salary reduction agreement, as determined by the governing board. The monthly charge shall be paid into the cafeteria plan fund.

(c) The governing board may invest and reinvest any of the money in the cafeteria plan fund. The interest on, earnings of, and the proceeds from the sale of the investments become a part of the fund.

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

Issued in Austin, Texas, on October 10, 1988.

TRD-8810448

James McWhorter
Assistant Commissioner for
Planning and
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: November 14, 1988

For further information, please call: (512) 462-6420

TITLE 22. EXAMINING BOARDS Part XXII. Texas State Board of Public Accountancy

Chapter 505. The Board

• 22 TAC §505.10

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

The Texas State Board of Public Accountancy proposes the repeal of §505. 10, concerning board committees. The repeal of this section will allow for a new section that will provide guidelines for the board of areas of responsibility, composition, and appointment of various committees.

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

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the repeal of this section will allow for the adoption of a new section that will set forth proper guidelines, areas of responsibility, and composition

of various appointed board committees. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to William A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding board committees.

§505.10. Board Committees.

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

Issued in Austin, Texas, on April 19, 1988.

TRD-8810334 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 14, 1988

For further information, please call: (512) 450-7066

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Testing Newborn Children for Phenylketonuria, Other Heritable Diseases, and Hypothyroidism

(Editor's Note: The Texas Department of Health proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Department of Health proposes the repeal of existing §§37.51-37.70, concerning testing newborn children for phenylketonuria, other heritable diseases, and hypothyroidism, and proposes new §§37.51-37.69, concerning newborn screening program. The new sections cover purpose; definitions; conditions for which newborn screening tests are required; exemption from screening; responsibilities of persons attending a newborn; blood specimen collection for required screening tests; screening test procedures to be used; follow-up and recordkeeping on positive screens; coordination with Chronically Ill and Disabled Children's Services Program; scope of newborn screening program services; eligibility requirements; application process; calculation of financial participation obligation; denial of application—modification, suspension, termination of program services; advisory bodies and task forces; confidentiality of information; nondiscrimination; oral health pilot project;

and effective dates. The repeal and new sections are also adopted on an emergency basis in this issue of the *Texas Register* in the emergency rules section. The new sections will replace the existing sections proposed for repeal and will restructure the existing Newborn Screening Program to conform to the administrative decision to place the program within the Department's Bureau of Chronically Ill and Disabled Children.

The proposed new sections add a new requirement to screen newborns for the inherited condition congenital adrenal hyperplasia. This test is expected to identify 20 to 30 infants annually who have the condition. Early identification and referral for diagnosis will prevent death of many infants who have the condition and will avoid longer and more costly diagnostic procedures to identify the condition in others. Additionally, to prevent financial hardship for persons diagnosed with phenylketonuria and who formerly received the medically necessary special dietary formula without cost, the department proposes to revise its program income guidelines upon which the co-pay requirement is based. The family income threshold is being raised from 100% to 200% of the federal poverty income guidelines. This increase in the income guideline is proposed in response to comments that certain former recipients may not be able to pay the fee now being assessed and may modify or forego their use of the medically necessary formula.

Mr. Stephen Seale, chief accountant III, has determined that for the first five-year period in which the repeals as proposed will be in effect there will be fiscal implications as a result of enforcing or administering the repeals. The effect upon state government will be an estimated additional cost of \$546,000 for fiscal year 1988, and \$406,000 each year for fiscal years 1989-1992. There is also an estimated increase in revenue of \$67,500 each year for fiscal years 1988-1992. Some additional administrative costs may arise out of a more formalized program procedure and the possibility that formal administrative hearings may have to be held. There is no anticipated fiscal implications to local government or small businesses.

Mr. Seale 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 that PKU special dietary formula will be offered without cost to all persons whose family incomes are under 200% of the federal poverty guidelines, rather than 100%. The addition of congenital adrenal hyperplasia to the screening panel should identify 20-30 newborns annually, many of whom would die or need lengthy and expensive workups to identify the disorder. The possible economic cost to individuals who are required to comply with the repeals as proposed will arise from more formalized program procedures.

Comments on the proposals may be submitted to Patti J. Patterson, M.D., F.A.A.P., Pediatric Consultant, Associateship for Personal Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*. A public hearing on the rules will be held on Saturday, October 29, 1988, at 10 a.m., at the Lexington Suites, Highway

183 at IH-35, Austin.

• 25 TAC §§37.51-37.70

The repeal and new sections are proposed under Texas Civil Statutes, Article 4414c, §2, which provide the Texas Board of Health (board) with the authority to charge fees by rule to persons who receive public health services from the department; Article 4418f-1, §(a), which provide the department with the authority to provide funds by grant to contract to qualified entities for the purchase of services, equipment, and supplies to be used to promote and maintain public health; Article 4418g-2, §4, which provide the board with the authority to adopt rules to provide oral health services to eligible individuals; Article 4419c, §3, which provide the board with the authority to adopt rules covering the provision of services to chronically ill and disabled children; Article 4447e, §1, which provide the department with the authority to develop a program to combat mental retardation in children suffering from phenylketonuria and other heritable disease; Article 4447e-1, §2, which provide the board with the authority to adopt rules to establish a program to detect hypothyroidism in newborn infants; and Article 4414b, §1.05, which provide the board with the authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

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

Issued in Austin, Texas, on October 5, 1988.

TRD-8810434 Robert A. MacLean, M.D.
Commissioner for
Professional Services
Texas Department of
Health

Proposed date of adoption: December 10, 1988.

For further information, please call: (512) 458-7321

Newborn Screening Program

• 25 TAC §§37.51-37.69

(Editor's Note: The Texas Department of Health proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The new sections are proposed under Texas Civil Statutes, Article 4414c, §2, which provide the Texas Board of Health (board) with the authority to charge fees by rule to persons who receive public health services from the department; Article 4418f-1, §(a), which provide the department with the authority to provide funds by grant to contract to qualified entities for the purchase of services, equipment, and supplies to be used to promote and maintain public health; Article 4418g-2, §4, which provide the board with the authority to adopt rules to provide oral health services to eligible individuals; Article 4419c, §3, which provide the board with the authority to adopt rules covering the provision of services to chronically ill and disabled children; Article 4447e, §1, which provide the department with

the authority to develop a program to combat mental retardation in children suffering from phenylketonuria and other heritable disease; Article 4447e-1, §2, which provide the Board with the authority to adopt rules to establish a program to detect hypothyroidism in newborn infants; and Article 4414b, §1.05, which provide the board with the authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of Health.

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

Issued in Austin, Texas, on October 5, 1988.

TRD-8810435

Robert A. MacLean, M.D.
Commissioner for
Professional Services
Texas Department of
Health

Proposed date of adoption: December 10, 1988.

For further information, please call: (512) 458-7321

Chapter 145. Long Term Care

Subchapter E. Procedures on Long Term Care Facilities

• 25 TAC §145.91

The Texas Department of Health proposes an amendment to §145.91, concerning administrative penalties assessed against nursing homes. The amendment to §145.91 will update subsection (r) concerning conditions/elements schedule, by inserting current minimum licensing standards for nursing homes reference numbers; clarify language in various subsections to prevent confusion about what constitutes a penalty, time frames for proper facility notification of surveyor findings, and submission of rebuttal material, etc.; remove references to the Medicare/Medicaid certification process; and remove unnecessary commentary in the rules.

Stephen Seale, chief accountant III, has determined that for each year of 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. For small and large facilities which are small and large businesses there will be no significant economic impact as a result of this amendment.

Mr. Seale also has determined that for each year of the first five years that the section as proposed will be in effect the public benefit anticipated as a result of administering the section will be that the amendment clarifies for the licensed nursing home staff, residents and their families, and Texas Department of Health staff, the criteria for assessing penalties and what licensing standards are clearly involved. Another benefit is that the section will contain only that material which is required for compliance.

Comments on the proposal may be submitted to Richard L. Butler, Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after

publication of the proposal in the Texas Register.

The amendment is proposed under Texas Civil Statutes, Article 4442c, §7, which provide the Board of Health with authority to adopt rules covering the licensing of nursing homes; Texas Civil Statutes, Article 4442c, §12A, which authorize the Texas Department of Health to assess administrative penalties; and Texas Civil Statutes, Article 4414b, §1.05, which provide 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.

§145.91. Administrative Penalties.

(a) The Texas Department of Health will administer a program of administrative penalties as authorized by Texas Civil Statutes, Article 4442c, §12A, and as described in this section. The penalties apply to nursing homes licensed under Texas Civil Statutes, Article 4442c. [Other facility categories may be included through future rule amendment.]

(b) When a deficiency/violation cited by department staff is determined to be [singularly or collectively] within the scope and description of a condition or element of a condition as stated in subsection (r) of this section, known as the schedule, the deficiency/violation is cause for assessment of penalty as described herein and as listed in the schedule.

(1) For inclusion, a deficiency/violation is:

(A) (No change.)

(B) of a magnitude or nature as to warrant action beyond the citation of a deficiency/violation only [of such deficient extent that the deficiency/violation merits specific attention beyond that provided under routine methods of appraising a facility of deficiencies/violations found].

(2) In determining whether a deficiency/violation limits the facility's ability to comply with statutes, standards, or separate and independent conditions described in paragraph (1)(A) of this subsection, and whether the action [specific attention] as described in paragraph (1)(B) of this subsection is needed, a deficiency/violation must [may] be:

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

(C) of a type presenting danger to the health or safety of at least one resident [a single patient] and the facility does not or did not take immediate corrective action at the beginning of the danger; or [.]

[(3) At the conclusion of some of the conditions of the schedule, explana-

tory statements are written to further explain the baseline relating to the condition or an element within the condition.]

(D)[(4) Obviously, a deficiency/violation is included for penalty when it already is one] of a magnitude or nature that constitutes a health or safety hazard having a direct or imminent adverse effect on resident health, safety, or security, or which presents even more serious danger or harm.

[(5) It is not the intent, however, that every violation/deficiency found on a survey, inspection, or related visit would be accompanied by an administrative penalty; facilities may be licensed/acceptable with certain violations/deficiencies.]

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

(f) Evidence of conditions or elements of conditions described in the schedule may be revealed through reports of inspections, surveys, inspection of care visits, complaint investigations, follow-up or call-back visits, [special reports,] incident investigation reports, abuse and neglect investigations, or similar visits [or reports] even though the primary purpose of the visit is for other than licensure.

(g) Penalties will be assessed as a result of conditions or elements of conditions observed or determined during on-site visits by Department staff, except that a penalty may be assessed for failure to report an incident of abuse or neglect on [undisputed] evidence gathered or furnished other than through on-site investigation.

(h) If an on-site visit conducted by department staff reveals that a condition or element of a condition requiring penalty exists, the recommended penalty will be as shown in the applicable column of the schedule, except as determined otherwise when a warning provision described in this subsection is applicable or when subsections (k) or (p) of this section, are applicable, regardless of the number of days on-site that are necessary to complete the purpose or purposes of the visit; hence, the penalty assessments are on a per-visit basis and not on a daily basis. Except for deficiencies/violations in conditions or elements identified as A; B1, 2, 3, 4; C; D; E1, 2, 4; F1, 4; G1; I1, 2; J1; L1; M1, 2, 7, 8; P1, 2e, 5a, 6a, 6b, 7a, 7b, 8a, 10a, 11a, 12a, 13a; Q; R; S1; and T, the facility will be given a warning on the first occurrence [and given an opportunity to demonstrate compliance before a penalty is assessed. If compliance is demonstrated on the next visit, the penalty will be waived. In all instances the occurrence is counted. If compliance is not demonstrated at the next visit, the penalty at the second level will be assessed]. No facility shall be penalized because of a physician's [or consultant's] nonperformance beyond the facility's control or if the violation is beyond the facility's control [if the situation is clearly documented].

(i) The first occurrence of a condition or element of a condition of the schedule carries a penalty as shown in the first penalty-amount column of the schedule, except when the warning provision of subsection (h) of this section applies. When there is a second occurrence of the same condition or element of a condition; the penalty shown in the second column applies. When there is then a third or subsequent occurrence of the same condition or element of a condition, the penalty shown in the third column applies. This progression applies to facilities regardless of change of ownership or license renewals, except that under change of ownership the facility starts over with the progression for other than A; B1, 2, 3, 4; C; D; E1, 2, 4; F1, 4; G1; I1, 2; J1; K1; M1, 2, 7, 8; P1, 2e, 5a, 6a, 6b, 7a, 7b, 8a, 10a, 11a, 12a, 13a; Q; R; S1; and T. However, when a facility for two years has not had an occurrence of a certain condition or element, the facility's next occurrence of that condition or element is in the first column of the schedule. The two-year period is measured based on the last day of each visit. A suspension of a license and subsequent reinstatement does not interrupt the progression. A voluntary surrendering of a license or a revocation by the department of a license interrupts the progression, so that should such facility come back into licensed status, the facility starts over with the progression. Each occurrence under condition T carries a penalty as shown regardless of number of occurrences or time between occurrences.

(j) (No change.)

(k) A condition or element of a condition calling for administrative penalty may cause or contribute to causing a facility receive other disciplinary actions.

(1) An administrative penalty for such condition or element will be waived for:

[(A) any vendor hold imposed on a facility under §16.1510 of this title (relating to Sanction Provisions for Violations of Title XIX Nursing Facility Contractual Agreements) which causes or accompanies cancellation by the Texas Department of Human Services of the facility's Medicaid contract;]

[(B) any decertification taken by the department under §§145.141-145.147 of this title (relating to Procedures Covering Certification and Decertification of Long-Term Care Facilities Which Participate in the Title XIX Medical Assistance Program);]

(A)[(C)] any civil penalty imposed under Texas Civil Statutes, Article 4442c, §12;

(B)[(D)] any trustee appointment under Texas Civil Statutes, Article 4442c, §6C;

(C)[(E)] any immediate closure ordered under Texas Civil Statutes, Article 4442c, §6B; or

(D)[(F)] any penalties received under Texas Civil Statutes, Article 4442c, §16 for failure to report a case of abuse or neglect.

(2) (No change.)

(3) The department may delay payment of a penalty if the facility can show that the penalty would impose an unreasonable hardship on the facility. [Where a vendor hold disciplinary action under §16.1510 of this title (relating to Sanction Provisions for Violations of Title XIX Nursing Facility Contractual Agreements) does not cause or accompany a contract cancellation, the department may delay the payment of the penalty until vendor hold reimbursement may be made, but if during the vendor hold period it is found that the vendor hold must continue, there will be no additional penalty.]

(l) (No change.)

(m) The intent in designing the conditions and elements listed in the schedule is not to cause a deficiency/violation [an event] to be subject to more than one condition; where such may occur or seem to occur, the condition or element which most closely corresponds with the deficiency/violation [carrying the largest penalty] will apply.

(n) (No change.)

(o) When department regional [on-site] staff participating in the visit determine that a deficiency/violation is subject to administrative penalty, those department [on-site] staff should [will] verbally so advise the facility at the exit conference of the conditions or elements of conditions involved and that a recommendation for administrative penalty is being made to the central office. Department regional staff will transmit this information and recommendation, with all supporting information to the central office. [The report shall include any information the on-site or re-

gional staff may have relating to the efforts or lack of efforts the facility may have had to prevent the deficiency/violation from occurring or from being corrected.] Any rebuttal the facility may wish to make must be in writing, [preferably prepared so as to accompany the report regional staff transmit to the central office; when preparation of rebuttal information does not allow the information to accompany the report, the facility may furnish written rebuttal to the central office,] to the [attention of the] director of the Quality Standards Division. [, but] Such information must be furnished within seven working days[.] from the date verbal notice was given to the facility.

(1) (No change.)

(2) (No change.)

(p) Within 20 days after the date on which written notice of recommended assessment is sent to a facility, the facility may, in lieu of contesting a penalty assessment, transmit 50% of the amount for each condition or element of a condition involved in the assessment, which shall constitute full payment [, thereby preventing costs of the appeal process to both the facility and the department]. This provision, however, does not apply to conditions and elements of the schedule identified as A, B (including all elements), C, D, I (including all elements), R (including all elements), S1, T (including all elements).

(q) (No change.)

(r) Conditions and assessments for deficiencies/violations warranting administrative penalties for nursing homes are described in the schedule that follows. The conditions and the subconditions or elements in the schedule primarily relate to existing standards in §§145.11-[145.24] 145.25 of this title (relating to Minimum Licensing Standards for Nursing Homes). Some conditions or elements relate to other rules or standards of this title which apply to nursing homes, such as §§145.251-145.261 (relating to Medication Aide Training and Issuing Permits to Administer Medications), and some conditions or elements relate directly to Texas Civil Statutes, Article 4442c or other laws. [However, the schedule also includes separate and independent conditions or elements for the assessment of penalties which do not relate to such existing standards or directly to Article 4442c or other laws.] All conditions or elements which relate to such existing standards or directly to Article 4442c or other laws have the appropriate section, subsection, or citation referenced. The standards are of Title 25 of the Texas Administrative Code.

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OCCURRENCE (1)	SECOND OCCURRENCE (2)	THIRD OR SUBSEQUENT OCCURRENCE (3)	EACH OCCURRENCE (4)
* A. Failure to employ a full-time licensed nursing home administrator within 30 days of a vacancy occurrence. §145.13(b)(5)	1,000	2,000	3,000	
B. Failure of direct care personnel to meet the needs of the residents [patients].				
* 1. The facility does not meet licensed staffing ratio. §145.17(a)(7) [§145.16(d)5]	500	1,000	1,500	
* 2. The facility does not provide licensed charge nurse coverage for required [both morning and afternoon] shifts. §145.17(a)(4), (5) [§145.16(d)(2), (3)]	500	1,000	1,500	
* 3. A full-time RN or LVN director of nursing is not provided. §145.17(a)(2) [§145.16d(2)]	750	1,500	2,250	
* 4. The director of nursing services more than one facility in this capacity. §145.17(a)(2)	1,000	2,000	3,000	
5. Residents [Patients] are not being kept comfortable, clean and well-groomed. §145.17(a)(8) [§145.16(d)(6)]	500	1,000	1,500	
[Observation of the patient reveals that direct care personnel are not meeting the needs of the patient.]				
* C. Failure to observe, recognize, record or [and] report to the physician sudden and/or severe changes in resident [patient] clinical signs and symptoms and/or conditions. §145.17(b)(10)	500	1,000	1,500	

	(1)	(2)	(3)	(4)
* D. Failure to obtain emergency medical care when required [ordered by physician]. §145.17(b)(16) [§145.18(b)]	1,000	2,000	3,000	
E. Failure to administer drugs or [and] biologicals in accordance with the physician's orders and/or established drug administration procedures.				
* 1. Medications are not administered by a physician, registered or licensed nurse, or medication aide. [(Medication aide must function within limits of regulations.) §145.20(c)(1); §145.251(a)(1), (2);] 4442c (Sec. 7B (Med.Aide)); §145.21(c)(1)	500	1,000	1,500	
* 2. Medications are administered without physician's order. §145.21(a)(1) [§145.20(a)(1)]	1,000	2,000	3,000	
3. Medications are administered in the wrong strength, or by the wrong route of administration. [, or to the wrong patient.] §145.21(c)(1)	500	1,000	1,500	
* 4. Medications are ordered by physician, but not administered. §145.21(c)(1)	500	1,000	1,500	
5. Medications are charted "before the fact". §145.21(c)(3)	300	600	900	
6. Medical records do not reflect that drugs and biologicals are administered in accordance with physician's orders and/or established drug administration procedures. §145.21(c)(1), §145.21(a)(1)	300	600	900	

	(1)	(2)	(3)	(4)
F. Failure to provide tube feeding/syringe feedings in accordance with physician's orders and/or established feeding administration procedures.				
* 1. Tube feeding is not administered by licensed personnel. §145.17(b)(12)	500	1,000	1,500	
2. Feeding is administered at improper temperature. §145.17(b)(12), (13)	150	300	450	
3. The resident [patient] is improperly positioned for feeding. §145.17(b)(12), (13)	250	500	750	
* 4. The quality and/or the formula quantity of the formula administered is not as ordered by the physician. §145.17(b)(12), (13)	250	500	750	
5. Improper technique is used in feeding. §145.17(b)(12), (13)	250	500	750	
6. There is lack of instruction in techniques of tube/syringe feeding. §145.17(b)(12), (13)	250	500	750	
7. Feeding is not given at right time. §145.17(b)(12), (13)	150	300	450	

[Observation of the patient and/or staff reflects that syringe or tube feedings are not properly administered.]

G. Failure to provide proper catheter care.

* 1. Catheter is inserted without physician's order. §145.17(b)(14)	500	1,000	1,500	
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	(1)	(2)	(3)	(4)
2. Catheter care supplies are not available to meet the prescribed orders of the physician. §145.17(b)(14)	250	500	750	
3. Improper routine care.				
a. There is poor technique/ cross contamination. §145.17(b)(14)	250	500	750	
b. Drainage tubes are improperly positioned, such as to allow for gravity flow of urine. §145.17(b)(14)	150	300	450	
c. There is no intake/ output record. §145.17(b)(14)	100	200	300	
d. Tubing is not clean. §145.17(b)(14)	150	300	450	
4. Catheter is leaking, bed/ resident [patient] is wet. §145.17(b)(14)	150	300	450	

[Observation of the patient and/or staff reflects that proper catheter care is not given.]

H. Failure to provide rehabilitative nursing services.

1. [Good body alignment and proper] Proper positioning of bedfast residents [patients are] not maintained. §145.17(b)(15)	250	500	750	
2. The positioning of bedfast and/or restrained residents [patients] is not changed at least every two hours day and night or as prescribed by the attending physician. §145.17(b)(15), (17)(A)	250	500	750	

	(1)	(2)	(3)	(4)
3. The staff fails to help residents [patients] carry out prescribed rehabilitative procedures [and exercises]. §145.17(b)(15)	250	500	750	
[4. The facility does not in-service new direct care staff and fails to give direct care staff annual in-service training in rehabilitative nursing procedures.]	[150]	[300]	[450]	

[Observation of the patient reflects that rehabilitative services are not properly provided.]

I. Failure to give proper skin care.

* 1. The staff fails to follow physician's orders for skin care. §145.17(b)(15)	500	1,000	1,500	
* 2. Tears, wounds, ulcers, or rashes [and reddened areas] are not reported to the attending physician or [and] are not documented in medical records. §145.17(b)(10)	500	1,000	1,500	
3. The staff fails to give complete baths every second day for helpless or chairfast residents [patients], unless an alternative plan is recommended by the physician. §145.17(a)(8)	350	700	1,050	
4. The staff fails to clean a resident [patient] after each incontinent episode. §145.17(a)(8)	250	500	750	
5. The staff fails to position position residents [patients], including turning and/or repositioning, in order to help prevent skin deterioration. §145.17(a)(8), (b)(15)	250	500	750	

	(1)	(2)	(3)	(4)
6. The staff fails to use protective devices, such as pillows or [and] hand rolls. §145.17(b)(15)	250	500	750	

[Observation of the patient and/or staff reflects that proper skin care is not given.]

J. Failure to use restraints properly.

* 1. Physician's orders are not followed in the use of restraints, and/or except in emergency, restraints are applied without physician's orders. §145.17(b)(17)	1,000	2,000	3,000	
2. Restraints are incorrectly applied such as being too loose, too tight or inappropriately placed. §145.17(b)(17)	500	1,000	1,500	
3. Every two hours restraints are not released for ten minutes and residents [patients] are not repositioned. §145.17(b)(17)(A)	250	500	750	
[4. The facility does not in-service new staff and does not provide annual in-service on restraints.]	[150]	[300]	[450]	

[Observation of the patient and/or staff reflects that restraints are not properly used.]

K. Failure to observe infection control techniques.

1. Staff are not washing hands between residents [patients]. §145.17(b)(19)	150	300	450	
2. Soiled linen is uncovered. §145.23(o)(10)(D) [§145.15(j)(3)]	150	200	300	

	(1)	(2)	(3)	(4)
3. Soiled linen is not handled, stored or processed so as to control the spread [transported to minimize occurrence] of infection. §145.24(c)(1) [§145.15(j)(1), (3)]	150	300	450	
4. Clean utensils are stored in dirty hopper room. §145.23(o)(2)(E) [§145.15(e)(3)]	150	300	450	
5. Aseptic or [and] isolation techniques are not followed. §145.13(a)(3)(D)	250	500	750	
L. Failure to organize and execute pharmacy services in accordance with standards or [and] established pharmacy practices [services].				
* 1. The facility does not retain a pharmacist who serves as a consultant to the facility. §145.21(g)(3) [§145.20(h)(3)]	500	1,000	1,500	
2. The consultant pharmacist does not review the drug regimen of each resident [patient] at least monthly or [and] does not submit written reports of [report] drug irregularities to the director of nurses [or health services supervisor] and the administrator. §145.21.(g)(5) [§145.20(b)(3)]	400	800	1,200	
3. Medications are not maintained at all times in properly labeled containers and stored in locked medication room, cabinet, cart, or secured refrigerator area. §145.21(a)(3), (4), (6), (7); §145.23(o)(2)(C) [§145.20(a)(3), (4)]	500	1,000	1,500	

	(1)	(2)	(3)	(4)
4. The facility does not store controlled drugs, Schedule II, in a separately locked or permanently affixed compartment within the medication storage area. §145.21(a)(6) [§145.20(a)(6)]	200	400	600	
5. Drugs for external use are not stored separately from internal drugs. §145.21(a)(8) [§145.20(a)(8)]	200	400	600	
6. The facility does not store poisons separately from all drugs. §145.21(a)(9) [§145.20(a)(9)]	200	400	600	
7. The physician's verbal medication orders received, are not immediately recorded, or [and] signed by appropriate persons (licensed nurse, pharmacist, or physician). §145.21(b)(1) [§145.20(b)(1)]	200	400	600	
8. Resident's [Patient's] replacement (reordered) medications are not available in the facility prior to administering the last dose from the previous container. §145.21(b)(2)	200	400	600	
9. Drugs released upon the physician's order to furloughed residents [patients] are not properly labeled or [and] inventoried in and out for controlled drugs, Schedule II, III, and IV, and/or non-scheduled drugs are not listed by name. §145.21(a)(11)	300	600	900	

	(1)	(2)	(3)	(4)
10. Drugs or [and] biologicals are not prepared and administered by the same qualified person, except under a unit-of-use package distribution system, and not properly and immediately recorded following administration. §145.21(c)(3)	300	600	900	
11. Drug administration errors or [and] adverse drug reactions are not reported immediately to the resident's [patient's] physician. §145.21.(C)(6) [§145.20(c)(6)]	750	1,500	2,250	
12. The facility does not have on-hand adequate medical supplies necessary for resident [patient] needs. §145.21(c)(2) [§145.20(c)(2)]	500	1,000	1,500	
13. The medication aide exceeds the role, function, or authority of his/her medication aide permit. §145.253, §145.254, §145.259 [§145.253(a)]	500	1,000	1,500	
M. Failure to provide dietary services in accordance with standards or [and] established dietary practices [services].				
* 1. The facility does not retain a qualified dietitian or receive regularly scheduled consultation from a professional dietitian. §145.22(a)(1), (b)(1) [§145.21(a)]	500	1,000	1,500	
* 2. The facility does not insure that menus are written one week in advance. §145.22(d)(2) [§145.21(d)(2)]	200	400	600	

	(1)	(2)	(3)	(4)
3. Written menus are not followed. §145.22(d)(2)	150	300	450	
4. The staff fails to provide between meals and/or bedtime snacks or feedings according to physician's orders. §145.22(d)(1), (10)	250	500	750	
5. The staff fails to provide therapeutic diets, mechanically altered diets, or special meals in accordance with physician's orders. §145.22(d)(10) [§145.21(d)(9)]	350	700	1,050	
6. The staff fails to offer substitutions of comparable nutritional content when patients consistently refuse to eat 50 percent or more of the food served. §145.22(d)(7)	250	500	750	
* 7. The staff fails to have two days supplies of perishable foods on the premises. §145.22(d)(6) [§145.21(d)(5)]	1,000	2,000	3,000	
* 8. The staff fails to have seven days supplies of staple foods on the premises. §145.22(d)(7) [§145.21(d)(5)]	1,000	2,000	3,000	
9. The staff fails to provide a safe and sanitary environment through the practice of storage, preparation, or [and] distribution of foods. §145.22(e)(1) [§145.21(e)(1)]	350	700	1,050	
10. The staff fails to provide dishwashing procedures in accordance with state laws and regulations or [and] local health ordinances. §145.22(e)(3) [§145.21(e)(3)]	250	500	750	

	(1)	(2)	(3)	(4)
11. Handwashing facilities including hot and cold water, soap dispensers, and paper towel dispensers or air dryer [and individual towels, preferably paper towels,] are not provided in the food preparation area. §145.22(e)(6) [§145.21(e)(6)]	250	500	750	
N. Failure to provide services to meet the activity needs of the residents [patients]. §145.19(a)	300	600	900	
[1. Personnel to oversee facility activities are not provided. §145.16(d)(8)]	[300]	[600]	[900]	
0. Failure to maintain the physical plant in accordance with standards.				
1. The facility interior or [and] exterior of the facility is not maintained in a safe, clean, or orderly manner, or is not free of lingering offensive odors. [, and attractive manner.] [§145.22(a)(1)] §145.23.(e)(1)	200	400	600	
[2. The staff fails to keep the facility free from offensive odors, accumulations of dirt, rubbish, dust, and hazards. §145.22(a)(2)]	[200]	[400]	[600]	
2. [3.] The facility fails to provide general building repairs and maintenance. [§145.15(c)(8); §145.22(a)(4)] §145.23(e)(2)	150	300	450	

	(1)	(2)	(3)	(4)
3. [4.] The facility fails to provide repairs or [and] maintenance to clothes driers to prevent lint build-up and fire hazard. §145.23(c)	250	500	750	
4. [5.] The facility fails to provide secure grab bars or [and] hand rails. §145.23(o)(2)(H) [§145.15(h)(5)(grab bars)]	250	500	750	
5. [6.] The facility fails to maintain an on-going safe or effective pest control program. §145.24(b)(1) [§145.22(b)(2)]	250	500	750	
P. Failure to meet safety requirements in the maintenance and operation of the physical plant.				
* 1. Required sprinkler system is not functioning, or system water supply is turned off or is inadequate or restricted. [4442c, Sec.4A] §145.23(j)	500	1,000	1,500	
2. Required sprinkler system components are ineffective.				
a. Paint or other foreign material is on sprinkler heads. [4442c, Sec.4A] §145.23(j)	250	500	750	
b. Area or space is not properly protected by sprinkler heads. §145.23(j) [4442c, Sec.4A]	150	300	450	
c. The supervisory switch is not properly installed into fire alarm system. §145.23(j) [4442, Sec.4A]	100	200	300	

	(1)	(2)	(3)	(4)
d. There are improper heads (type and temperature rating). §145.23(j) [4442c, Sec.4A]	100	200	300	
* e. There is no current maintenance contract and/or quarterly test inspections are not performed. §145.25(f)	250	500	750	
f. There are deficiencies listed on maintenance contract or quarterly inspection reports that have not been corrected. §145.25(g)	250	500	750	
3. Required fire alarm system is not functioning in total or in the majority of zones. §145.23(j) [4442c, Sec.4A]	500	1,000	1,500	
4. Required fire alarm/detection system with trouble condition is not reported and scheduled for repair. §145.23(j) [4442c, Sec.4A]	350	700	1,050	
5. Required fire alarm/detection system components are ineffective.				
* a. There is no current maintenance contract and/or quarterly inspection reports. §145.25(f)	250	500	750	
b. A new or renovated system is not certified by licensed fire alarm installer. §145.23(j) [Texas Insurance Code 5.43-2]	150	300	450	

	(1)	(2)	(3)	(4)
c. The system is not U.L. listed and/or components are improperly inter-mixed. §145.23(j) [4442c, Sec.4A]	150	300	450	
d. The system is not fully electrically supervised. §145.23(j) [4442c, Sec. 4A]	150	300	450	
e. The system visual lights or [and] signals are not in normal operating mode. §145.23(j) [4442c, Sec.4A]	150	300	450	
f. The system is not connected directly to fire department or other approved third party system (where required). §145.23(j) [4442c, Sec.4A]	150	300	450	
g. The system is not properly maintained, such as, there are dangling wires, panel fronts missing, components not properly secured. §145.23(j) [4442c, Sec.4A]	150	300	450	
6. Emergency electrical/lighting systems are ineffective.				
* a. The generator will not start automatically and/or transfer and carry load. §145.23(1) [4442c, Sec.4A]	250	500	750	
* b. Batteries do not illuminate or maintain required illumination for required items. §145.23(1) [4442c, Sec.4A]	200	400	600	

	(1)	(2)	(3)	(4)
c. Components are ineffective.				
(1) Batteries are not maintained. §145.23(1) [4442c, Sec.4A]	150	300	450	
(2) Batteries are the improper type for the system. §145.23(1) [4442c, Sec.4A]	150	300	450	
(3) Areas or [and] components requiring emergency lighting or power are not all connected to the system. §145.23(1) [4442c, Sec.4A]	150	300	450	
(4) Fuel for generators is not properly stored or connected to the generator. §145.23(1) [4442c, Sec.4A]	200	400	600	
7. Exit doors or [and] means of egress do not meet standards.				
* a. A required exit door does not allow immediate egress. §145.23(h) [4442c, Sec.4A]	500	1,000	1,500	
* b. A required exit door is blocked on the interior or exterior with heavy obstruction. §145.23(h) [4442c, Sec.4A]	250	500	750	
c. The corridor means of egress are not kept clear of obstructions. §145.23(h) [4442c, Sec.4A]	100	200	300	

	(1)	(2)	(3)	(4)
d. The exit sign illumination is not maintained. §145.23(h) [4442c, Sec.4A]	150	300	450	
8. Smoke compartmentation does not meet standards.				
* a. Smoke or fire doors are tied, blocked, or wedged open. §145.23(k) [4442c, Sec.4A]	350	700	1,050	
b. Smoke barriers in attic are not maintained smoke tight. §145.23(k) [4442c, Sec.4A]	250	500	750	
c. Bedroom doors do not fit smoke tight in frames or [and] do not latch. §145.23(k) [4442c, Sec.4A]	100	200	300	
d. Smoke doors are not adjusted to close smoke tight. §145.23(k) [4442c, Sec.4A]	150	300	450	
9. Flammables and hazardous materials are not properly stored.				
a. Storage area construction within the facility does not meet Life Safety Code requirements. §145.23(c) [4442c, Sec.4A]	100	200	300	
b. Doors to storage areas within the facility are not properly maintained. §145.23(c) [4442c, Sec.4A]	100	200	300	

	(1)	(2)	(3)	(4)
10. Fire extinguishers do not meet requirements.				
* a. Extinguishers are not maintained in required locations. §145.23(m) [4442c, Sec.4A]	100	200	300	
b. Extinguishers are not maintained on an annual basis by qualified personnel. §145.23(m) [4442c, Sec.4A]	150	300	450	
c. The kitchen range hood extinguisher is not maintained in operable condition. §145.23(j) [4442c, Sec.4A]	150	300	450	
d. The kitchen range hood extinguisher is not inspected on a semi-annual basis by qualified personnel. §145.23(j) [4442c, Sec.4A]	100	200	300	
11. Building utility maintenance does not meet standards.				
* a. The annual gas leak test is not performed. §145.25(1) [§145.15(c)(7)]	150	300	450	
b. Mechanical rooms containing gas-fired equipment are used for storage. §145.25(n)	150	300	450	
12. Fire drills are not conducted as required.				
* a. Drills are not conducted at least one per shift per quarter. §145.25(a)(3) [4442c, Sec.4A]	200	400	600	

	(1)	(2)	(3)	(4)
b. There is no documentation of participating employees. §145.25(a)(3)	100	200	300	
13. Failure to observe smoking regulations.				
* a. There is no written policy on smoking. §145.25(m) [4442c, Sec.4A]	100	200	300	
b. Smoking is allowed in unauthorized areas. §145.25(m) [4442c, Sec.4A]	100	200	300	
* Q. Failure to provide resident-use [patient-use] hot water supply in a safe condition.				
1. Hot water temperature is 125 F to 149 F. §145.23(s)(7)	500	1,000	1,500	
2. Hot water temperature is 150 F or higher. §145.23(s)(7)	1,000	2,000	3,000	
[For each element, the deficiency/violation has been found at one or more patient-use fixtures or faucets, whether the fixture or faucet is normally operated by a patient or by an aide or attendant, and whether the measurement was made as soon as the faucet was opened or at a later time. A tolerance for thermometer variations of plus or minus three degrees is appropriate. By standards, hot water is not to exceed 110 F. However a 125-degree temperature is established as the beginning temperature for penalty in order to allow for a sudden malfunction in equipment or device which may not be immediately discerned, although a temperature of 120 degrees or higher can be a real threat to safety.]				
* R. Failure to manage an incident of abuse or neglect.				
1. Management is knowledgeable of a possible case of physical abuse or neglect but fails to report in accordance with Article 4442c, VTCS. §145.13(a)(2)(L), (M), (P) [4442c, Sec.16]	1,000	2,000	3,000	

	(1)	(2)	(3)	(4)
2. Management is knowledgeable of a substantiated case of physical abuse or neglect but fails to take corrective action. §145.13(a)(2)(L), (M), (P)	2,000	4,000	6,000	

[Element 1 relates to the management of the facility and applies when the management has knowledge of an incident of abuse or neglect which reasonably appears to be governed by Article 4442c, Vernon's Texas Civil Statutes, Section 16, and fails to report the incident as required thereunder or to assure the reporting of the incident. Element 2 relates to failure of management to take corrective action, such as termination of an involved employee, when an incident of abuse or neglect is substantiated by Department personnel or law enforcement personnel.]

S. Failure to observe humane treatment of residents [patients].

* 1. There is abuse or punishment of residents [patients]; that is, willfully inflicting injury, physical suffering, or mental anguish. §145.14(7) [§145.23(b)]	5,000	10,000	10,000	
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[When a condition qualifying for the penalty is reported by the facility in accordance with Texas Civil Statutes, Article 4442c, and corrective action has been taken by the facility to the satisfaction of the Department, the penalty may be mitigated.]

2. Residents [Patients] are not permitted to move freely from the facility. §145.14(7) [§145.23(c)]	200	400	600	
3. Residents [Patients] are not permitted to receive or send mail unopened and without undue delay [unless otherwise directed by physician]. §145.14(11) [§145.23(f)]	200	400	600	
4. Residents [Patients] are not allowed to receive visitors within the structured visiting hours unless otherwise ordered by the physician. §145.14(11) [§145.23(g)]	200	400	600	

(1) (2) (3) (4)

* T. Failure to manage for the safety of a resident [patient] or residents [patients] which result in SERIOUS INJURY defined as requiring extensive physician intervention or treatment OR DEATH of a resident [patient]. These penalties will be applied as isolated incidents or occurrences and not patterns.

1. Failure to control temperatures of resident-use [patient-use] hot water. 5,000
§145.23(s)(7) [§145.15(d)(5)]

[The penalty applies to an incident involving hot water whether the patient is being aided in bathing or is self-bathing. The temperature of the water does cause serious physical injury or causes or significantly contributes to the cause of death.]

2. Failure to protect a resident [patient] from drowning or near-drowning in a bathing facility. 5,000
§145.17(a)(8)

[The penalty applies to an incident involving a patient who normally and routinely requires aid in bathing. It does not apply to an incident involving a patient who has been considered competent to normally and routinely self-bathe.]

3. Failure to properly apply and/or monitor restraints. 5,000
§145.17(b)(17)

[The penalty applies to incidents involving gross carelessness or misuse in the application of restraints or neglect in the monitoring of a patient in restraint as to the application of the restraint and the patient's condition.]

4. Failure to assure adequate staff or procedures to handle a resident [patient] in turning in bed, transferring to bed or chair, or in providing other similar service. 3,000
§145.17(a)(8)

[The penalty applies to incidents involving inadequate number or type of staff to discharge the involved service, or gross carelessness or incompetence of the staff, or lack of devices or equipment reasonably necessary to discharge the service.]

- | | (1) | (2) | (3) | (4) |
|--|-----|-----|-----|-------|
| 5. Failure to maintain necessary surveillance or control of whereabouts of a resident [patient]. §145.17(a)(8) | | | | 3,000 |

[The penalty applies to incidents involving patients whose medical records or history indicate that the patient does wander or may wander or that the patient does attempt or may attempt to leave the place of residence under unauthorized conditions, and the facility has not made reasonable efforts through staffing, control, alarms, or other attention to provide secure care for the patient.]

- | | | | | |
|---|--|--|--|-------|
| 6. Failure to have staff available to monitor or assist certain residents [patients] in eating. §145.17(a)(8) | | | | 3,000 |
|---|--|--|--|-------|

[The penalty applies to an incident wherein the facility has inadequate staff to monitor or fails to monitor or assist a patient in eating when the record or history of the resident makes known that the resident is susceptible to choking when eating.]

- | | | | | |
|---|--|--|--|-------|
| 7. Failure to provide necessary supervision of resident [patient] smoking. §145.25(m) | | | | 3,000 |
|---|--|--|--|-------|

[The penalty applies to incidents where the facility has been negligent in providing supervision of smoking of the type reasonably judged necessary for the protection of the involved patient. The penalty does not apply where persons beyond the control of the facility, such as relatives or friends of the patient, supply the patient with smoking paraphernalia in violation of facility policies or without facility's knowledge.]

* Conditions or elements under which waiver of penalty for first occurrence is not permitted (see §145.91 (h)) and under which the restarting of the progression of penalties is not permitted under a change of ownership (see §145.91(i)).

[Effective June 25, 1986]

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

Issued in Austin, Texas, on October 5, 1988.

TRD-8810438 Robert A. MacLean, M.D.
Commissioner for
Professional Services
Texas Department of
Health

Proposed date of adoption: January 14, 1989.

For further information, please call: (512)
458-7706

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 3. Energy Resources

Payment of Royalties; Filing of Reports; Failure to Pay Penalties and Forfeitures.

• 31 TAC §3.10

The General Land Office proposes an amendment to §3.10, concerning basis for computing royalties. The amendment is needed to clarify the terms "available" and "actually available" as used in paragraph (e)(7) and (8) of this section.

Jim Phillips, general counsel, General Land Office, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Phillips also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that revenues from royalty payments will be strictly enforced according to the lease language. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jim Phillips, General Counsel, General Land Office, Legal Services, Room 630, 1700 North Congress Avenue, Austin, Texas 78701.

The amendment is proposed under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce suitable rules consistent with the law.

§3.10. Basis for Computing Royalties.

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

(e) Determination of market value.

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

(8) For the purposes of para-

graph (7)(a) of this subsection, a price will be presumed to be available to the producer if it is offered in the field where the lease is located at the time of sale. A producer may overcome the presumption by submitting evidence that the price is not actually available to the producer. The terms "available" and "actually available" as used in paragraph (7) and (8) of this subsection mean that a price is being offered, by posting, contract listing, or amendment, or otherwise, to non-affiliated parties, and that if a producer presented a barrel of oil or an MCF/MMBTU of gas to an entity offering said price, assuming all quality specifications for the price were met, that producer would in fact, receive that offered price.

(9) (No change.)

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

Issued in Austin, Texas, on October 5, 1988.

TRD-8810322 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: November
14, 1988

For further information, please call: (512)
463-5009

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administrative Division

Substantive Rules

• 37 TAC §§211.1, 211.3, 211.7, 211.9, 211.80, 211.81, 211. 83, 211.99, 211.101

The Texas Commission on Law Enforcement Officer Standards and Education proposes amendments to §211.1, concerning definitions; §211.3, concerning filing of documents; §211.7, concerning place and nature of hearings; §211.9, concerning contested cases and hearings; §211.80, concerning minimum standards for licensing; §211.81, concerning agency and chief administrator reporting responsibilities; §211.83, concerning minimum standards for retention of license; §211.99, concerning provisional peace officer or reserve license; and §211.101, concerning voluntary surrender of license.

Section 211.1 adds new definitions to track new legislation and streamline the rules generally, and also it deletes many old definitions which are no longer necessary. Section 211.3 will be amended to provide that documents

are only deemed filed with the commission when they have been received by the executive director or hearing examiner. Section 211.7 will be amended to allow the executive director to call hearings at locations outside Austin. Section 211. 9 will be amended to correct the citation of the Administrative Procedure and Texas Register Act. Section 211.80 will be amended to cover armed public security officers, to streamline and clarify the provisions concerning criminal offenses, educational and military discharge requirements, and physical, drug-free and psychological declarations. It will also provide for a rule of construction to classify criminal offenses outside the Penal Code. Section 211. 81 is substantially rewritten to clarify the reporting responsibilities of an agency and chief administrator. It requires documentation that supports licensing to be retained by the agency, that certain documents be forwarded at the time of licensing or at the time of reporting appointment after a 180-day break in service, that changes in commission files be requested in writing by an administrator, and that reports of termination be forwarded in certain circumstances. It also allows for licensing before the fingerprint criminal history process is completed. Section 211.83 will be amended to streamline and clarify its language so that its minimum standards for retention of license parallel the minimum standards of issuance of a license found in §211.80. Section 211.99 will be amended to avoid an administrative hearing on every request for a provisional license. The new procedure will allow the executive director to grant informal requests for most provisional licenses but it still retains the same hearing right in the case of denial. It also clarifies the effective dates and conditions attached to such licenses and adds a requirement that several lists of inactive license holders be considered in the decision to issue a provisional license. Section 211.101 will be amended to provide for constructive delivery of voluntary surrenders of license to the commission and for constructive surrender of all licenses based on one surrender.

David M. Boatright, general counsel, 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 or small businesses as a result of enforcing or administering the sections.

Mr. Boatright 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 will be more streamlined and enforceable rules, upgraded standards for issuance and retention of license, and more efficient systems for provisional licenses and voluntary surrenders of license. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to David M. Boatright, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1606 Headway Circle, Suite 100, Austin, Texas 78754.

The amendments are proposed under the Government Code, 415.010, 415.012, 415.055, and 415.060, which provide the Texas Commission on Law Enforcement Officer

Standards and Education with the authority to pass rules for the administration of Chapter 415; to set minimum standards for licensing; to establish reporting standards and procedures from agencies and their chief administrative officers; and to adopt rules to allow provisional licenses to be issued in cases of manpower shortage. The amendments are also proposed under Texas Civil Statutes, Article 6252-13a, 4(a)(1), which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules of practice and procedure before the commission.

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

Accredited college or university—An institution of higher education that is accredited by its state education department and by either the Southern Association of Colleges and Schools or a similar regional association.

Agency—A law enforcement unit or other entity, whether public or private, authorized by law to appoint at least one license holder governed by the Government Code, Chapter 415, or its predecessor statutes.

Appointed—Elected or commissioned by an agency as a peace officer or reserve or otherwise selected or assigned to a position governed by the Government Code, Chapter 415, without regard to pay or employment status.

Armed public security officer—A person appointed under the provisions of Chapter 758, 70th Legislature, 1987.

Chief administrator—The head of an agency, such as a sheriff, constable, chief of police, marshal, director of public safety, etc.

Commission—[Agency or Commission] The Texas Commission on Law Enforcement Officer Standards and Education.

Commissioned—Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

Commissioners—The nine commission members appointed by the governor and, where appropriate, the five ex-officio members.

Convicted—Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is re-

leased from all penalties and disabilities resulting from the offense;

(C) the cause has been made the subject of an expunction order;

(D) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

[Contested case—A matter so designated by the Administrative Procedure and Texas Register Act, §3(2).]

Executive director—[Director]—The executive director of the commission [in charge of the agency].

Firearms proficiency—Receiving a passing score on a course of fire that meets or exceeds the minimum standards for annual firearms proficiency.

Hearing examiner—[Hearing examiner]—A person appointed by the executive director [agency] to conduct administrative hearings for the commission [on matters within the agency jurisdiction].

Jailer—A person appointed as a jailer or guard of county jail [—A person] under the provisions of the Local Government Code, §85.005, whose job title may be county jailer, county detention officer, county correction officer, county correctional officer, or some similar title but the term does not mean a city, state, federal, or private jailer [so designated by Texas Civil Statutes, 1925, Article 6871].

Law enforcement agency—An organization or entity, whether public or private, authorized by law to appoint at least one peace officer.

License holder—Any person who holds a current, valid license of any type issued by the commission, whether or not under current appointment.

[License—A matter so designated by the Administrative Procedure and Texas Register Act, §3(3).]

[Licensee—A person seeking to retain a license.]

Officer—A peace officer or reserve.

[Party—Each person or agency named or admitted as a party.]

Peace officer—A person elected, employed, or appointed as a peace officer under [so designated by] the Code of Criminal Procedure, Article 2.12, [and by the Texas] under the Education Code, §51.212 or §51.214, or under other law.

[Petitioner—A party seeking a license or ruling from the agen-

cy.]

[Pleading—Written allegations filed by parties concerning their respective claims.]

Placed on probation—Has received an unadjudicated or deferred adjudication probation for a criminal offense.

Reserve—[law enforcement officer]—A person appointed as a reserve law enforcement officer under Government Code, the Local §85.004 (reserve deputy sheriff), §86.012 (reserve deputy constable), or §341.012 (municipal police reserve) [in compliance with Texas Civil Statutes, Article 998a or Article 6869.1].

[Rule—A matter so designated by the Administrative Procedure and Texas Register Act, §3(7).]

Telecommunicator—A dispatcher or other communications specialist appointed under or governed by the provisions of Chapter 147, 70th Legislature, 1987.

§211.3. Filing of Documents. All petitions, complaints, motions, replies, answers, notices, or [and] other documents [pleadings] relating to any matter [proceeding pending or to be instituted] before the commission [agency] shall be filed with the executive director and [. They] shall be deemed filed only when actually received by him or the hearing examiner.

§211.7. Place and Nature of Hearings. All hearings [conducted in any proceeding] shall be open to the public and [. All hearings] shall be held in Austin, unless otherwise provided by the executive director.

§211.9. Contested Cases and Hearings. Contested cases and hearings will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, [§13] Texas Civil Statutes, Article 6252-13a.

§211.80. Minimum Standards for Licensing.

(a) An applicant for a peace officer, a reserve, an armed public security officer, or a jailer license must [shall]:

(1) be a citizen of the United States of America;

(2) meet the minimum standard for entry level age found in §211.97 of this title (relating to Minimum Entry Level Age Requirement);

(3) be fingerprinted and be subjected [subject] to a search of local, state, and national records and fingerprint files to disclose any criminal record;

(4) not be on probation for any

[a] criminal offense above the grade of Class C misdemeanor;

(5) not have been convicted of a Class A misdemeanor offense [of the grade of "Class A" or its equivalent,] within the last 12 months;

(6) not have been convicted of a Class B misdemeanor [of the grade of Class B or its equivalent] within the last six months;

(7) not have been convicted of the offense of driving while intoxicated or driving under the influence of drugs within the last 24 months [two years];

(8) not have ever been convicted at any time of a felony offense [as defined by Texas Civil Statutes, Article 4413(29aa), §8A(c)];

(9) be of good moral character;

(10) be subjected [subject] to a thorough, comprehensive background investigation by the appointing authority [to be conducted by the agency desiring to license the applicant];

(11) meet one of the following minimum educational requirements:

(A) be a high school graduate; [or]

(B) have passed a general educational development (GED) test indicating high school graduation level; or

(C) have [attained the equivalent of] 12 semester hours credit from [at] an accredited college or university;

(12) be examined by a licensed physician and be declared in writing within the past 180 days both:

(A) to be physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought [as a peace officer, reserve law enforcement officer, or jailer or guard of county jail]; and

(B) to show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test;

(13) be examined by a registered professional [licensed psychologist or a licensed physician] and be declared in writing within the past 180 days by that professional [the psychologist or physician] to be in satisfactory psychological and emotional health appropriate to the type of license sought and appointment to be made [to be a peace officer, reserve law enforcement officer, or jailer or guard of county jail, as required by Texas Civil Statutes, Article 4413(29aa), §7A];

(14) be interviewed personally prior to appointment by representatives of the appointing authority;

(15) not have been discharged from any [and all] military service under less than honorable conditions including, specifically:

(A) under other than honorable conditions;

(B) bad conduct;

(C) dishonorable; or

(D) any other characterization of service indicating bad character;

(16) not have had a license denied by final order or [issued by the commission previously] revoked;

(17) meet the minimum training standards required by the rules of this agency for each license sought;

(18) pass the commission licensing examination required by the rules of this agency for each license sought;

(19) not have a voluntary surrender of license currently in effect;

(20) not violate any commission rule or the Government Code, Chapter 415.

(b) The commission may only issue a license to an applicant if:

[(1) a signed application for such license is received from a law enforcement agency; and

[(2) the applicant complies with the standards set forth in subsection (a) of this section.]

(b)[(c)] A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license.

[(d) A person who fails to comply with the standards set forth in this section] shall not accept appointment as an [a peace] officer or [, reserve law enforcement officer,] jailer [or guard of a county jail].

(c) For purposes of this section, the commission will construe any probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military, or foreign jurisdiction.

(d) However, a classification of an offense as a felony will never be changed or downgraded because Texas

law has changed or because the offense would not be a felony under current Texas laws.

(e) The effective date of this section shall be January 1, 1989.

§211.81. [Law Enforcement] Agency and Chief Administrator Reporting Responsibilities.

(a) An [A law enforcement] agency that desires to appoint [hiring] a person who does not hold [desiring] a commission license to a position requiring such license must [shall] file an application for that license with the commission [as required by Texas Civil Statutes, Article 4413(29aa), §6(c)].

(b) The application must [for license shall] be filed with the commission and approved with a license date before the [prior to appointment of a] person is appointed or commissioned [as a peace officer, reserve law enforcement officer, jailer or guard of a county jail as required by Texas Civil Statutes, Article 4413(29aa), §6(c)].

(c) The application must [for license shall] be completed, signed, and filed with the commission by the agency's chief administrator [i.e., the sheriff, the constable, the chief of police, etc.] of the law enforcement agency] or, if that person designates another, by a license holder.

(d) Each agency that files an application for licensing or reports initial appointment must [law enforcement department shall] keep on file at its headquarters for inspection by the commission[,] and must forward, upon request to [the acknowledgment of license on file issued by] the commission, the documentation necessary to show [for] each officer or jailer appointed [employed] by that agency met the minimum standards for licensing [law enforcement department].

(e) An agency [A law enforcement department] which submits an application [for license to the commission] for an individual [seeking a license and subsequently fails to employ that individual as a peace officer, reserve law enforcement officer, or jailer,] shall, through its chief administrator, report any [the] failure to appoint in the reported capacity [employ] to the commission within 30 days of the reported date of appointment.

(f) A copy of the original written reports or documentary evidence obtained by the agency to support [demonstrate that each applicant for] licensing must [satisfactorily meets the minimum standards for licensing as required by §211.80 of this title (relating to Minimum Standards for Licensing) shall] be attached to each application and [for license] forwarded to the commission, including specifically:

(1) one completed FBI finger-

print card which has been classified and processed through the FBI;

(2) one completed DPS fingerprint card which has been classified and processed through DPS;

(3) a criminal history by name and date of birth from both TCIC and NCIC;

(4) proof of the final disposition of each arrest, probation, conviction, or any other criminal history that may exist;

(5) a current declaration by a physician that the applicant is both physically sound and drug free;

(6) a current declaration by a registered professional that the applicant is in satisfactory psychological and emotional health;

(7) a military discharge or other documentation showing the character of service, if the applicant was ever in the military;

(8) a high school diploma, GED, college transcript, or other documentation necessary to show the applicant meets the education standard; and

(9) any training or any other documentation required by the commission for that particular application.

(g) Each agency must [Employing law enforcement departments shall] require an [each] applicant [for licensing] to furnish any [the department with the applicant's] Social Security number (SSN) assigned to the applicant to be included on the application [for license submitted for that applicant]. The applicant should [shall] be advised that the disclosure of the SSN [Social Security number] is required under the Government Code, §415.012, [Texas Civil Statutes, Article 4413(29aa), §2B(a), in order] to provide the commission with an identifiable number for licensing. All names and all SSN's assigned to that person must be disclosed.

(h) An [A law enforcement] agency that appoints an individual who already holds a valid [possessing a] license appropriate to that position [issued by the commission] must, through its chief administrator, [shall] notify the commission of the appointment within 30 days of the actual date of appointment [as required by Texas Civil Statutes, Article 4413(29aa), §6(d)]. This notification must be made on a commission form that reports appointment. This form must be completed and signed as required of a license application and, if the appointment is made after a 180 day break in appointment, it must have attached to it:

(1) a criminal history by name and date of birth from both TCIC and NCIC run within the past 30 days;

(2) a current declaration of

psychological and emotional health;

(3) a current declaration of lack of any dependency or illegal drug use; and

(4) two completed fingerprint cards as required for initial licensing.

(i) The chief administrator must [of a law enforcement agency shall] not intentionally or knowingly appoint a person who fails to comply with the minimum standards for the appropriate license or who does not hold a required license [set out in §211.80 of this title (relating to Minimum Standards for Licensing)].

(j) An agency, through its [The] chief administrator, must [of a law enforcement agency shall immediately] notify the commission in writing within 30 days on a commission form that reports termination, when a person [an officer or jailer] under appointment with that agency:

(1) fails to comply with the minimum standards for retention of license [set forth in §211.83 of this title (relating to Minimum Standards for Retention of License)];

(2) is terminated from appointment for any reason;

(3) is temporarily suspended from appointment for more than 30 days; or

(4) is placed on active duty military leave for more than 30 days.

(k) A chief administrator is responsible for making any reports or submitting any documents required of that agency by the commission.

(l) Except in the case of a commission error, a chief administrator who wishes to report a change to any information within commission files about a license holder (such as date of appointment or officer type) must do so in a signed, written request to the commission on a commission form, if available, containing:

(1) the license holder's name and SSN;

(2) the requested change; and

(3) the reason for the change including, specifically, an explanation for the original incorrect or erroneous report.

(m) The commission may, in the discretion of the executive director, waive the requirement of a completed FBI or DPS fingerprint card, or both:

(1) if a reasonable good faith effort to comply has been made by the agency;

(2) if a complete criminal history is provided by name and DOB; and

(3) if the agency forwards to

the commission a sworn, notarized statement by the applicant of his complete criminal history or that he has never been arrested, charged, convicted, or placed on probation for a criminal offense.

(n) The effective date of this section shall be January 1, 1989.

§211.83. Minimum Standards for Retention of License.

(a) To retain a license issued by the commission, a license holder must [licensee shall] not:

(1) be convicted [by any state or by the federal government] of any driving while intoxicated or driving under the influence of drugs offense;

(2) be placed on probation for any [a] criminal offense above the grade of Class C misdemeanor;

(3) be convicted of a Class A or B misdemeanor offense [of the grade of Class A or Class B or its equivalent];

(4) be convicted of a felony offense [as defined by Texas Civil Statutes, Article 4413(29aa), §8A];

(5) be discharged from any military service under less [other] than honorable conditions[,] including, specifically:

(A) under other than honorable conditions;

(B) bad conduct;

(C) dishonorable; or

(d) any other characterization for service indicating bad character;

(6) make, [or] submit, cause to be submitted, or file a false or untruthful report to the commission or to an agency or chief administrator, if the report is required by the commission;

(7) violate a commission rule [or standard established by the commission];

(8) violate any provision of the Government Code, Chapter 415; [the provisions of Texas Civil Statutes, Article 4413 (29aa), §6;]

(9) fail to maintain United States citizenship; [violate the provisions of Texas Civil Statutes, Article 4413 (29aa), §7A.]

(10) fail to maintain credit for a high school diploma, a GED, or the 12 hours of college credit necessary to meet the minimum educational standard;

(11) fail to maintain credit for meeting the original training or testing standard;

(12) voluntarily surrender any license unless that surrender is expressly limited; or

(13) be declared to be in unsatisfactory psychological or emotional health appropriate to the type of license or appointment held.

(b) The license holder should not be convicted of or placed on probation for any criminal offense of any grade that is related to the duties and responsibilities of office [A licensee shall immediately notify the commission in writing upon failing to comply with any of the standards set forth in this section].

(c) For purposes of this section, the commission will construe any probation or conviction for a criminal offense in the same manner as the minimum standard for licensing.

(d) A license holder must meet the minimum standards for licensing at the time of issuance of license. A fact, which would have supported license denial at that time, will support cancellation, suspension, or revocation under this section, whether discovered before or after issuance.

(e) The effective date of this section shall be January 1, 1989.

§211.99. Provisional Peace Officer or Reserve License.

(a) The commission shall issue to an [a law enforcement] agency a provisional license for a person seeking appointment by that agency as a peace officer or as a reserve [law enforcement officer] if that person:

(1)[(2)] meets all other [the] minimum standards for the license sought, but is not eligible for a permanent peace officer or conditional reserve license because of lack of training or testing[.]; and

(2) is approved by the executive director under this section; or

(3)[(1)] is the subject of a favorable order signed by the commissioners. [a hearing examiner under this section; and]

(b) A provisional license is issued in the name of the applicant [officer] ; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor by the agency to another applicant.

(c) An [A law enforcement] agency desiring to appoint a person pursuant to the issuance of a provisional license must, before appointment, request in writing for the executive director to approve such issuance. The request shall be attached to a completed license application and should state the existence of the factors found in subsection (e) of this section and be signed and dated by the chief adminis-

trator. [shall] If denied, the agency may petition the commission for such [a provisional peace officer license or a provisional reserve law enforcement] license.

(d) [Upon the filing of a petition for a provisional license] The commission shall set the petition for a hearing [before a hearing examiner appointed by the commission.]

(e) The provisional license petition hearing shall be set in Austin at a regional commission office or] at an [a location] agreed [to by the commission and the applicant law enforcement agency at a time and] date [agreed to by the commission] and location [the applicant law enforcement agency; however], except that the [applicant law enforcement] agency shall have the waivable right to [request a notice period of] at least 20 [10] days notice of such hearing. [The 10 day minimum notice period may be waived by the applicant law enforcement agency.]

(e)[(f)] At such hearing, the [Provisional license petition hearing.

(1) The applicant law enforcement] agency shall substantiate that it has a manpower shortage and must prove, specifically: [.]

(2) The applicant law enforcement agency shall substantiate that it has a manpower shortage through the use of (but not limited to):]

[(A) sworn testimony;]

[(B) exhibits;]

[(C) public records and any other competent and relevant evidence deemed admissible by the hearing examiner.]

(3) Relevant factors that may be considered by the hearing examiner include, but are not limited to:]

(1)[(A) evidence] that the [applicant law enforcement] agency has been [is] operating at a manpower shortage rate of more than 25% [or more] of [the agency's] authorized strength[, or evidence that the applicant law enforcement agency has operated with a manpower shortage] for more than [a period of time exceeding] 45 days;

(2)[(B) evidence] that the [applicant law enforcement] agency has made sufficient [each and every] effort to fill each vacancy within the shortage with an otherwise qualified, [a] licensed peace officer or [licensed] reserve including, specifically, consideration of any license holder list that is maintained by the commission [law enforcement officer];

(3)[(C)] the nature of the [manpower] shortage [(i.e., patrol division, administration, jail, dispatch, etc.);] and its

[(D) the] relationship [of the manpower shortage] to the overall efficient operation of the agency;

(4)[(E)] the extent to which the [manpower] shortage hinders the ability and capacity of the agency [required] to perform its [the] duties and discharge its [the] responsibilities [of the law enforcement agency]; and

(5)[(F)] the availability of [a basic training course for the type of provisional license requested, including evidence of] the next [available] basic training course for the license sought that will [to] be offered in the agency's council of government [regional training] area [which serves the applicant law enforcement agency].

(f)[(4)] Any [A finding that a provisional license shall be issued] order under this section shall be made in writing by the commissioners [hearing examiner] and may include reasonable terms and conditions placed on the activities of the holder. A provisional license may be cancelled or suspended for violation of any such term or condition.

(g) Unless there is an order, the effective and expiration dates of a provisional license shall be those set by the executive director at the time of approval. If there is an order, the commissioners will, in that order, set:

(1)[(A)] The effective date [of the provisional license, if issuance is made, shall be the date] , which will not, in any event, be earlier than the date the order is signed; and [the hearing is closed.]

(2)[(B)] The expiration date [of a provisional license shall be the date set by the hearing examiner].

(h) The effective date of this section shall be April 28, 1987.

§211.101. Voluntary Surrender of License.

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

(d) A license holder may voluntarily surrender any license by sending, or causing to be sent, a signed, written request to the executive director, who may accept or reject the request. The executive director may liberally construe the intent of any request and may, specifically, construe the surrender of any single commission license to be a surrender of all other licenses held unless the request expressly states otherwise. The surrender should include a summary of the reason for the surrender.

(e) (No change.)

(f) In case of such reapplication, the executive director:

(1) shall deny the new license based upon any failure to meet the current minimum standards for licensing;

(2) may deny a [the] new license of the same or any other type based solely upon a voluntary surrender:

(A) if permanent; or

(B) if for a term that has not yet expired; or

(3) may approve the reissue and may give notice to any agency or individual named in the original surrender and then may impose any previously agreed conditions (such as suspensions, pro-rated terms of suspension, etc.).

(g)-(h) (No change.)

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810360 David M. Boatright
General Counsel
Texas Commission on Law
Enforcement Officer
Standards and
Education

Proposed date of adoption: January 1, 1989

For further information, please call: (512) 834-9222

- 37 TAC §§211.2, 211.4-211.6, 211.8, 211.10-211.14, 211.75, 211.76, 211.84, 211.85, 211.96, 211.98

(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 Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Law Enforcement Officer Standards and Education proposes the repeal of §§211.2, 211.4-211.6, 211.8, 211.10-211.14, 211.75, 211.76, 211.84, 211.85, 211.96, and 211.98. These sections have either been superseded or replaced by the Administrative Procedure and Texas Register Act or are being completely rewritten.

David M. Boatright, general counsel, 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 or small businesses as a result of enforcing or administering the repeals.

Mr. Boatright 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 more efficient enforcement of commission rules in their rewritten form. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David M. Boatright, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1606 Headway Circle, Suite 100, Austin, Texas 78754.

The repeals are proposed under the Government Code, §415.010(10), 415-.012, 415.031, 415.052, 415.057, and 415.062, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to set mental standards for licensing; to require submission of certain reports from agencies; to approve or revoke approval of schools or academies that train license holders; to license qualified instructors; to adopt rules for reactivation of a peace officer license after a break in appointment; to license a person only after a declaration of satisfactory psychological and emotional health; and to issue certificates that recognize professional achievement or proficiency. The repeals are also proposed under Texas Civil Statutes, Article 6252-13a, which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to establish rules of procedure and other matters.

§211.2. *Object of Rules.*

§211.4. *Computation of Time.*

§211.5. *Classification of Parties.*

§211.6. *Incorporation by Reference of Agency Records.*

§211.8. *Presiding Officer.*

§211.10. *Revocation of License.*

§211.11. *Rules of Evidence.*

§211.12. *Burden of Proof and Order of Procedure.*

§211.13. *Proposal for Decision.*

§211.14. *Final Decision.*

§211.75. *Certification of Schools.*

§211.76. *Minimum Standards for Instructor Certification.*

§211.84. *Termination of Employment or Appointment.*

§211.85. *Proficiency Certificates.*

§211.96. *Reactivation of a Peace Officer License.*

§211.98. *Psychological Examination.*

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

Issued in Austin, Texas, on October 3, 1988.

TRD-8810358 David M. Boatright

General Counsel
Texas Commission on Law
Enforcement Officer
Standards and
Education

Proposed date of adoption: January 1, 1989

For further information, please call: (512) 834-9222

- 37 TAC §§211.15-211.26, 211.65-211.68, 211.85, 211.88, 211.89, 211.96, 211.98, 211.107

The Texas Commission on Law Enforcement Officer Standards and Education proposes new §211.15 concerning license action; §211.16 concerning notice; §211.17 concerning appeal; §211.18 concerning license holder lists; §211.19 concerning public information; §211.20 concerning contemplated rule making; §211.21 concerning fees and payment; §211.22 concerning issuance of duplicate or delayed documents; §211.23 concerning date of licensing, certification, or acknowledgment; §211.24 concerning date of appointment; §211.25 concerning meeting dates and procedures; §211.26 concerning undercover records; §211.65 concerning academy licenses; §211.66 concerning agreement training; §211.67 concerning advisory boards; §211.68 concerning instructor licenses; §211.85 concerning proficiency certificates; §211.88 concerning reporting responsibilities of individuals; §211.89 concerning denial; §211.96 concerning reactivation of a peace officer license; §211.98 concerning psychological examination of an initial license applicant; and §211.107 concerning psychological re-examination of a license holder after a break in service. Section 211.115 restates the statutory provisions for preliminary notice and hearing before any license action to deny, cancel, suspend, or revoke and provides for automatic expiration or deactivation of license. Section 211.16 restates the statutory provisions for notice of rules to law enforcement agencies and the legislature and notice of license action to individual license holders. Section 211.17 restates the statutory provision for appeal of final decisions and allocates the costs of appeal. Section 211.18 implements two lists of peace officer license holders who are not under current appointment. The first active license list is of officers who have terminated within the past two years and the second inactive license list is of officers whose licenses have deactivated within the past two years. Section 211.19 restates the statutory provisions for public notice of rules, memoranda, policies, procedures, and final orders. Section 211.20 restates the statutory provisions for advice and procedures for contemplated rule making. Section 211.21 requires fees to be paid by money order, cashier's check, or agency check. Section 211.22 provides for procedures to issue a document in either duplicate or original forms and fixes the fee for duplicates at \$5.00, which is the current policy. Section 211.26 provides for temporary removal of undercover officers license records. Section 211.65 provides for licensing of three types of academies: agency, college, and regional; sets the standards for issuance, cancellation, suspension, and revocation of academy licenses; provides inspection standards; and sets the requirements and duties

of training coordinators. Section 211.66 provides for agreement training conducted by an agency, academy, school, individual, or other entity. Section 211.67 sets the standards for advisory boards for either academy or agreement training. Section 211.68 sets the standards for issuance and retention of instructor licenses. Section 211.85 provides for proficiency certificates for three levels of peace officer, two levels of reserves, one level of jailers and several specialty certificates: crime prevention inspector, homeowners insurance inspector, and investigative hypnotist. Section 211.88 provides for individual reporting responsibilities concerning signed applications, rule violations addresses, and changes of name. Section 211.89 sets standards for license denial. Section 211.96 provides for reactivation of a peace officer license after a two-year break in service and clarifies temporary licenses which have been previously issued. Section 211.98 sets the standards for administering and reporting initial psychological examinations, and standards for registering professionals and for exceptional circumstances. Section 211.107 sets the standards for reporting psychological examinations after a 180-day break in service.

David M. Boatright, general counsel, 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 or small businesses as a result of enforcing or administering the sections.

Mr. Boatright also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections will be more efficient enforcement of commission rules; increased understanding of commission rules, law, and procedure; clarification of such issues as dates of licensing or appointment, undercover records, and denial of licenses; and increased protection flowing from adding content and standards to the declarations of psychological and emotional health. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to David M. Boatright, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1606 Headway Circle, Suite 100, Austin, Texas 78754.

The new sections are proposed under the Government Code, 415.008, 415.010(1), 415.010(10), 415.012, 415.031, 415.051(b)(2), 415.052, 415.057, 415.060, 415.061, 415.062, and 415.064, which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to set meeting dates; to receive biennial public comment on training and standards; to adopt rules on internal management and control; to adopt rules for the administration of Chapter 415 of the Government Code; to set minimum standards for licensing; to require reports from agencies and academies about appointment and other matters; to license schools operated by or for the state or a political subdivision; to approve training after establishment of an advisory board; to license instructors; to require a new psychological declaration after a 180-day break in appointment; to issue licenses to persons after proper application and other requirements;

to adopt rules establishing active and inactive lists of peace officers who leave employment; to adopt rules to reactivate a peace officer license; to adopt rules to set the standards and measures used for psychological declarations and to use other qualified professionals for such declaration in exceptional circumstances; to set procedural rules for hearings and other matters; to provide for appeal of certain matters; to use the employment records of an agency for the purpose of proficiency certification and for the date of appointment as a peace officer.

The new sections are also proposed under Texas Civil Statutes, Article 6252-17, 3(a), and Article 6252-13a, 4(a), 5f, 5g, 5h, 11, 13, 18c, and 19f, which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to exempt from open records disclosure certain records of undercover officers; to index and make available to the public certain rules, memoranda, policies, procedures, and final orders; to hold informal conferences and appoint advisory committees when contemplating rule making; to give notice to certain individuals, agencies, and the legislature; to adopt rules governing petitions to adopt rules; to provide for notice and hearings for certain commission actions; and adopt rules to tax costs of transcription or appellate record.

§211.15. License Action.

(a) A person whose license the commission proposes to deny, cancel, suspend, or revoke is entitled to preliminary notice from and to a hearing before the commission. License expiration or deactivation is automatic. However, the commission may set a hearing upon petition by the holder of an expired or deactivated license for the commission to prove expiration or deactivation.

(b) An action by the commission to deny, cancel, suspend, or revoke one license will, if so plead, also operate against any other commission license or certificate held by the same person.

(c) The effective date of this section is January 1, 1989.

§211.16. Notice.

(a) At least 30 days before considering final adoption, the commission will give notice of each proposed rule change:

(1) to the lieutenant governor and the speaker of the house; and

(2) to each law enforcement agency.

(b) Before the effective date of each proposed rule, the commission will mail notice of final adoption to each law enforcement agency.

(c) When individual notice is required, the holder of a license, certificate, or acknowledgment from the commission must receive notice of any action or matter before the commission at:

(1) the address of the agency

shown in commission records to have the holder under current or last appointment;

(2) the address shown on the Texas driver's license record of the holder; or

(3) any other address requested by the holder in a written request to the executive director.

(d) The effective date of this section is January 1, 1989.

§211.17. Appeal.

(a) A person dissatisfied with a final decision of the commission may appeal the decision by filing a petition with a Travis County district court not later than the 30th day after the date of the final decision.

(b) All or part of the proceedings of a contested case, will be transcribed upon the written request of a party with cost to that party, unless the executive director provides otherwise.

(c) Any party who appeals a final decision must pay all preparation costs for the original or certified copy of the record of any proceeding to be submitted to the court.

(d) The effective date of this section is January 1, 1989.

§211.18. License Holder Lists.

(a) The commission will establish lists of all prospective, current, or recently deactivated peace officer license holders within each county who are not reported as under current peace officer appointment. The active list will include current, valid license holders. The inactive list will include both recently deactivated license holders and persons who are unlicensed but recently trained and tested to be peace officers.

(b) The active list will include, in alphabetical order by the last name, every peace officer license holder who was last reported as terminated by an agency within that county within two years from the date of the list.

(c) The inactive list will include every peace officer license holder whose license has been deactivated for less than two years and also those persons who are unlicensed, but who have met the peace officer training and testing standards within two years of the list. The county for these persons will be the county of their academy.

(d) A chief administrator may request a copy of either list from the commission for employment or recruitment purposes.

(e) The active list must, and the inactive list may be considered before any decision to issue a provisional license.

(f) The effective date of this section is January 1, 1989.

§211.19. Public Information.

(a) All commission rules are published in the *Texas Register* as they are proposed and adopted.

(b) The commission will index, maintain, and make available for public inspection at the Austin headquarters a copy of:

- (1) the current rules;
- (2) all interpretive memoranda, policies, and procedures; and
- (3) all final orders, decisions, and opinions of the commission.

(c) The effective date of this section is January 1, 1989.

§211.20. Contemplated Rule Making.

(a) Concerning contemplated rule making, the commission may:

- (1) use informal conferences and consultations to obtain the advice of interested persons; or
- (2) appoint any advisory committee of experts, interested persons, or the public.

(b) An interested person may petition the commission to propose the adoption of a rule. If the petition is in writing, the executive director must, within 60 days of submission, either place the petition on the agenda for the next regular meeting or deny the petition in writing. A denial will be reported at the next meeting. The commission staff or its attorney may modify the language or format of the petition before it is submitted as a proposed rule.

(c) The effective date of this section is January 1, 1989.

§211.21. Fees and Payment.

(a) Any fee or payment made to the commission by a person, agency, or other entity will be accepted only in the form of a money order, cashier's check, or agency check. Cash or personal check may be refused.

(b) The effective date of this section is January 1, 1989.

§211.22. Issuance of Duplicate or Delayed Documents.

(a) If an original license, certificate, acknowledgment, or other document was previously issued by the commission, a duplicate of that document may, if the document is current and valid, be issued after:

- (1) a request is made in person or in writing;
- (2) a check of commission re-

ords verifies original issuance and continuing validity; and

(3) payment of a \$5.00 fee.

(b) If all requirements for issuance of a document were met at one time, the commission may issue the document, without requiring the payment of a fee, regardless of:

- (1) the current reported appointment status of the individual; or
- (2) the reason it was not previously issued.

(c) The effective date of this section is January 1, 1989.

§211.23. Date of Licensing, Certification, or Acknowledgment.

(a) If an application is required, the date of licensing, certification, or acknowledgment will be either the receipt date or the acceptance date of the application, whichever is later.

(1) The receipt date is the day the completed application is received by the commission and will be used if the commission has already received proof before that date that the applicant has met the required standards.

(2) The acceptance date is the day proof of all required standards is received and accepted by the commission and will be used:

(A) if the commission has already received the completed application; or

(B) if no application is required.

(b) The commission may set a licensing, certification, or acknowledgment date or may issue any document before the date of appointment, but will never do so before the date of receipt or acceptance, whichever is later.

(c) A person is licensed, certified, or acknowledged by the commission on the date of such act by the commission whether or not:

- (1) any physical document has been or ever is issued; or
- (2) the person has such physical document in his possession.

(d) Any such document may expire or be cancelled, surrendered, suspended, revoked, deactivated, or otherwise invalidated. Mere possession of the physical document does not necessarily mean that the person:

- (1) currently holds, has ever held, or has any of the powers of the office indicated on the document; or
- (2) still holds a current, valid li-

cence, certificate, or acknowledgment.

(e) The effective date of this section is January 1, 1989.

§211.24. Date of Appointment.

(a) To determine experience for purposes of law enforcement proficiency certification, the commission must use the date of appointment that appears in the records of any appointing agency, whether licensed or not.

(b) A person is licensed only if that person still holds a license that has not expired or been cancelled, surrendered, suspended, revoked, deactivated, or otherwise invalidated.

(c) If a proper report of appointment is received for appointment as a peace officer, the commission must accept the date of appointment reported to the commission by the agency.

(d) If a proper report of appointment is received for some appointment other than as a peace officer, the commission may accept such a report.

(e) The effective date of this section is January 1, 1989.

§211.25. Meeting Dates and Procedures.

(a) The commission will comply with the open meetings law and may hold quarterly meetings throughout each calendar year, normally scheduled in Austin at 10 a.m. on the second Wednesday of each March, June, September, and December, unless:

(1) the date, time, and location is altered by vote of the commissioners; or

(2) more frequent meetings are called by the chairman on the chairman's own motion or upon the written request of five voting commissioners.

(b) At least once every two years, a regular or special meeting will receive public comment on training and standards for officers and jailers.

(c) Each meeting will be conducted by the chairman or, in the absence of the chairman, by the vice-chairman, the secretary, the most senior commissioner, or another commissioner selected by vote, in that order.

(d) The effective date of this section is January 1, 1989.

§211.26. Undercover Records.

(a) The commission and its records are governed by the Open Records Act. However, to protect the security of an undercover operation and its law enforcement participants, the commission may, upon request to the commission's custodian of records, temporarily remove from its routinely accessed files the records of an

individual license holder.

(b) Such request may be informally accepted, but should be in writing from the chief administrator including the name, Social Security Number, agency, and approximate dates of the undercover operation, without including any other details of that operation.

(c) Such request should not be for more than 12 months and may be renewed.

(d) While a record is in an undercover status, the commission will respond in the negative to any request on the license or appointment status of that license holder.

(e) The effective date of this section is January 1, 1989.

§211.65. Academy Licensing.

(a) The commission may issue an academy license to an academy that is operated by or for the state or any political subdivision of the state for the specific purpose of training officers or jailers.

(b) To be issued an academy license, an academy must pass an inspection of its facilities and instructional materials and must submit for commission approval:

(1) a completed, written application on a commission form that is signed by the chief administrator or head of the organization exercising administrative control over the academy;

(2) a resolution of support from the governing body of the sponsoring organization;

(3) the formal name of the academy which must not misrepresent the status of the academy or be confusing to law enforcement or to the public;

(4) a proposed startup and operational budget and a proposed course schedule to show that training will be conducted on a continuing basis;

(5) evidence that an advisory board has already been appointed as provided by law and rule including a list of board members and a brief recitation of their current titles and qualifications;

(6) any advisory board minutes necessary to show the decisions which have been made by that board in all areas required by the commission;

(7) the name and Social Security Number of the proposed training coordinator and any course coordinators or instructors who will be available to the academy, including any license documentation that may be requested by the commission; and

(8) evidence that the academy will be, based on the characteristics of the sponsoring organization, at least one of the following:

(A) an agency academy, conducted by a law enforcement agency that has at least 50 full-time peace officers under current appointment;

(B) a college academy, conducted by an institution governed by the Texas Higher Education Coordinating Board; or

(C) a regional academy, conducted or sponsored by a regional planning or council of governments (COG) board.

(c) The commission will only issue one regional academy license within each COG area at any one time.

(d) To be or remain a regional academy, that particular academy must substantially meet the training needs of all current or prospective license holders who reside in that region and do not attend an agency or college academy.

(e) A licensed academy must be inspected by the commission before licensing and may, after licensing, be inspected at any time. The commission may appoint an inspection team composed of persons with experience in the field of law enforcement education or others and at least one member of the commission staff.

(f) To pass an inspection, an academy must have, or have access to, and must maintain:

(1) a reasonably comfortable classroom and/or testing facility that is:

(A) sufficiently air conditioned and heated;

(B) well lit; and

(C) free of noise or other unreasonable distractions;

(2) a reasonably safe firearms range capable of meeting the firearms instruction requirements of the basic peace officer course; and

(3) sufficient instructors and instructional material, devices, and equipment necessary to conduct effective training.

(g) All academy licenses must be formally approved by the commission upon recommendation of the staff and after the applicant has had an opportunity to be heard.

(h) A training coordinator must be paid and assigned on a full-time basis. However, the commission may, in the discretion of the executive director, waive any part of this requirement in an unusual case if the training coordinator is able to discharge all responsibilities set by commission rules.

(i) The training coordinator of an

academy must:

(1) prepare, maintain, and make timely submission of any required report or other record;

(2) receive all commission notice on behalf of the academy and forward each notice to the person who appointed him or maintains his appointment; and

(3) be responsible for the administration and conduct of each course, including specifically:

(A) appointing and supervising qualified course coordinators and instructors;

(B) maintaining course schedules;

(C) securing and maintaining any facility necessary to meet the inspection standards of this section;

(D) enforcing any admission, attendance, retention, or other standard set by the advisory board;

(E) distributing learning objectives and insuring that all learning objectives are taught, that all training is effective, and that no required instruction periods are consumed by matters that are frivolous or unrelated to the scheduled training;

(F) controlling the discipline and demeanor of each student or instructor during class;

(G) proctoring or supervising all examinations to insure fair, honest results;

(H) making a final report of training to the commission within 30 days after completion of each course; and

(I) making any report or providing information as required by the advisory board.

(j) A licensed academy must report to the commission:

(1) any change in training or course coordinators or instructors;

(2) any substantial failure to meet the inspection standards; or

(3) any rule violation by it or by its training or course coordinator, instructor, or advisory board.

(k) The commission may cancel an academy license if it was issued in error or based on false or incorrect information.

(l) The commission may suspend an academy license, or issue a written reprimand.

mand to the sponsoring agency, if:

(1) it fails to comply with a commission rule or law;

(2) it demonstrates inadequate supervision or instruction;

(3) it is ineffective due to inadequate facilities or it fails an inspection;

(4) it fails to maintain the appointment of a qualified training coordinator for more than 30 days;

(5) its name status changes;

(6) its training coordinator makes a false report to the commission or fails to comply with any commission rule; or

(7) it has an inactive advisory board that has failed to:

(A) meet with a quorum at least once during a calendar year;

(B) maintain a quorum of appointed members; or

(C) review or update training needs or curricula.

(m) The commission may revoke an academy license if:

(1) it no longer offers courses on a continuing basis, fails to offer training for more than six months, or offers training insufficient for its region or any sponsoring organization;

(2) one of its administrators intentionally or knowingly violates a commission rule; or

(3) it has received more than two suspensions or reprimands within a four-year period.

(n) A licensed academy must distribute to every student in an approved course a copy of the learning objectives for that course before it is taught. These learning objectives may also be divided by and then distributed before each major unit is taught. However, they must be either provided or approved by the commission or, if not, must be kept on file for at least five years.

(o) The commission will approve each course taught by an academy and will award any basic or in-service training credit as provided by commission rules for any such course unless:

(1) the course is not taught as provided by the advisory board;

(2) the training is not related to a commission license; or

(3) the advisory board, the academy, the training coordinator, the course coordinator, or the instructor substantially failed to discharge any responsibility re-

quired by rule.

(p) The effective date of this section is January 1, 1989.

§211.66. Agreement Training.

(a) The commission may, in the discretion of the executive director, enter into an agreement with an agency, academy, school, individual, or other entity to conduct training for license holders. Such training may be basic, in-service, or any other training or course approved by the commission.

(b) Any such agreement is limited to those terms expressly included in the agreement or incorporated by reference and must be dated and:

(1) in writing on a commission form;

(2) signed by a commission staff member;

(3) signed by the chief administrator or head of the sponsoring organization; and

(4) signed by the training or course coordinator responsible for the administration of that training.

(c) An agreement may approve a specific course and the number of times it will be offered. However, each agreement must expire on the last day of the calendar year of its signing unless expressly continued or modified by its terms or by a completed addendum. An agreement may incorporate by reference a law, rule, or any other document. However, any waiver, exception, or deletion must be express.

(d) The commission may suspend an agreement, until compliance, for any violation of its terms or of any commission rule or law. Any party may terminate it upon written notice to all other parties, received by either the executive director, the coordinator, or any other named person or office.

(e) The agreeing agency or other entity must:

(1) appoint and maintain an advisory board as required by law and rule;

(2) follow the current requirements set by its advisory board;

(3) select a training facility that meets all academy inspection requirements;

(4) select any instructional material, equipment, or resources necessary for the course;

(5) forward for approval, upon commission request, at least one copy of the learning objectives of each course covered by the agreement;

(6) appoint and maintain the appointment of a qualified course coordinator;

(7) insure the course coordinator

discharges any responsibilities required by law, rule, or agreement;

(8) select and monitor the performance of qualified instructors;

(9) admit any license holder subject to any reasonable limitations or preferences required by the advisory board;

(10) insure effective training and distribute learning objectives to each student before the course is taught;

(11) teach or insure that each course is taught in accordance with the instructor guide and/or learning objectives provided or approved by the commission;

(12) keep records of all agreement training for at least five years; and

(13) proctor any required examination and insure fair, honest results; and

(f) unless expressly waived by the agreement:

(1) an advisory board for agreement training must discharge the responsibilities of such boards as required by law or rule; and

(2) a course coordinator must discharge the same responsibilities as an academy training coordinator and must hold a valid instructor license.

(g) By entering into any such agreement, the commission pre-approves specific training which will be fully credited by the commission to each student as basic or in-service training or to the agency as in-service training provided by that agency, unless:

(1) the training was not conducted in compliance with the agreement; or

(2) the advisory board, course coordinator, or instructor substantially failed to discharge any responsibility required by rule.

(h) The effective date of this section is January 1, 1989.

§211.67. Advisory Boards.

(a) Each academy, school, or training course approved by the commission must establish and maintain an advisory board as required by law. To be established, this board must have at least three members who are appointed by the sponsoring organization. To be maintained, the active, appointed membership of the board must not fall below a quorum for more than 30 days.

(b) The board may have members who are law enforcement personnel. However, one-third of the members must be public members having the same qualifications, found in the Government Code, §415.005, as any commissioner who is required by law to be a member of the general public.

(c) The board must elect a chairman and may elect other officers and set its own rules of procedure. However, a quorum must be either three members or two-thirds of the members, whichever is greater.

(d) A board must meet at least once each calendar year. More frequent meetings may be called by its chairman, the training coordinator, or the person who appoints the board.

(e) A board will comply with the open meetings law and keep written minutes of all meetings. These minutes must be retained for at least five years and a copy forwarded to the commission before the end of the next month following the meeting month.

(f) Board members will be appointed by the following authority, depending on the type of academy or training:

(1) for an agency academy, by the chief administrator;

(2) for a college academy, by the dean or other person who appoints the training coordinator;

(3) for a regional academy, by the head of the council of governments or other sponsoring entity from names submitted by chief administrators from that area of persons who work or live in that same area; or

(4) for agreement training, by the chief administrator or head of the sponsoring organization.

(g) A member may be removed by the appointing authority for any reason. A board will set and enforce its own attendance requirements.

(h) A board is generally responsible for developing curricula and any other related duty that may be required by the commission.

(i) The board must, as specific duties:

(1) effectively discharge its responsibilities and otherwise comply with commission rules;

(2) study, evaluate, and identify specific training needs;

(3) determine the types, frequency, and location of courses to be offered;

(4) approve the appointment of training coordinators, course coordinators, and instructors;

(5) establish, for each course, the standards for admission, prerequisites, minimum and maximum class size, attendance, and retention; and

(6) insure that all approved learning objectives are being taught.

(j) A board must establish admission standards and determine the order of

preference between employees or prospective appointees of the sponsoring organization and other persons, if any. No person may be admitted to a training course without meeting the board's admission standards. A board is encouraged but not required to set admission and retention standards that meet or exceed the current minimum licensing standards set by the commission.

(k) If the learning objectives of a lesser course have been identified by the commission as a course separate from but contained within a greater course and if only the greater course is being offered by the academy or school, the board may, in its discretion, admit a student to the greater but require attendance only when the learning objectives of the lesser course are being taught. In this case, the student should be reported as completing only the lesser course.

(l) A board may, when discharging its responsibilities, require that a report be made or some other information be provided to them by a training or course coordinator.

(m) The effective date of this section is January 1, 1989.

§211.68. Instructor License.

(a) An applicant for an instructor license shall:

(1) meet each of the following peace officer licensing standards:

(A) citizenship;

(B) age;

(C) criminal conviction or probation;

(D) good moral character; and

(E) background investigation;

(2) be or be within 30 days of appointment as a training coordinator, a course coordinator, or a regularly used instructor for either an agreement training school or a licensed academy;

(3) have substantial experience in teaching or in the special field or subject area to be taught;

(4) have successfully completed an instructor training course or its equivalent, as determined by the executive director;

(5) have submitted a completed, signed application which has been approved by the commission; and

(6) not have a commission li-

cense that has been revoked or is currently under suspension or voluntary surrender.

(b) In this section the term "substantial experience" means:

(1) five years as a peace officer or jailer;

(2) two years in a specialty of law enforcement or detention;

(3) a bachelor's degree and two years of teaching experience; or

(4) a post-graduate degree.

(c) The commission may require documentation of any instructor training or experience by certificates, diplomas, transcripts, letters of verification, or other supporting documents to be submitted upon commission request.

(d) An instructor license may be revoked, suspended, cancelled, surrendered, or reinstated on the same basis as a peace officer license.

(e) Such license may also be suspended if the holder loses any professional license, certificate, permit, or other document required in the instructor's special field or area.

(f) The effective date of this section is January 1, 1989.

§211.85. Proficiency Certificates.

(a) A permanent peace officer license holder who is reported to the commission as currently appointed as a peace officer may, if qualified, be issued one of the following proficiency certificates:

(1) basic peace officer;

(2) intermediate peace officer;

(3) advanced peace officer;

(4) crime prevention inspector;

or

(5) investigative hypnotist.

(b) A permanent peace officer license holder who is reported to the commission as currently appointed as a reserve may, if qualified, be issued one of the following proficiency certificates:

(1) basic peace officer;

(2) intermediate peace officer;

or

(3) advanced peace officer.

(c) A permanent reserve license holder who is reported to the commission as currently appointed as a reserve may, if qualified, be issued an intermediate reserve proficiency certificate.

(d) A permanent jailer license holder who is reported to the commission as currently appointed as a jailer may be issued a basic jailer proficiency certificate.

(e) Any person, if qualified, may be

issued a homeowners insurance inspector certificate.

(f) To qualify for a basic peace officer certificate, the applicant must hold a permanent peace officer license.

(g) To qualify for an intermediate peace officer certificate, the applicant:

(1) must have one of the following combinations of points and peace officer experience:

(A) 20 points and eight years experience;

(B) 40 points and six years experience;

(C) 60 points or an associate's degree and four years experience; or

(D) 120 points or a bachelor's degree and two years experience; and

(2) if the basic peace officer certificate was issued or qualified for on or after January 1, 1987, must also complete an intermediate proficiency course which must:

(A) be approved by the commission;

(B) be taught in conformity with the instructor guides provided by the commission;

(C) require passing a final examination; and

(D) consist of the following subjects, each credited with three points upon successful completion: child abuse, crime scene search, use of force, and arrest, search, and seizure.

(h) To qualify for an advanced peace officer certificate, the applicant must have already qualified for an intermediate peace officer certificate and have either:

(1) 40 points and 12 years experience;

(2) 60 points or an associate's degree and nine years experience;

(3) 120 points or a bachelor's degree and six years experience; or

(4) a post-graduate degree and four years experience.

(i) To qualify for an intermediate reserve certificate, the applicant must:

(1) have passed the reserve licensing exam; and

(2) either have completed the 70-hour or the 145-hour basic and the 131-hour intermediate reserve courses; or

(3) have completed the seven college transfer curriculum courses and either Law Enforcement #1 or both the Texas peace officer skills and laws courses.

(j) There is no advanced reserve certificate to be awarded and no basic reserve certificate will be issued on or after January 1, 1989.

(k) To qualify for a crime prevention inspector or a homeowners insurance inspector certificate, the applicant must meet the requirements found in §211.106 of this title (relating to Crime Prevention and Homeowners Insurance Inspector Certificates and Inspection Standards).

(l) To qualify for an investigative hypnotist certificate, the applicant must meet the requirements found in §211.103 (relating to Investigative Hypnosis by a Peace Officer).

(m) To qualify for the issuance of a certificate, the commission may require submission of an application by an individual or agency on a completed commission form, including any documentation requested.

(n) A license holder must return any cancelled certificate to the commission. The commission may cancel any certificate if the recipient was not qualified for its issue and it was issued:

(1) by mistake of the commission or an agency; or

(2) based on false or incorrect information provided by the agency or applicant.

(o) In this section, the term "experience" means the actual number of months served in the appropriate capacity in law enforcement, the term "points" means training or education points, and the term "post-graduate degree" means either a master's degree, a doctoral degree, or other similar degree above the level of a bachelor's degree.

(1) Law enforcement experience only includes each complete month served as a licensed and appointed peace officer, reserve, or jailer and while reported as such to the commission by an agency. Credit may, in the discretion of the executive director, be awarded for any experience from an out-of-state agency or at an in-state agency which has not sought licensing of its officers.

(A) Experience accrued under a temporary, provisional, or conditional license will be credited as if the holder possessed a permanent license.

(B) A commissioned peace officer who is reported as a full-time peace officer will earn credit for one month of peace officer experience for each month of peace officer service.

(C) A commissioned peace officer who is not full-time will earn credit for one month of peace officer experience for each month of peace officer service.

(D) A commissioned reserve will earn credit for one month of peace officer experience for each month of reserve service.

(E) A jailer who is reported to the commission as appointed as a jailer will earn credit for one month of jailer experience for each month of jailer service.

(2) One training point equals 20 hours of law enforcement training completed in a program conducted or approved by the commission for each type of license.

(3) One education point equals one semester credit hour from an accredited college or university.

(4) An undergraduate or post-graduate degree must be issued by an accredited college or university.

(p) The effective date of this section is January 1, 1989.

§211.88. Reporting Responsibilities of Individuals.

(a) If the commission requires that an application or other form be signed by an applicant, that person is responsible for:

(1) reviewing the entire document and any attachments; and

(2) signing it only after such review to attest to the accuracy and truthfulness of all information on and attached to the document.

(b) When a person who holds a commission license or certificate no longer meets the minimum standards for retention or never met the standards for issuance of any such license or certificate, that person must report to the commission in writing within 30 days:

(1) the fact that the license holder does not meet the retention or issuance standards; and

(2) the address to which notice of any commission action will be mailed.

(c) A license holder must report any name changed by marriage or other reason to the commission within 30 days.

(d) The effective date of this section is January 1, 1989.

§211.89. Denial.

(a) The commission may deny an application for any license, certificate, or acknowledgment and may refuse issuance or refuse to accept a report of appointment if:

(1) the applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;

(2) the applicant has not affixed any required signature;

(3) the required forms are incomplete;

(4) the required documentation is incomplete, illegible, or is not attached;

(5) the application is not submitted or signed by a chief administrator, a designate who is a license holder, or some other person with authority to appoint the applicant to the position reported;

(6) the application is not submitted by the appointing agency or entity;

(7) the agency reports the applicant in a capacity that does not require the license sought;

(8) the agency fails to provide documentation, if requested, of the agency's creation or authority to appoint persons in the capacity of the license sought or the agency is without such authority; or

(9) the application contains a false assertion by any person.

(b) Upon any such denial or refusal, the applicant or agency may request a hearing at which the commission must prove sufficient facts to support its action. After such hearing, the commission may issue a final order of denial.

(c) The effective date of this section is January 1, 1989.

§211.96. Reactivation of a Peace Officer License.

(a) The commission will place a peace officer license in an inactive status when the holder has not been reported to the commission as appointed as either a peace officer or reserve for more than two years after:

(1) the last report of termination;

(2) the date of licensing, if never appointed; or

(3) the date of last reactivation.

(b) The holder of an inactive license is unlicensed for purposes of the Government Code, Chapter 415.

(c) In this section, the term "peace officer license" includes any permanent peace officer qualification certificate with an effective date before September 1, 1981.

(d) A temporary license may not be reactivated if it expired without the holder meeting each training or testing standard in effect at that time. However, if before expiration the holder met all such standards in effect at that time, the commission will construe any such temporary license to be a

permanent license that must be reactivated.

(e) The commission will reactivate a peace officer license for an applicant who has:

(1) previously held an otherwise valid license or qualification certificate to be a peace officer; and

(2) passed the current peace officer licensing examination.

(f) The exam may only be challenged once for reactivation. If challenged and passed, the license will be immediately reactivated whether or not the commission has received any appointment report from an agency. If failed, the applicant may not be retested until successful completion of either the supplementary peace officer training course or the entire basic peace officer course.

(g) If failed three times after first qualifying by training, the applicant may not be retested until successful completion of the entire current minimum training standards for a peace officer.

(h) The effective date of this section is January 1, 1989.

§211.98. Psychological Examination of an Initial License Applicant.

(a) An initial license applicant must undergo a psychological examination except as provided by subsection (v) of this section. This examination must be administered by a professional who:

(1) has been registered by the commission to do so; or

(2) is a licensed psychologist or psychiatrist.

(b) The commission will register any professional who agrees to comply with commission rules and who is either a licensed psychologist or a psychiatrist. The commission may, in exceptional circumstances, register an exempt psychologist or a qualified physician.

(c) An examination will consist of at least:

(1) a background survey;

(2) two objective personality tests; and

(3) a professional interview.

(d) The background survey will be one or more documents that are completed by the examinee and that elicit information about significant life events and patterns of behavior relevant to the examination. The survey documents must be kept on file indefinitely by the professional as part of the record of the examination. If there is substantial compliance with this subsection, all or part of the survey may be an employment application or other information provided by the requesting agency.

(e) One of the two required objective personality tests must identify patterns of abnormal behavior. The other must assess relevant dimensions of normal behavior. Additional tests may be used.

(f) The professional interview must be conducted in person by the professional. Generally, professional discretion will control the length and content of the interview except that it must be adequate for a comprehensive review of any critical issue raised by the background survey, the personality tests, or any other source, including a review of at least the following histories:

(1) mental health treatment;

(2) family, educational, employment, military, financial, litigation, and criminal; and

(3) substance abuse and medical.

(g) At the conclusion of the initial examination or any supplementary examination, the professional must make a determination of and a written declaration of the psychological and emotional health of the examinee. The declaration must state whether the professional has concluded, on its effective date, that the examinee is or is not in satisfactory psychological and emotional health to be licensed and appointed in each capacity indicated by the requesting agency. All declarations must be made on completed forms provided by the commission.

(h) Before the examination, the professional must obtain a waiver of confidentiality signed by the examinee that approves the release of the declaration to the commission, to the requesting agency, or to another professional and that approves the release of any supporting notes, tests, or other documents to another professional conducting an examination under this section.

(i) A positive declaration form will be provided by the professional directly to the chief administrator of the requesting agency for submission with a license application or report of appointment. A negative declaration form will also be provided by the professional directly to the chief administrator of the requesting agency for submission to the commission within 10 working days of its effective date. The professional must, in either case, retain indefinitely the waiver and a copy of each declaration either of which must be made available for inspection by or provided to the commission upon request. If the commission has appointed the professional to administer the examination, the declaration and a copy of the waiver will be submitted directly to the commission.

(j) The commission may deny or refuse to issue a license if there is no declaration, if the required declaration is no longer current or has been withdrawn or invalidated, or if the declaration or exami-

nation was not made in compliance with this section. A declaration is no longer current after more than 180 days from its effective date. The effective date is the date the declaration was signed. If a license is issued based upon a current declaration, that initial declaration does not have to be updated or reissued and a license holder does not have to undergo another examination unless otherwise required by law or rule. This section only applies to an initial applicant for any license and shall not be construed to require a re-examination or a new declaration to retain an existing license or after a break in service. Nor shall this section be construed to require a professional or an agency to report to the commission a positive or negative declaration with regard to an existing license.

(k) An agency must select the professional to administer a particular examination on its behalf. The professional may refuse any such request without penalty from the commission. The agency, the examinee, or another may pay all or part of the cost of examination. An agency may choose to adopt a previous declaration made for appointment by another agency if that declaration is current and has not been withdrawn or otherwise invalidated. As part of an examination, a professional may request and, upon request, the commission will reveal to that professional the name of any other professional shown by commission records to have previously made a negative declaration on that particular examinee.

(l) If ordered to do so by the commission, an initial license applicant or a holder must submit to another examination by a professional appointed by the commission. The commission may order another examination if, before licensing or within 180 days after licensing, there is a conflict between two current declarations or if at any time it has cause to believe that:

(1) the examinee, the agency, or the professional has failed to follow commission rules relating to the examination or declaration; or

(2) the examinee, the agency, or the professional has submitted a false or incorrect report relating to the examination or declaration.

(m) The commission will develop and distribute to a professional, upon request, a psychological examination packet containing suggested guidelines for the efficient administration of the examination. The guidelines may be followed or not. However, the rules governing the examination must be followed unless a waiver is sought and received from the commission, acting through its executive director, prior to the effective date of the declaration. The commission may appoint and seek the advice of a peer review committee of other professionals to guide its decision to grant or deny the waiver based on whether the variance

meets or exceeds the standards established by the commission.

(n) By signing the declaration, the professional attests to familiarity with the guidelines and further attests that state law, commission rules, and professional standards have been followed. The commission will maintain a list of registered professionals by county of practice or availability.

(o) An agency claiming exceptional circumstances may informally request approval from the executive director for the commission to register and allow use of a professional who is neither a licensed psychologist nor psychiatrist. The request should be in writing, should assert the existence of the relevant facts and conditions, and should be signed and dated by the holder of a commission license who is responsible for the truth of these assertions. If the services of a professional are not available to the agency within reasonable proximity, the agency must provide the name, location, and qualifications of one or more exempt psychologists or qualified physicians whose services are available to the agency. The commission may appoint and seek the advice of a peer review committee of other professionals to guide its decision to accept or reject the qualifications of a prospective registered professional, based on whether that professional has the necessary training and experience.

(p) If denied, the agency may formally petition the commission to allow the request. The commission shall set the petition for a hearing at an agreed date and location, except that the agency has the waivable right to at least 20 days notice of such hearing. After reviewing the hearing examiner's proposal for decision, the executive director may approve or deny the request and, if denied, will set the matter for final decision by the commissioners at their next quarterly meeting. The commissioners may approve or deny the request by final order after the agency has had an opportunity to be heard. An informal or formal approval order will name the professional to be registered and used and require the agency to inform the commission when and if the services of another professional become available to the agency within reasonable proximity.

(q) A professional may withdraw a declaration within 180 days of its effective date if it was based on false, misleading, or incorrect information or if new information is received which substantially alters the initial declaration. A professional may withdraw a declaration by sending written notice of the reason to the agency and to the commission. An agency must notify the commission of a withdrawn declaration in writing within 10 days of its receipt from the professional.

(r) The commission may invalidate a declaration at any time:

(1) upon the request of the de-

claring professional;

(2) because of a rule or law violation by the examinee, the agency, or the professional related to the examination or declaration; or

(3) because the professional was not a licensed psychologist or psychiatrist or was not registered from the beginning date of the examination to the effective date of the declaration.

(s) The commission may revoke, suspend, probate such suspension, or reprimand a registered professional who:

(1) makes a false report to the commission or to a requesting agency;

(2) violates a commission rule or a provision of the Government Code, Chapter 415;

(3) loses a professional license or exemption necessary for initial registration; or

(4) is no longer required by exceptional circumstances to be registered.

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

(1) Satisfactory psychological and emotional health—relative to a particular license and appointment capacity:

(A) the absence of any mental, emotional, intellectual, or behavioral disorder that would substantially impair the functioning or suitability of the examinee including, specifically, the absence of any mental disorder as defined in the current *Diagnostic and Statistical Manual (DSM)* of the American Psychiatric Association; and

(B) the presence of mental, emotional, intellectual, and behavioral suitability for appointment by the requesting agency.

(2) Available to the agency—The professional in question is willing to accept or has agreed to accept a particular request from that agency to administer an examination and make a declaration.

(3) Professional—A person who has the necessary training and experience, including a licensed psychologist, a psychiatrist, or a registered professional.

(4) Registered professional—Any professional registered under commission rules to conduct an examination.

(5) Exempt psychologist—A person who has the necessary training and experience, but who is exempt from licensing as a psychologist in Texas because of governmental or academic employment.

(6) Qualified physician—A physician who is licensed by the Texas State

Board of Medical Examiners and has the necessary training and experience.

(7) Necessary training and experience—The training and experience necessary to adequately administer the psychological examination as provided by this section.

(8) Reasonable proximity—Within:

(A) any county where the agency has jurisdiction; or

(B) a 100-mile radius of the headquarters of the agency.

(u) The standard to be used to determine and declare satisfactory psychological health has two components, disorders and suitability for appointment. The first component, disorders, is the same standards for all licenses. The second component, suitability for appointment by the requesting agency, involves the following three separate appointment categories:

- (1) peace officer and reserve;
- (2) jailer; and
- (3) armed public security officer.

(v) The holder of a current license in any category, who applies for an initial issuance of a license in the same category, will not be required to provide a new declaration for the new license. If the application is for a new license in a different category and if the new declaration will be made by the same professional, the new declaration

may be based upon a supplementary examination that incorporates the results of the initial examination but covers any additional issue raised by the new appointment.

(w) The effective date of this section is January 1, 1989. However, the commission may, in the discretion of the executive director, waive any provision of this section for good cause shown until December 31, 1989. On and after January 1, 1990, all declarations must be made in full compliance with this section.

§211.107. Psychological Re-examination of a License Holder After Break in Service.

(a) After a break in service of more than 180 calendar days, a license holder must undergo another psychological examination and receive a new declaration of satisfactory psychological and emotional health except as provided by subsection (e) of this section.

(b) The re-examination and the new declaration will be same examination and declaration that are required for initial licensing.

(c) The term "break in service" means the period of time that begins on the day after the license holder was reported terminated from a particular position governed by the Government Code, Chapter 415, and ending on the date before the date of reappointment to a position in the same category.

(d) For purposes of this section, the categories of appointment are the same as for initial licensing and the three categories are:

- (1) peace officer and reserve;
- (2) jailer; and
- (3) armed public security officer.

(e) Appointment in one capacity within any category counts as service in any other capacity with the same category for the purpose of avoiding a break in service under this section and, therefore, no re-examination or new declaration is required if the person:

- (1) holds a current, valid license required for both capacities;
- (2) has complied fully with all psychological examination provisions required for the first capacity; and
- (3) seeks appointment to the second capacity while appointed to or within 180 days of termination from the first capacity.

(f) The effective date of this section is January 1, 1989.

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

Issued in Austin, Texas, on October 8, 1988.

TRD-8810359

David M. Boatright
General Counsel
Texas Commission on Law
Enforcement Officer
Standards and
Education

Proposed date of adoption: January 1, 1989

For further information, please call: (512) 834-9222

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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 within six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 505. The Board

• 22 TAC §505.10

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the repeal of §505.10 which appeared in the April 26, 1988, issue of the *Texas Register* (13 TexReg 2022). The effective date of this withdrawal is October 6, 1988.

Issued in Austin, Texas, on October 6, 1988.

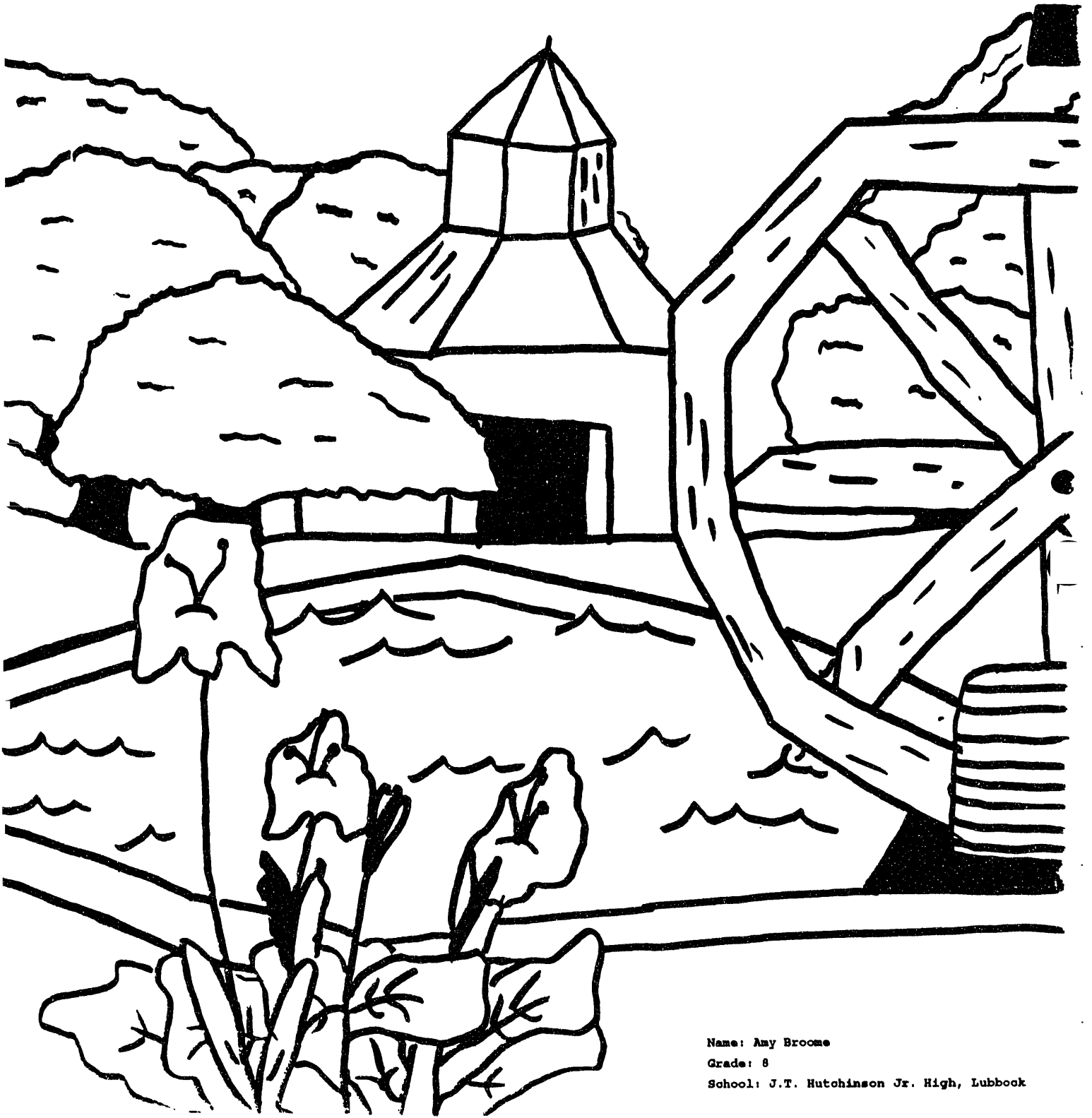
TRD-8810353

William A. Sansing
Enforcement Coordinator
Texas State Board of
Public Accountancy

Effective date: October 6, 1988

For further information, please call: (512)
450-7066





Name: Amy Broome

Grade: 8

School: J.T. Hutchinson Jr. High, Lubbock

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 7. BANKING AND SECURITIES

Part I. Finance

Commission of Texas

Chapter 3. Banking Section

Subchapter E. Banking House and Other Facilities

• 7 TAC §3.91

The Banking Section of the Finance Commission of Texas adopts an amendment to §3.91, with changes to the proposed text as published in the August 5, 1988, issue of the *Texas Register* (13 TexReg 3805).

This amendment to §3.91, is made due to a recent federal court ruling that allows national banks domiciled in Texas to establish branches on a statewide basis to the extent permitted for Texas savings and loan associations. In order to maintain competitive equality between state and national banks, the Texas Constitution, Article 16, §16(c), provides that state-chartered banks have the same rights and privileges that are or may be granted to national banks domiciled in this state. The proposed amendment establishes a dual branch application procedure which recognizes statewide branching authority and, for applications involving these expanded geographic locations, follows a procedure similar to that established by the Office of the United States Comptroller for the currency and applicable to national banks domiciled in Texas.

In summary, the adopted branching section provides for a dual branch application procedure that may be outlined as follows: The establishment of branch banks in accordance with the state law as it existed before the federal district court decision, *The State of Texas v. Clarke*, A-87-CA-860 (W.D. Tex. June 24, 1988), will continue to be an abbreviated application process as was provided for in §3.91 before these amendments. This procedure would apply to those branches to be established in accordance with Texas Civil Statutes, Article 342-903a. For establishment of branches in accordance with the federal court decision, an application procedure that basically tracks the procedure followed by the Office of the Comptroller of the Currency (OCC), with respect to national banks is provided for in the adopted section. See subsection (e), (f), and (g) of the adopted section. Subsection (h) of the adopted section provides for appeal to the banking section of the Finance Commission, by either the applicant or a protestant, from the decision of the commissioner to grant or deny a branch application. For the establishment of unmanned teller machines ("automated teller machines"

or "ATMs") in accordance with Texas Civil Statutes, Article 342-903a, no application is needed. However, to establish ATMs based on the federal court decision, an application procedure similar to that followed by the OCC with respect to national banks is provided for in the adopted section.

From the comments received, two commenters expressed a preference for a two-tiered application procedure: one procedure would continue the existing abbreviated application process for establishing branches in accordance with Texas Civil Statutes, Article 342-903, and another procedure would provide for the establishment of branches other than those provided for in this statute. Two commenters suggested that the proposed section be modified to provide for the establishment of unmanned teller machines on an unrestricted geographic basis. Another commenter expressed a concern that the section could be interpreted as not providing for statewide branching, and he also questioned whether specific capital requirements for a state bank to establish a branch should be included in the section. One commenter requested a specific statement of intent that the regulation provide parity for state banks.

Commenting in favor of the amendment were the following: The Guaranty Bond State bank; State Bank of DeKalb; Eidenburg and Stiles; Liedell, Sapp, Zizley, Hill, and LaBoon; Ford, Dennison, and Byrne; and Texas Bank Association.

The agency has modified the section based on the comments received regarding the dual application process and providing for ATMs on an unrestricted geographic basis. However, with respect to expressly providing for capital requirements or expressly stating that the section allows statewide branching, it is felt that those matters are sufficiently covered in the section. The section as adopted expressly recognizes the principle of competitive equality between state and national banks.

The Texas Constitution, Article 16, §16(c), and Texas Civil Statutes, Article 342-113, provide the banking section of the Finance Commission with authority to promulgate rules not inconsistent with the constitution and statutes of this state and to permit state banks to transact their affairs in any manner or make any loan or investment which they could do were they organized and operated as a national bank.

§3.91. Establishment of Branch banks (Including Automated or Unmanned Teller Machines) and Drive-in Facilities.

(a) General. Applications for branch bank, unmanned teller machines and drive-in facilities filed by state-chartered

banks pursuant to Texas Civil Statutes, Article 342-903, or otherwise in accordance with applicable laws of this state shall be filed with the banking commissioner (hereinafter commissioner) on forms prescribed by the commissioner.

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

(1) Branch bank—Branch facility includes any additional bank office, except an unmanned teller machine, at which deposits are received, or checks paid, or money lent.

(2) ATM ("Automated Teller Machine" or "Unmanned Teller Machine") branch—An ATM branch is an automated device, established (i.e., owned or rented) by a state bank at a location separate from the main office or a branch bank, that:

(A) takes deposits; or

(B) disburses cash drawn against:

(i) a customer's deposit account; or

(ii) a customer's pre-approved loan account;

(C) is a machine other than a telephone, capable of being operated solely by a customer, by which a customer may communicate to the bank:

(i) an instruction to transfer funds between one or more accounts maintained by the customer with the bank but not as between the customer's account and an account maintained in the bank or in some other financial institution by some other customer;

(ii) an instruction to apply funds against an indebtedness of the customer to the bank; or

(iii) a request for information concerning the balance of the account of the customer with the bank.

(3) Drive-in facility—A drive-in facility means a facility offering banking services solely to persons who remain outside of the facility. State banks desiring to establish a drive-in facility pursuant to Article 342-903, shall follow the application

procedure set out in subsection (d) of this section herein. State banks desiring to establish drive-in facilities otherwise in accordance with applicable laws shall follow the application procedures set out in subsection (e) of this section. However, in either event, no application will be required to establish a drive-in facility that will be located within 1,000 feet of the nearest wall of the principal banking building or existing branch facility.

(c) Commencement of operations. Any branch bank approved under subsection (d) or subsection (e) and (f) of this section, any ATM branch approved under subsection (g) of this section or any drive-in facility to be located in excess of 1,000 feet from the nearest wall of the principal banking building or branch facility shall commence operation within a period of 12 months after the date of approval unless an extension is granted in writing by the commissioner. No more than one 12 month extension will be approved by the commissioner. The branch bank, ATM branch or drive-in facility approval will automatically expire if no extension is granted prior to the end of the first 12 month period.

(d) Branch bank applications filed pursuant to Article 342-903. Application forms and instructions may be obtained from the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705. The commissioner, as the primary regulator of state-chartered banks, shall approve applications for branch bank or drive-in facilities filed pursuant to Article 342-903 if:

(1) in the opinion of the commissioner, there are no significant supervisory problems with respect to the applicant which would affect its ability to properly operate such branch bank or drive-in facility; and

(2) the application for a proposed branch bank or drive-in facility complies with the provision of Article 342-903.

(e) Branch bank applications filed in accordance with applicable laws of this state other than pursuant to Article 342-903. The Texas constitution provides that state banks have the same rights and privileges that are or may be granted to national banks. In recognition of the fact that national banks and, therefore, state banks are now permitted under applicable case law to branch beyond the limits set forth in Texas Civil Statutes, Article 342-903, the following branch application procedures adhere to the principle of competitive equality. In determining whether to approve an application to establish and operate a branch or a drive-in facility filed in accordance with applicable laws of this state other than pursuant to Article 342-903, the commissioner is guided by the following principles: The Texas Department of Banking and the commissioner are responsible for maintaining a

sound banking system; the Texas Department of Banking and the commissioner are responsible for encouraging a bank to help meet the credit needs of its entire community, as delineated in its Community Reinvestment Act statement; the marketplace normally is the best regulator of economic activity; and competition promotes a sound and more efficient banking system that serves customers well. Accordingly.

(1) It is the general policy of the commissioner to approve applications to establish and operate branches, provided that approval would not violate the provisions of applicable law regarding the establishment of such branches.

(2) The commissioner may deny applications or grant approval subject to fulfillment of certain conditions, if in the opinion of the commissioner:

(A) there are significant supervisory concerns with respect to the applicant or any affiliated organizations; or

(B) the applicant's record of helping to meet the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of the bank, is less than satisfactory; or

(C) any financial or other business arrangement, direct or indirect, involving the proposed branch and bank insiders (directors, officers, employees, and shareholders owning or controlling, directly or indirectly, 10% or more of any class of the subject bank's voting stock) involves terms and conditions more favorable to the insiders than would be available in a comparable transaction with unrelated parties.

(3) If the proposed branch established pursuant to authority other than Article 342-903, will change the bank's existing community delineation, the applicant's board of directors must act upon any material change at its first regular meeting after the change, i.e., the establishment of the branch. In the application, the bank must indicate the ways it intends to vary its lending policy, procedures, or services at the proposed branch, if at all.

(f) Branch bank application procedure to establish a branch under authority other than Article 342-903. Application forms and instructions may be obtained from the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705.

(1) Notice of filing of application. The applicant shall publish a notice in a newspaper of general circulation in the community in which the applicant proposes to establish a branch. The notice shall state that a branch application is being filed as of the date of notice, and the notice shall contain the name of the applicant(s) and the

location of the proposed branch. The application shall be placed in the United States mail, postage prepaid or delivered to the commissioner on the same day the notice is published. A statement containing the date of publication and the name and address of the newspaper in which the notice was published, shall be furnished with the application.

(2) Written comments on applications. Within 30 days after notice by publication as required herein, any person or entity may submit to the commissioner written comments and data on the application. The commissioner may extend this 30 day comment period if, in his judgment, the applicant has failed to file all required supporting data in time to permit review by interested persons or entities or if other extenuating circumstances exist.

(3) Requests for hearing. Within 30 days after notice by publication required herein, or within extended comment period described in subsection (f) (2) of this section, any interested person or entity may submit to the commissioner a written request for a hearing on an application.

(A) The request shall state the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation to the commissioner. If the reasons are related to factual disputes, the disputes shall be described.

(B) Written requests for hearing in accordance with subsection (f)(3) of this section and requests for waiver of hearing-related costs in accordance with subsection (f)(3)(D) of this section shall be evaluated by the commissioner, who may grant or deny such request in whole or in part. A hearing request shall generally be granted only if the commissioner determines that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing shall be limited to issues considered material by the commissioner.

(C) When a hearing is granted, it shall be conducted during normal business hours at the Texas Department of Banking office in Austin.

(D) A transcript of each hearing is arranged by the Texas Department of Banking. The cost of one copy of the transcript for use by the person or entity requesting the hearing and two copies of the transcript for the Texas Department of Banking are generally borne by the person or entity requesting and being granted the hearing. If a person or entity requesting a hearing desires a waiver of these costs, the written request for the hearing shall state the reasons such waiver is necessary or appropriate and must include a showing of

financial need. When a waiver is granted, the cost of two transcripts for the Texas Department of banking and one transcript for use by the person or entity requesting the waiver may be borne by the Texas Department of banking.

(4) Action on requests for hearings. If a request for hearing has been made and denied, the commissioner shall notify the applicant and all persons or entities who have filed written submissions with the commissioner relating to the application and shall state the reasons for the denial, within 14 days after the date of the notice of denial, the commissioner will accept additional written comments or data on the application. Copies of such written submissions or data shall simultaneously be sent to the applicant by the person or entity making the submission. The applicant shall be provided an additional seven days, after the 14 day additional written comment deadline has expired, within which to respond to any comments submitted within the 14 day additional written comment period. The commissioner may waive this seven day response period if so requested by the applicant. A copy of any response submitted by the applicant shall also be mailed simultaneously by the applicant to all persons or entities who have filed written submissions with the commissioner relating to the application.

(5) Hearing. When a request for hearing made in accordance with this section is granted, or when a hearing is ordered because the commissioner believes that it is in the public interest, the Texas Department of banking shall issue a notice of hearing and conduct a hearing in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(6) Confidential information. A public file shall be established by the Texas Department of banking in the case of each application. That file shall consist of the application with supporting data and supplementary information, except for material deemed by the commissioner in accordance with applicable law, to be confidential, such as trade secrets normally not available through commercial publication or other information made confidential under the Texas Open Records Act or the Texas banking Code. In addition, the public file shall contain all data and information submitted by interested persons or entities in favor of or in opposition to such application, excluding any material deemed by the commissioner in accordance with applicable law, to be confidential. Information may be deemed confidential and withheld from the public file only upon request of the person or entity submitting the information. All factual information submitted to or obtained by the Texas Department of Banking staff shall also be made part of the public file, unless deemed confidential by the commissioner. In no event shall information re-

quired by statute or regulation to be treated as confidential be made a part of a public file.

(7) Investigation, examination and required information. The commissioner may conduct an investigation or examination into the facts of an application and the character, management ability, and good faith of the persons or entities filing an application to the extent necessary to reach an informed decision. Additionally, the commissioner may require any person or entity submitting an application or any affiliated person or entity to submit such information, data, opinion of counsel, or other materials as may be specified by the commissioner. Failure to comply with such demand of the commissioner may be treated as abandonment of the filing to which the information, data, opinion of counsel, or other material relates. Fees may be assessed for the investigations or examinations based on the actual cost to the Texas Department of banking.

(g) Establishment of ATM ("automated teller machine" or "unmanned teller machine") branches.

(1) Permanently staffed ATM. An automated device that would otherwise qualify as an ATM branch, but which is permanently staffed (either full or part-time, directly or indirectly) by personnel employed by the applicant, is a branch bank that requires an application pursuant to subsection (d) or subsection (e) and (f) of this section.

(2) ATM branch established pursuant to Article 342-903a. No application is required for ATM branches established in accordance with the provisions of Texas Civil Statutes, Article 342-903a.

(3) ATM branch applications filed in accordance with applicable laws other than Article 342-903a. The following procedure shall apply to applications filed in accordance with applicable laws of this state other than Article 342-903a (e.g., ATM branches established on an unrestricted geographic basis).

(A) Application forms. Application forms and instructions for the establishment of ATM branches under subsection (g)(3) of this section, may be obtained from the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705.

(B) Criteria. The standards for approving ATM branch application filed under subsection (g)(3) of this section, shall be the same as those set forth in subsection (e) and (f) of this section.

(C) Application filing requirement.

(i) The applicant shall

mail an application form, or a document containing the information requested in the application form to the commissioner. For the purpose of this section, the filing date of the application shall be the date upon which the application was delivered or placed in the United States mail, postage prepaid, addressed to the banking Commissioner, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705.

(ii) Within five days after filing an application, the applicant shall publish once in a newspaper of general circulation in each community in which the applicant proposes to establish an ATM branch, a notice containing the name of applicant, the subject matter of the application, the date on which the application was filed, and a statement that written comments on the application must be submitted by interested persons or entities within 10 days after the newspaper publication date to the banking commissioner, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705. Immediately thereafter, the applicant shall furnish the commissioner with a statement containing the date of publication and the name and address of each newspaper in which the notice was published.

(iii) The applicant may request approval, through a single application, for as many ATM branches as the applicant proposes to establish within 12 months after the preliminary approval date. Each proposed location must be listed in the application.

(iv) If a state bank proposes to establish an ATM branch jointly with one or more state banks or other financial institutions, only one of the state banks must submit an application as agent for all the state banks in the group of financial institutions proposing to share the ATM branch. The application must indicate in an attachment the names and principal office addresses of all the state banks that propose to participate in the joint establishment of the ATM branch. A state bank that arranges for its customers to use another financial institution's automated teller device on a transactional fee basis does not require a separate ATM branch application.

(D) Written comments on ATM branch applications, within 10 days after publication of the notice described in subsection (g)(3)(C)(ii) of this section, any interested person or entity may submit to the commissioner written comments concerning the application. Written requests for a hearing before the commissioner may be granted only if the commissioner determines that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process.

(E) Decisions. If the appli-

cant has not received notification on or before the 11th day after the end of the comment period that further consideration of the application is required, the applicant may conclude that the application is approved and may proceed with establishing the ATM branch. Written notification of approvals will be forwarded to all interested parties within 30 days after the end of the comment period. If the application is disapproved, the applicant will be informed in writing of the basis for the decision.

(F) Expiration of preliminary approval. ATM branch approvals will expire if the ATM branch is not in operation within 12 months after the date of preliminary approval.

(G) Authorization. The ATM branch will be considered established on the date it becomes operations for customer use. Except as noted in subsection (g)(3) (H) of this section, the bank must notify the commissioner by letter, confirming the location(s) of the ATM branch(es) and the date of establishment within seven days after the establishment date.

(H) Preliminary approval. If preliminary approval is granted subject to satisfaction of conditions, final approval and authorization for the establishment and operation of the ATM branch(es) at the location(s) described in the application will be granted following satisfaction of the conditions. In these instances, the applicant must advise the commissioner at least two weeks in advance of the establishment date of the ATM branch(es) so that final approval and authorization can be issued.

(h) Appeal of commissioner's decision. Any decision of the commissioner to grant or deny an application for a branch bank, a drive-in facility, or an ATM branch shall be appealable to the banking section of the Finance Commission of Texas by any interested person or entity (applicant or protestant) who is adversely affected by the commissioner's decision and who participated or attempted to participate in the application proceeding. Said appeal shall be filed in accordance the Department of Banking Rules and Regulations, Chapter 13, codified at 7 TAC Chapter 13.

(i) Emergency establishment of a branch. The procedure outlined in this section for the approval of branches shall not apply to the acquisition of a branch by a bank when such acquisition is made in connection with the assumption of assets and liabilities of any bank deemed by the commissioner to be in an unsafe condition.

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

Issued in Austin, Texas, on October 5, 1988.

TRD-8819332

Ann Graham
General Counsel
Department of Banking

Effective date: October 26, 1988

Proposal publication date: August 5, 1988

For further information, please call: (512) 479-1200

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 213. Practice and Procedure

• 22 TAC §§213.6-213.9, 213.11- 213.13, 213.15-213.17

The Board of Nurse Examiners adopts amendments to §§213.6-213.9, 213.11-213.13, and 213.15-213.17, without changes to the proposed text as published in the August 19, 1988, issue of the *Texas Register* (13 TexReg 4111).

The sections are being amended so that the language reads the same as in the Nurse Practice Act which was passed during the 70th legislative session. The sections are mostly editorial in nature.

The adopted amendments will provide the nurse, the attorney representing the nurse, and the witness subpoenaed to testify in a formal hearing before the board clearer guidelines that more closely follow the disciplinary proceedings as outlined in the Nurse Practice Act passed during the 70th Legislative session.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing, and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

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

Issued in Austin, Texas, on October 5, 1988.

TRD-8810372

Louise Waddill
Executive Secretary
Board of Nurse Examiners

Effective date: October 27, 1988

Proposal publication date: August 19, 1988

For further information, please call: (512) 835-4880

• 22 TAC §213.18

The Board of Nurse Examiners adopts new §213.18, without changes to the proposed text as published in the August 19, 1988, issue of the *Texas Register* (13 TexReg 4113).

The new section being adopted to provide clarification and guidance for the nurse whose license to practice professional nursing has previously been revoked in the State of Texas and is seeking to have that license reinstated.

The new section will provide guidance for a nurse who may be seeking to have his/her license to practice professional nursing reinstated in the State of Texas following revocation. This procedure outlines the requirements and suggested time frame necessary for presentation of the petition.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing, and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

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

Issued in Austin, Texas, on October 5, 1988.

TRD-8810374

Louise Waddill
Executive Secretary
Board of Nurse Examiners

Effective date: October 27, 1988

Proposal publication date: August 19, 1988

For further information, please call: (512) 835-4880

Chapter 215. Nurse Education

• 22 TAC §§215.1-215.3, 215.5, 215.12, 215.14

The Board of Nurse Examiners adopts amendments to §§215.1-215.3, 215.5, 215.7, 215.12, and 215.14. Section 215.1 is adopted with changes to the proposed text as published in the August 19, 1988, issue of the *Texas Register* (13 TexReg 4114). Sections 215.2, 215.3, 215.5, 215.7, 215.12, and 215.14 are adopted without changes and will not be republished.

The amendments are being adopted to include master's degree programs, their facul-

ty, and students who are in the master's degree nursing programs within the structure of a senior college or university. The inclusion of these amendments will permit the masters of science and nursing graduate to write the licensure examination for registered nurses.

The adoption of these amendments will provide an additional avenue for students to study for a career in nursing, and expands opportunities for nursing students to study nursing in the home health setting.

One comment was received regarding the definition of master's degree programs.

The Board of Nurse Examiners did not disagree with the commenter, and reworded the definition so as to offer further clarification.

The amendments are adopted under Texas Civil Statutes, Article 4514, §1 and Article 4518, §, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purposes and objectives, to regulate the practice of professional nurse practitioners.

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

Basic program—An educational unit whose purpose is to prepare practitioners of nursing and whose graduates are eligible to write the National Council Licensure Examination for Registered Nurses.

(A) Associate degree program—A program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or university.

(B) Baccalaureate degree program—A program leading to a bachelor's degree in nursing conducted by an educational unit in nursing which is a part of a senior college or university.

(C) Master's degree program—A program leading to a master's degree which is the first degree in professional nursing and conducted by an educational unit in nursing within the structure of a senior college or university.

(D) Diploma program—A program leading to a diploma in nursing conducted by a single purpose school usually under the control of a hospital.

Director—A registered nurse who is responsible for the administration of the nursing program and who meets the requirements as stated in §215.6(c) of this title (relating to Faculty Qualifications-Diploma or Associate Degree Programs) or §215.7(d) of this title (relating to Faculty Qualifications-Baccalaureate and Master's Degree Programs).

Faculty member—An individual employed to teach in the nursing program who meets the requirements as stated in §215.6 of this title (relating to Faculty Qualifications-Diploma and Associate Degree Programs); and §215.7 of this title (relating to Faculty

Qualifications-Baccalaureate and Master's Degree Programs).

Survey visit—An on-site visit of a nursing program, including clinical facilities, by a board representative for the purpose of evaluating the program of learning and gathering data to support whether the program is meeting the board's requirements as specified in §§215.1-215.19 of this title (relating to Definitions; New Programs; Accreditation; Pass Rate of Graduates on the National Council Licensure Examination for Registered Nurses; Administration and Organization; Faculty Qualification-Diploma and Associate Degree Programs; Faculty Qualifications-Baccalaureate and Master's Degree Programs; Faculty Policies; Faculty Organization; Faculty Development and Evaluation; Philosophy and Objectives; Curriculum; Curriculum Changes and Expansion of Nursing Program; Extended Campus; Students; Educational Resources and Facilities; Clinical Resources; Records and Reports; and Total Program Evaluation).

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

Issued in Austin, Texas, on October 5, 1988.

TRD-8810373 Louise Waddill
Executive Secretary
Boar of Nurse Examiners

Effective date: October 27, 1988

Proposal publication date: August 19, 1988

For further information, please call: (512) 835-4880

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 10. Family Self-support Services

Eligibility

• 40 TAC §10.1009

The Texas Department of Human Services (DHS) adopts an amendment to §10. 1009 without changes to the proposed text as published in the July 26, 1988, issue of the *Texas Register* (13 TexReg 3691).

The amendment is justified to increase access for low-income clients to family planning services and to improve coordination between state agencies in annually adjusting the family planning income eligibility guidelines.

The amendment will function by using 130% of the current, applicable federal poverty income guidelines as the criterion for determining Title XX income eligibility for family planning services rather than the gross income levels established for the Food Stamp Program. Food stamp eligibility is also set at 130% of the federal poverty income guidelines, but food stamp cost-of-living adjustments occur three months after the annual cost-of-living adjustments of federal poverty

income guidelines. By using the federal poverty income guidelines to determine family planning income eligibility, DHS can annually revise Title XX income levels in conjunction with the Texas Department of Health's annual revision of Title X income levels for family planning services.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on October 7, 1988.

TRD-8810382 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: November 1, 1988.

Proposal publication date: July 26, 1988.

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

Chapter 35. Pharmacy Services

Subchapter H. Texas Drug Code Index - Addition, Retention, and Deletion of Drugs

• 40 TAC §35.802

The Texas Department of Human Services (DHS) adopts an amendment to §35. 802, without changes to the proposed text as published in the July 26, 1988, issue of the *Texas Register* (13 TexReg 3691).

The amendment is justified because it allows for a better understanding of drug formulary rules.

The amendment will function by explaining in greater detail the current information used in determining drug availability.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on October 7, 1988.

TRD-8810381 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: October 28, 1988.

Proposal publication date: July 26, 1988.

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

Chapter 53. Family Care Program

Contracting for Family Care Services

• 40 TAC §§53.201

(Editor's Note: The following section was originally to be published in the October 7, 1988, issue of the *Texas Register* (13 TexReg 5001) with its preamble, but was inadvertently omitted.)

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

§53.201. General Contracting Requirements.

(a) To contract with the Texas Department of Human Services to provide family care services, a legal entity or one of its divisions must:

(1) be a public agency or a private profit or nonprofit corporation that is either chartered with the Office of the Secretary of State of Texas or authorized by that office to transact business within the state;

(2) be permanently licensed by the Texas Department of Health (TDH) as a Class A home health agency and certified to deliver Title XVIII home health services;

(3) be a participating Title XIX home health agency in the Texas Medicaid Home Health Program;

(4) be enrolled in the Primary Home Care Program. Enrollment must cover at least one county of the DHS region in which family care services are to be provided and must have been effective on or before January 1 of the procurement year, except for the 1988 procurement year. During the 1988 family care procurement year, enrollment in the Primary Home Care Program must have been effective on or before May 1, 1988; and

(5) have a governing body that authorizes a person or position to bind the organization contractually.

(b) The provider agency must comply with all provisions of the contract, the

family care provider manual and revisions, policy clarifications, information letters, federal laws and regulations, applicable statutes, and department rules and any subsequent additions, deletions, and amendments to those rules.

(c) The provider agency must make mandatory payments related to its operation. If the provider agency fails to make mandatory payments, the department may not renew the contract or may terminate it.

(d) The provider agency must:

(1) acknowledge receipt of the family care provider manual, subsequent revisions to the manual, and policy clarification letters from the department within 20 days of the date on associated transmittal letters;

(2) recruit, select, and place family care attendants;

(3) not select a person as an attendant if the caseworker determines him to be detrimental to the client or the service plan;

(4) accept, and provide services to, all clients referred by caseworkers.

(5) respond to emergency referrals on a first-priority basis;

(6) report, within 24 hours of awareness, suspected cases of abuse, neglect, and exploitation to the local adult protective services unit, the community care for aged and disabled unit, or the DHS hotline at 1-800-252-5400;

(7) ensure the confidentiality of individual client records and any other information related to specific clients; and

(8) use required department forms.

(e) The provider agency must have sufficient operating funds to allow delivery of services under the terms of its contract while awaiting payment from the department.

(f) When providing services under the contract, neither the provider agency nor the provider agency's employees, agents, or representatives may solicit or accept gifts, favors, or any other items of value from the client or other persons on the client's behalf.

(g) The provider agency is liable for any willful or gross negligence or malicious actions of an attendant involving the management of a client's money in the delivery of authorized tasks.

(h) The provider agency must acknowledge the department's funding in all the agency's literature describing the services covered under its contract with the department. The provider agency must also place notice in its annual reports.

(i) The provider agency must notify the regional contract manager in writing about:

(1) serious incidents that affect the agency's overall operation or that may hamper its ability to deliver services. The written notification must be sent by the next DHS workday after awareness of the incident; and

(2) changes in the person responsible for the overall management of the agency's contract, its address, hours of operation, or telephone number. The written notification must be sent by the next DHS workday after the change.

(j) The provider agency must notify the department in writing about any change in the agency's ownership or charter number at least 60 days before the change. A change in ownership or charter number is any change that, in the department's opinion, materially or substantially alters the business organization of the entity responsible for delivering services to department clients.

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

Issued in Austin, Texas, on September 30, 1988.

TRD-8810142

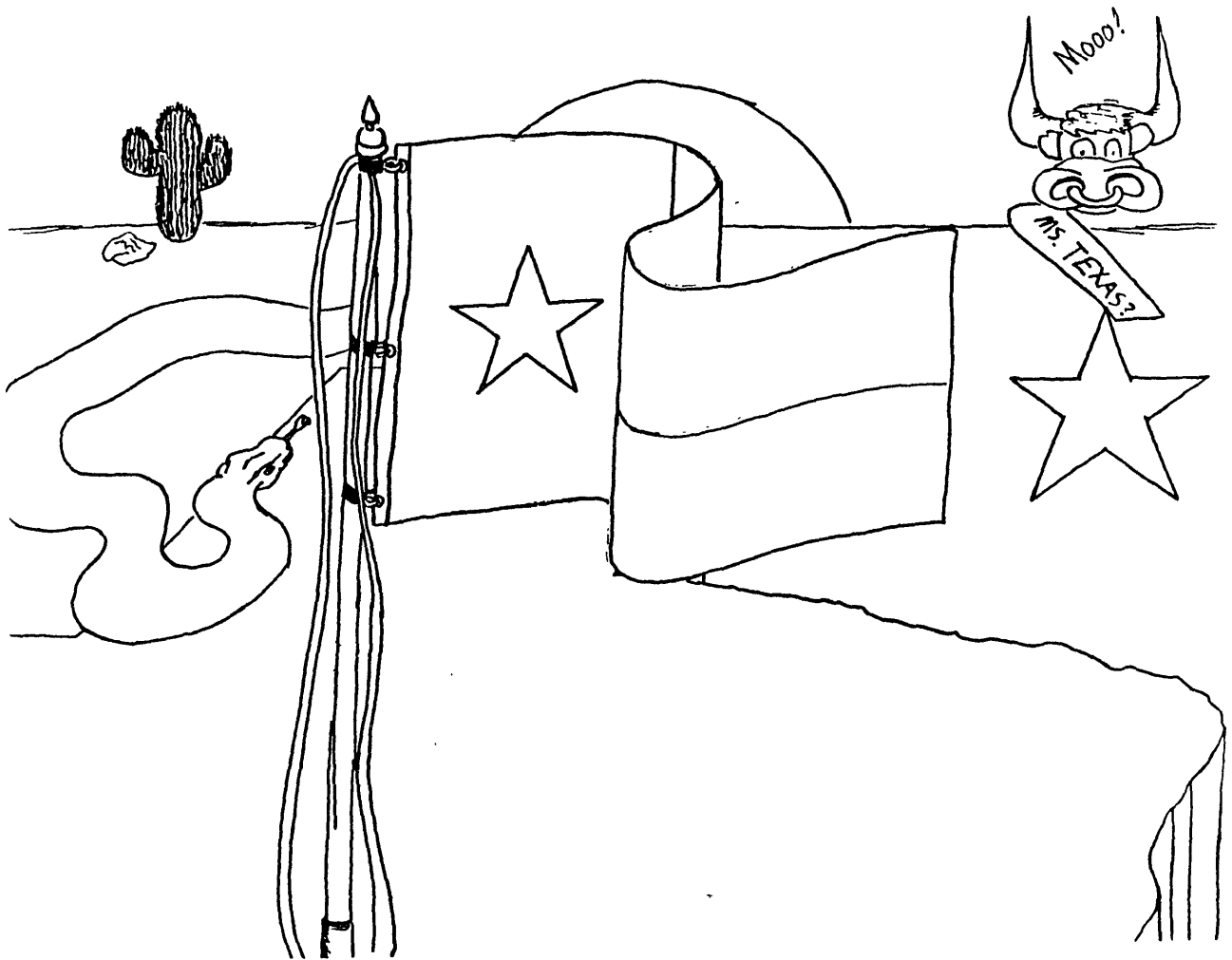
Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: November 1, 1988.

Proposal publication date: July 29, 1988.

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

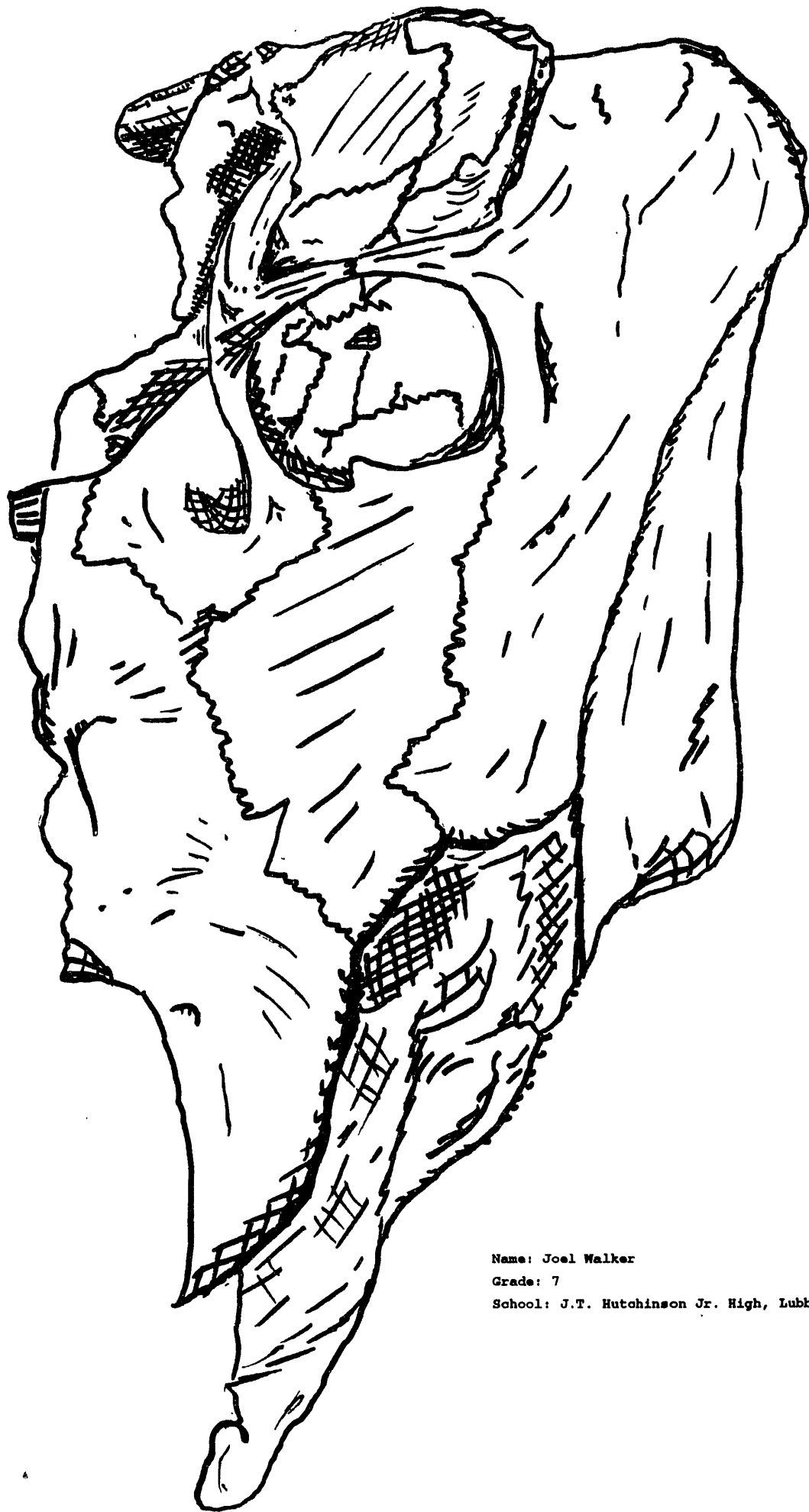
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Name: Justin Haggard

Grade: 7

School: J.T. Hutchinson Jr. High, Lubbock



Name: Joel Walker

Grade: 7

School: J.T. Hutchinson Jr. High, Lubbock

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 billeting 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*.

Automated Information and Telecommunications Council

Friday, October 21, 1988, 9 a.m. An open council meeting for the Automated Information and Telecommunications Council will be held in Room 104, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the council will call roll and witness registration, approve minutes, hear executive director's report, hear committee reports, consider procurements, and discuss new business.

Contact: Lynn B. Polson

Filed: October 10, 1988, 4:06 p.m.

TRD-8810473

Banking Section of the Finance Commission

Tuesday, October 18, 1988, 10 a.m. The Banking Section of the Finance Commission will meet in the State Banking Department, 2601 North Lamar Boulevard, Austin. According to the agenda, the section will approve minutes of the September 16, 1988, meeting; discuss proposed rule relating to identification of bank facilities (7 TAC §3.92); consider legislative agenda for next legislative session; discuss policies relating to bank examination and other regulatory matters, including, but not limited to enforcement action, dividends, ORE, and loans; update branching rules; elect new chairman for Banking Section; budget transfer authority for an additional attorney position; review departmental operations; CSBS educational foundation proposal; report on management evaluation system; update on Texas Banker's Association's "Rating the Regulators" program and "Dialogue with the Regulators" program; and meet in executive session.

Contact: Ann Graham, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Filed: October 10, 1988, 4:18 p.m.

TRD-8810479

Texas Bond Review Board

Tuesday, October 18, 1988, 10 a.m. The Texas Bond Review Board will meet in the Senate Chamber, State Capitol, Austin. According to the agenda, the board will approve minutes of the previous meeting; consider proposed issues concerning Public Finance Authority-proposed bond issuance on behalf of the Texas Department of Corrections and the Department of Mental Health and Mental Retardation; and discuss other business.

Contact: Tom K. Pollard, Sam Houston Building, Room 700, Austin, Texas 78711, (512) 463-1741.

Filed: October 10, 1988, 1:43 p.m.

TRJ-8810455

Texas Corn Producers Board

Thursday, October 20, 1988, 9 a.m. The Texas Department of Agriculture, Texas Corn Producers Board, will meet in the Board Office, 218 East Bedford, Dimmitt. According to the agenda, the board will read minutes of previous meeting; review financial statement; discuss spider mite research update; and consider new business.

Contact: Carl King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: October 10, 1988, 2:44 p.m.

TRD-8810461

Texas Commission for the Deaf

Friday, October 7, 1988, 2 p.m. The Texas Commission for the Deaf met in the Conference Room, 510 South Congress Avenue, Austin. According to the agenda, the commission met in emergency session to discuss personnel matters in executive session, pursuant to 6252-17, and hear chairperson's report. The emergency status was necessary as all board members who reside out of town were able to attend the meeting of October 7, 1988.

Contact: Larry D. Evans, 510 South Congress Avenue, Suite 300, Austin, Texas 78704, (512) 469-9891.

Filed: October 7, 1988, 10:54 a.m.

TRD-8810386

Interagency Council on Early Childhood Intervention

Monday and Tuesday, October 17 and 18, 1988, at 12:01 p.m. and 8 a.m., respectively. The Interagency Council on Early Childhood Intervention will meet at Aquarena Springs Hotel, One Aquarena Springs Drive, San Marcos. According to the agenda summary, the council will discuss values and beliefs that support early childhood intervention program activities, parameters effecting the statewide ECI system, development of a mission statement, internal analysis of the ECI organization, critical issues, and development of objectives for fiscal year 1989.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2671.

Filed: October 7, 1988, 4:16 p.m.

TRD-8810427

East Texas State University

Thursday, October 13, 1988. The Board of Regents of East Texas State University met in the McDowell Administration Building, East Texas State University, Commerce. Times and agendas follow.

1 p.m. The Student and University Advancement Committee heard report on division activities; and considered day care center at Sike Hall and alumni and centennial projects.

Contact: Charlie Brice, East Texas State University, Commerce, Texas 75428, (214) 886-5014.

Contact: October 7, 1988, 10:48 a.m.

TRD-8810391

1 p.m. The Executive Committee approved policy on internal auditing; considered ETSU-Texarkana mission statement and amendment of policy IC, board bylaws. The committee also met in executive session to discuss personnel matters.

Contact: Charlie Brice, East Texas State University, Commerce, Texas 75428, (214) 886-5014.

Contact: October 7, 1988, 10:48 a.m.

TRD-8810390

2 p.m. The Academic Affairs Committee considered ETSU-Commerce curriculum changes, faculty workload reports for Summer and Fall 1988, and undersized class reports for Summer and Fall 1988; heard ETSU-Texarkana faculty workload reports for Summer and Fall 1988 and undersized class reports for Summer and Fall 1988; considered ETSU-Texarkana non-substantive course change and curriculum changes; and considered program in communication disorders.

Contact: Charlie Brice, East Texas State University, Commerce, Texas 75428, (214) 886-5014.

Contact: October 7, 1988, 10:48 a.m.

TRD-8810387

3 p.m. The Campus Planning and Finance Committee considered re-appropriation of accounts and balances for ETSU-Commerce, re-appropriation of accounts and balances for ETSU-Texarkana, adoption of employee benefit (cafeteria) plan, approval of roofing consultants, student information tracking system, adjustments in the fiscal year 1989 operating budget for ETSU-Commerce, energy plan audit, contract with Lone Star Gas Company, interagency cooperation contract with School Land Board/General Land Office, vending contract with Sulphur Springs Coca Cola/Dr. Pepper Bottling Company, and vendor service-Lance, Inc.

Contact: Charlie Brice, East Texas State University, Commerce, Texas 75428, (214) 886-5014.

Contact: October 7, 1988, 10:48 a.m.

TRD-8810388

Friday, October 14, 1988, 8:30 a.m. The board will meet in the McDowell Administration Building, East Texas State University, Commerce. According to the agenda summary, the board will approve minutes of the July 13, 1988, meeting; receive report by the president; consider motions from the Student and University Advancement Committee, Academic Affairs Committee, Campus Planning and Finance Committee, and Executive Committee. The board will also meet in executive session to discuss personnel matters.

Contact: Charlie Brice, East Texas State University, Commerce, Texas 75428, (214) 886-5014.

Contact: October 7, 1988, 10:48 a.m.

TRD-8810389

Texas Education Agency (TEA)

Various committees for the Commissioner's Advisory Council for Regional Services of the Texas Education Agency will meet in the William B. Travis Building, 1701 North Congress Avenue, Austin. Times, dates, room numbers, and agendas follow.

Tuesday, October 18, 1988, 10:30 a.m. The Committee for Research and Information will meet in Room 1-104 to consider public education information management system update; review actions by the State Board of Education; and discuss provision of computer services to school districts.

Contact: Rob Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9371.

Filed: October 10, 1988, 10:32 a.m.

TRD-8810447

Tuesday, October 18, 1988, 1:30 p.m. The Committee for Curriculum and Program Development will meet in Room 1-109 to review actions by the State Board of Education, and discuss TEA/Education Service Center efforts for curriculum and program development.

Contact: Rob Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9371.

Filed: October 10, 1988, 10:32 a.m.

TRD-8810448

Tuesday, October 18, 1988, 1:30 p.m. The Committee for Educational Quality will meet in Room 1-104 to review actions by the State Board of Education, and discuss issues related to the provision of training services to school districts.

Contact: Rob Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9371.

Filed: October 10, 1988, 10:32 a.m.

TRD-8810449

Tuesday, October 18, 1988, 1:30 p.m. The Committee for Finance and Compliance will meet in Room 1-110 to review actions by the State Board of Education, and discuss issues related to the education service center comprehensive plan and application.

Contact: Rob Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9371.

Filed: October 10, 1988, 10:32 a.m.

TRD-8810451

Wednesday, October 19, 1988, 8:30 a.m. The agency will meet in Room 1-104 to hear public education information manage-

ment system update; review actions the board; discuss provision of computer services to school districts, discuss issues related to the provision of training services to school districts, TEA/education service center efforts for curriculum and program development, and issues related to the education service center comprehensive plan and application.

Contact: Rob Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9371.

Filed: October 10, 1988, 10:32 a.m.

TRD-8810450

Texas Department of Health

Wednesday, October 19, 1988, 10 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 department will discuss overview of committee responsibilities, elect a interim chairperson, nominate a chairperson to the Board of Health, discuss federal regulations effective October 3, 1988, for ICF-MR facilities, review state license regulations, and schedule next meeting.

Contact: Richard Butler, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7706.

Filed: October 7, 1988, 4:16 p.m.

TRD-8810429

Thursday, October 20, 1988, 10 a.m. The Advisory Committee on Nursing Home Affairs 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 approve minutes of the previous meeting; discuss subcommittee reports on social services; consider alzheimer's certification standards and pharmacy services-controlled substances rules, nominate a chairperson to Board of Health, and rules on universal precautions and HIV transmission; discuss status of joint agency interpretation of Medicaid standards to allow sharing of nursing staff certified and non-participating distinct parts of facilities, organization of personal care home advisory committee, and new business; and schedule next meeting.

Contact: Richard Butler, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7706.

Filed: October 7, 1988, 4:16 p.m.

TRD-8810428

Texas Historical Commission

Friday, October 21, 1988, 7:30 a.m. The Main Street Committee for the Texas His-

torical Commission will meet at the Brazosport Hilton Inn Coffee Shop, 925 Highway 332 West, Lake Jackson. According to the agenda, the committee will consider Main Street conference, national Main Street town meeting, and designation of 1989 Main Street cities.

Contact: Anice Read, P.O. Box 12276, Austin, Texas 78711, (512) 463-6092.

Filed: October 10, 1988, 2:03 p.m.

TRD-8810457

Texas Housing Agency

Tuesday, October 18, 1988, 7:15 a.m. The Ad Hoc Tax Credit Committee for the Texas Housing Agency will meet in Suite 300, THA Conference Room, 811 Barton Springs Road, Austin. According to the agenda, the committee will discuss and possibly act on 1988 and 1989 applications for the low income tax credit program, and special requests for the low income tax credit program; and approve July 13 and September 21, 1988, minutes.

Contact: Timothy Kenny, P.O. Box 13941, Austin, Texas 78704, (512) 474-2974.

Filed: October 10, 1988, 4:47 p.m.

TRD-8810482

Tuesday, October 18, 1988, 6 p.m. The Personnel and Planning Committee for the Texas Housing Agency will meet in Suite 300, THA Conference Room, 811 Barton Springs Road, Austin. According to the agenda, the committee will discuss and possibly act on procedures and techniques for agency planning over the next two years, planning goals for agency in the 90-180, and 360 day time frame; and meet in executive session to discuss proposed employee reclassifications.

Contact: Timothy R. Kenny, P.O. Box 13941, Austin, Texas 78704, (512) 474-2974.

Filed: October 10, 1988, 4:46 p.m.

TRD-8810481

State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Dates, times, rooms, and agendas follow.

Tuesday, October 18, 1988, 9 a.m. The board will meet in Room 353 to consider whether disciplinary action should be taken against Earl Carrell Kirkpatrick, Fort Worth, who holds a Group I, legal reserve life insurance agents license, a Group II, health and accident insurance agent's license, and a local recording agent's license issued by the State Board of Insurance.

Contact: James W. Norman, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:30 p.m.

TRD-8810465

Tuesday, October 18, 1988, 1:30 p.m. The board will meet in Room 353 to consider the approval of the amendments to the Articles of Agreement of Ranger Lloyd's, Houston, changing the attorney-in-fact.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:30 p.m.

TRD-8810466

Tuesday, October 18, 1988, 2 p.m. The board will meet in Room 414, to meet with Attorney General's Office concerning pending and contemplated litigation concerning State Board of Insurance, et al. v. National Employee Benefit Administrators, Inc., et al.; State of Texas v. Dyna Span, Inc., et al.; The People of Texas, ex rel. Jim Mattox, Attorney General v. State Board of Insurance; State of Texas v. James D. Adkins, et al.; Commercial Life Insurance Company v. State Board of Insurance, et al.; and other pending and contemplated litigation.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6328.

Filed: October 7, 1988, 3:06 p.m.

TRD-8810417

Wednesday, October 19, 1988, 1:30 p.m. The board will meet in Room 353 to consider whether disciplinary action should be taken against Docia Hughs, Childress, who holds a Group I, legal reserve life insurance agent's license, issued by the board.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:31 p.m.

TRD-8810467

Wednesday, October 19, 1988, 1:30 p.m. The board will consider the application for amendment to the Articles of Incorporation of C/F Life Insurance Company, San Antonio, limiting liability of directors to shareholders.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:31 p.m.

TRD-8810468

Friday, October 21, 1988, 9 a.m. The board will meet in Room 443 to consider the application of Larry Philip Hulsey, Carrollton, for a Group II, health and accident insurance agent's license.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:31 p.m.

TRD-8810469

Friday, October 21, 1988, 9 a.m. The board will meet in the Commissioner's Conference Room to consider the application of Thomas Stuart Walker, Dallas, for a Group I, legal reserve life insurance agent's license.

Contact: Wendy Ingham, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:30 p.m.

TRD-8810471

Friday, October 21, 1988, 1:30 p.m. The board will meet in Room 443 to consider the application of PAA Holdings, Inc. and Commercial Credit Group, Inc., to acquire control of Transport Life Insurance Company, Fort Worth; American Financial Life Insurance Company, Carrollton; and Continental Life Insurance Company, Fort Worth.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:32 p.m.

TRD-8810472

Friday, October 21, 1988, 1:30 p.m. The board will meet in the Commissioner's Conference Room to consider the application for amendment to the restated Articles of Incorporation of BSC Life Insurance Company, Dallas, changing the location of its home office, amending corporate purposes, changing the period of duration of the corporation, eliminating shareholder pre-emptive rights, changing the number of directors, amending the powers and limitations of the board, deleting the prohibition against cumulative voting, deleting shareholder authority to make, alter, or amend by-laws, and limiting the director's liability.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:32 p.m.

TRD-8810475

Monday, October 24, 1988, 9 a.m. The board will meet in Room 353 to consider the application of Clif-Tex, Inc., Dallas, to acquire control of Southern National Life Insurance Company, Dallas.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:32 p.m.

TRD-8810476

Monday, October 24, 1988, 9 a.m. The board will meet in Room 342, to consider the restatement to the Articles of Incorporation of Life of America Insurance Company, Houston, amending authorized capital stock, substituting the names of the present board of directors, deleting original Article 7, and pertaining to director liability.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:33 p.m.

TRD-8810477

Monday, October 24, 1988, 10:30 a.m. The board will meet in Room 342 to consider the approval of an assumption reinsurance agreement between Peoples Life Insurance Company, Houston, and Life of America Insurance Company, Houston.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:33 p.m.

TRD-8810478

Monday, October 24, 1988, 1:30 p.m. The board will meet in Room 353 to consider the approval of amendments to the restated Articles of Agreement of Service Lloyds Insurance Company, Austin, pertaining to a substitution of underwriters and substitution of attorney-in-fact.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:33 p.m.

TRD-8810463

Monday, October 24, 1988, 1:30 p.m. The board will meet in Room 342 to consider the application for amendment to the Articles of Incorporation of State Reserve Life Insurance Company, San Antonio, limiting the liability of directors to shareholders.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: October 10, 1988, 3:33 p.m.

TRD-8810464

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**Joint Select Committee on
Workers' Compensation**

Wednesday, October 19, 1988, 10 a.m. The Joint Select Committee on Workers' Compensation will meet in the Senate Chamber, Austin. According to the agenda, the committee will call order, review staff and consultant research, and consider future meetings.

Contact: Bobby Gierisch, Room 224, Reagan Building, Austin, Texas (512) 463-0814.

Filed: October 10, 1988, 4:53 p.m.

TRD-8810483

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**Texas Department of Labor
and Standards**

Thursday, October 20, 1988, 9:30 a.m. The Air Conditioning and Refrigeration Contractors Advisory Board for the Texas Department of Labor and Standards will meet at the Hilton Inn, 8181 Airport Boulevard, Houston. According to the agenda, the board will record attendance, adopt agenda, approve minutes of the August 12, 1988, meeting, hear staff and task group reports, set next meeting date, and consider old and new business.

Contact: Steven M. Matthews, P.O. Box 12157, Austin, Texas 78711.

Filed: October 6, 1988, 3:52 p.m.

TRD-8810370

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**Lamar University System,
Board of Regents**

Monday, October 10, 1988, 9 a.m. The Board of Regents Committee for Lamar University System, Board of Regents met in the Map Room, John Gray Institute, 855 Florida, Beaumont. According to the agenda, the board held meetings for Finance and Audit, Academic Affairs, Building and Grounds, Development and Public Relations, and Personnel Committees, and met in executive session.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: October 6, 1988, 10:33 a.m.

TRD-8810355

Thursday, October 13, 1988, 9:30 a.m. The Board of Regents for Lamar University System met in the Map Room, John Gray Institute, 855 Florida, Beaumont. According to the agenda, the board will consider approval of recommendations from Finance and Audit, Academic Appeals, Building and Grounds, Development and Public Relations, and Personnel Committees; and met in executive session.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: October 6, 1988, 10:33 a.m.

TRD-8810452

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Legislative Budget Board

Thursday, October 20, 1988, 9 a.m. The Legislative Budget Board will meet in Room 310, State Capitol, Austin. According to the agenda, the board will conduct a public hearing on the governor's budget execution proposal to transfer \$4,294,072 from the Department of Human Services out of the Child Support Retained Collections account for fiscal year 1989 to the

Child Support Retained Collections account of the office of the attorney general and distributed to line item 3.b. Child Support-Program Operations. None of these funds are to be expended or obligated for expenditure by the office of the attorney general until proper performance measures have been established and signed by the governor, lieutenant governor, and speaker of the house of representatives. Following the public hearing, the board may take such action as it determines to be appropriate.

Contact: Jim Oliver, Room 207-A, State Capitol, Austin, Texas 78711, (512) 463-1166.

Filed: October 11, 1988, 9:48 a.m.

TRD-8810490

Thursday, October 20, 1988, 9 a.m. The Legislative Budget Board will meet in Room 310, State Capitol, Austin. According to the agenda, the board will conduct a public hearing on the governor's budget execution proposal to transfer \$4,294,072 from the Department of Human Services out of the Child Support Retained Collections Account for fiscal year 1989 to the Child Support Retain Collections Account of the Office of the Attorney General and distributed to line item 3.b. Child Support-Program Operations. None of these funds are to be expended or obligated for expenditure by the office of the attorney general until proper performance measures have been established and signed by the governor, lieutenant governor, and speaker of the house of representatives. Following the public hearing, the board may take such action as it determines to be appropriate.

Contact: Jim Oliver, Room 207-A, State Capitol, Austin, Texas 78711, (512) 463-1166.

Filed: October 6, 1988, 3:39 p.m.

TRD-8810368

Friday, October 21, 1988, 9 a.m. The Legislative Budget Board will meet in Room 310, State Capitol, Austin. According to the agenda, the board will consider governor's budget execution proposals, review constitutional limitation on the growth of certain appropriations and other issues related to state government finance.

Contact: Jim Oliver, Room 207-A, State Capitol, Austin, Texas 78711, (512) 463-1166.

Filed: October 11, 1988, 9:48 a.m.

TRD-8810489

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**Board of Pardons and
Paroles**

Monday-Friday, October 17-21, 1988, 1:30 p.m. daily, except 11 a.m. on Friday. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the

board 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: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: October 7, 1988, 11:28 a.m.

TRD-8810384

Tuesday, October 18, 1988, 1:30 p.m. The Board of Pardons and Paroles will consider executive clemency recommendations and related actions (other than out of country conditional pardons), including: full pardons and restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentences; and other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: October 7, 1988, 11:27 p.m.

TRD-8810385

Tuesday, October 18, 1988, 9:30 a.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will meet in workshop session to discuss the impact of special review caseloads.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: October 10, 1988, 11:28 a.m.

TRD-8810453

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**Texas State Board of
Physical Therapy
Examiners**

Saturday, October 29, 1988, 11 a.m. The Texas State Board of Physical Therapy Examiners will meet in Suite 113, 313 East Rundberg, Austin. According to the agenda, the board will consider rule changes; hear committee reports and July exam reports; and consider miscellaneous business.

Contact: Lois M. Smith, 313 East Rundberg, Suite 113, Austin, Texas 787853, (512) 835-1846.

Filed: October 7, 1988, 3:50 p.m.

TRD-8810420

◆ ◆ ◆
**Texas State Board of Public
Accountancy**

The Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. Dates, times, and agendas follow.

Tuesday, October 18, 1988, 8:30 a.m. The Continuing Education Committee will review the exemption requests and forms which have been submitted to the committee, CE hours submitted by licensees who have received board sanctions for noncompliance with CE requirements, requests for additional credit for published articles and books, and sponsor registration; consider requests for CE credit from unregistered sponsors; review a statistical report concerning CE and dates for the next committee meeting; and consider other matters coming before the committee.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: October 7, 1988, 3:49 p.m.

TRD-8810421

Tuesday, October 18, 1988, 10 a.m. The Long-Range Planning Committee will discuss proposed amendments to the Act, Sunset Legislation to begin September 1, 1988, implementation/cost schedule of major other board projects, feasibility of developing rules of professional conduct consistent with the AICPA Code of Professional Ethics, the feasibility of publication of directory of licensees by TSCPA, and feasibility of a joint effort with the TSCPA to develop and publish ethics interpretations; review implementation of Substantive Rule 505.10, board committees, and status of implementing a positive enforcement program; and consider other business.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: October 7, 1988, 3:49 p.m.

TRD-8810474

Wednesday, October 19, 1988, 1:30 p.m. The Entry and Reentry Screening Committee will consider ratification of approved applications for registration of partnerships and professional corporations and applications for reinstatement of CPA certificates; consider ratification of previously approved applications under §§12, 13, and 14; consider non-routine applications under §§12, 13, and 14; consider informal conference for individuals requesting appearances before the committee; review convictions reported by licensees on their 1988 renewal notices, information relating to Department of Public Safety criminal background investigation reports, requests for surrender of CPA certificates under §12(a) of the Act, plans for November 1988 swearing-in ceremony, and licensing statistics; and consider other matters coming before the committee.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: October 7, 1988, 3:49 p.m.

TRD-8810422

**Public Utility Commission of
Texas**

Thursday, October 27, 1988, 10 a.m. The Hearings Division for the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will consider Dockets 6925 and 7029, application of Contel Corporation to purchase stock of Colmesneil Telephone Company, Inc. and application of Continental Telephone Company of Texas for merger of Colmesneil Telephone Company, Inc. with Continental Telephone Company of Texas.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 10, 1988, 3:03 p.m.

TRD-8810460

Monday, November 14, 1988, 10 a.m. The Hearings Division for the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the division will consider a settlement conference in Docket 7930, regarding application of Texas-New Mexico power company for approval of standard avoided cost calculated for purchase of firm energy and capacity from qualifying facilities.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 6, 1988, 2:48 p.m.

TRD-8810367

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**State Purchasing and
General Services
Commission**

Wednesday, October 19, 1988, 1:30 p.m. The Texas School Bus Committee for the State Purchasing and General Services Commission will meet in the Central Services Building, Conference Room 402, 1711 San Jacinto, Austin. According to the agenda, the committee will discuss school bus bodies, chassis, engines, options, accessories, and the Approved Products List.

Contact: Troy C. Martin, 1711 San Jacinto, Austin, Texas, (512) 463-3414.

Filed: October 11, 1988, 9:27 a.m.

TRD-8810488

◆ ◆ ◆
**Railroad Commission of
Texas**

Monday, October 10, 1988, 9 a.m. The Oil and Gas Division for the Railroad Commission of Texas will meet in emergency session in Room 12-126, 12th Floor Conference Room, William B. Travis Building,

1701 North Congress Avenue, Austin. According to the agenda, the division will consider whether to use state funds to plug a leaking well, Empire Gas and Fuel, Wharton Lease, Well 1, unknown field, Palo Pinto County. The emergency session was necessary as the well is leaking approximately 103 barrels of saltwater per day which is getting into the Brazos River, causing an imminent threat to the public health and safety.

Contact: Willis C. Steed, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6830.

Filed: October 7, 1988, 1:33 p.m.

TRD-8810394

Monday, October 17, 1988, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, 1701 North Congress Avenue, Austin. Agendas follow.

The Administrative Services Division will consider and act on the division director's report on division administration, budget, procedure, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7257.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810397

The Automatic Data Processing Division will consider and act on the division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810407

The commission will consider and act on the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. Consider reorganization of various commission divisions; consolidation of positions; and appointment, reassignment and/or termination of various positions, including division directors.

Contact: C. Tom Clowe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7274.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810409

The Flight Division will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6787.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810405

The Gas Utilities Division will consider various matters within the regulatory jurisdiction of the Railroad Commission of Texas. 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 its entirety or for particular action at a future time or date.

Contact: Vicki Dimego, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7009.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810404

The Office of Information Services will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78753, (512) 463-6710.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810406

The Investigation Division will consider and act on the division director's report on division administration, investigations, budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6828.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810396

The Legal Division will consider and act on the Legal Division's report on division administration, budget, procedures, and personnel matters; proposed and pending litigation, including but not limited to discussion and/or action on the following: consideration of proposal for public comment of new general rules of practice and procedure for the commission and simultaneous repeal of the current general rules of practice and procedure, 16 TAC §§1.1-1.36.

Contact: C. Tom Clowe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7274.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810401

LP-Gas Division will consider and act on division director's report on division administration, budget, procedures, and personnel matters; consider administrative penalty orders concerning violation of commission regulations by Taylor Brothers Appliances and Butane Company, Docket 663 and Young County Butane Company, Docket 665.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6931.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810403

The Oil and Gas Division will consider various matters within the regulatory 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 its entirety or for particular action at a future time of date.

Contact: Sonia O'Neal, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6848.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810410

The Oil and Gas Division will consider category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810399

The Oil and Gas Division will consider the letter required from the commission pursuant to Chapter 27 of the Texas Water Code, in conjunction with the application of Sweetwater Resources, Inc., to the commission for a Class I hazardous waste disposal well permit for Fisher County.

Contact: Jerry Mullican, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6790.

Filed: October 7, 1988, 1:58 p.m.

TRD-8810395

The Personnel Division will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810408

The Office of Research and Statistical Analysis will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810408

The Surface Mining Division will consider various matters within the regulatory 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 its entirety or for particular action at a future time of date.

Contact: Jerry Hill, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6900.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810400

The Transportation Division will consider various matters within the regulatory 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 its entirety or for particular action at a future time or date.

Contact: Robert F. Biard, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: October 7, 1988, 1:48 p.m.

TRD-8810402

Texas Real Estate Commission

Monday, October 17, 1988, 9:30 a.m. The Texas Real Estate Commission will meet in the Boardroom, College Station Hilton, 801 University Drive, College Station. According to the agenda summary, the commission will approve minutes of the September 12, 1988, meeting; hear staff reports for month of August 1988 and audit report; consider proposed new 22 TAC §535.165 concerning disclosure of buyer or tenant representation, complaint file 88-567(a), claims against the real estate recovery fund, motions for rehearing and/or probation, entry of orders in contested cases, and place of next meeting. The commission will also meet in executive session to discuss pending litigation pursuant to Texas Civil Statutes, Article 6525-17, §2(c).

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

Filed: October 7, 1988, 4:40 p.m.

TRD-8810431

Special Task Force on Rural Health Care Delivery in Texas

Monday, October 17, 1988, 9:30 a.m. The Special Task Force on Rural Health Care Delivery in Texas will meet in the Senate Chamber, State Capitol Building, Austin. According to the agenda, the task force will call order and roll, introduce task force

members, presentations, hear public testimony, and consider other business.

Contact: Sam Gorena, P.O. Box 13206, Austin, Texas, (512) 463-0809.

Filed: October 10, 1988, 9:15 a.m.

TRD-8810443

Tuesday, October 25, 1988, 1 p.m. The Regulatory Restrictions Subcommittee for the Special Task Force on Rural Health Care Delivery in Texas will meet in the Senate Chamber, State Capitol Building, Austin. According to the agenda, the subcommittee will hold a work session to discuss the impact of certain state and federal regulations on rural health care providers.

Contact: Susan Wilson, P.O. Box 12068, Austin, Texas, (512) 463-0360.

Filed: October 10, 1988, 9:14 a.m.

TRD-8810444

State Rural Medical Education Board

Sunday, October 23, 1988, 1 p.m. The Board for the State Rural Medical Education Board will meet in the Boardroom, Doubletree Hotel, 6505 North IH 35, Austin. According to the agenda, the board will call order; review financial and statistical reports; review problem files; and discuss other business.

Contact: J.C. Randolph, Room B1-B, Anson Jones Building, Austin, Texas 78701, (512) 463-1108.

Filed: October 6, 1988, 10:42 a.m.

TRD-8810356

School Land Board

Tuesday, October 18, 1988, 10 a.m. The School Land Board will meet in Room 831, General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will approve minutes of the previous board meeting; consider pooling applications, schedule and procedures for the next oil, gas, and other minerals lease sale, excess acreage applications, good faith claimant applications, direct land sales for Hutchinson County; preliminary discussion of acquisition of timberland in Liberty and San Jacinto Counties; consider asset management policy statement on upgrading the permanent school fund inventory; coastal public lands-commercial lease applications; easement applications and lease applications; and meet in executive session to discuss the renewal of Queen Isabella Causeway lease with Texas Parks and Wildlife Department.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas

78701, (512) 463-5016.

Filed: October 10, 1988, 4:20 p.m.

TRD-8810480

State Securities Board

Tuesday, October 18, 1988, 10 a.m. The Securities Commissioner for the State Securities Board will meet in Suite 201, 2727 Kirby Drive, Houston. According to the agenda, the commissioner will determine whether a cease and desist order should be issued prohibiting the sale of securities issued by Guaranty Funding Corporation.

Contact: John Morgan, 1800 San Jacinto, Austin, Texas, (512) 474-2233.

Filed: October 10, 1988, 3:22 p.m.

TRD-8810461

Texas State Senate

Friday, October 21, 1988, 9 a.m. The Select Committee on Medicaid and Family Services for the Texas State Senate will meet in Room 104, John H. Reagan Building, Austin. According to the agenda, the committee will discuss local funds subcommittee findings and recommendations; hear report on Medicaid expansion implementation and interagency collaboration of TDH and DHS; and hear report on federal welfare reform legislation.

Contact: Bryan Sperry, Room G-31, Capitol Building, Austin, Texas 78711, (512) 463-0010.

Filed: October 10, 1988, 10:15 a.m.

TRD-8810442

Stephen F. Austin State University

The Board of Regents of Stephen F. Austin State University will meet in Room 307, Austin Building, Stephen F. Austin State University Campus, Nacogdoches. Dates, times, and agendas follow.

Monday, October 17, 1988, 1:30 p.m. The board will approve minutes of the previous meeting; hear underenrolled class report and faculty workload report; consider curriculum, policy on honorary degrees, policy on disposition of abandoned personal property, budget adjustments for fiscal years 1988 and 1989, final budget positions for fiscal year 1988, select insurance agent for group coverage, select contractor for long distance 0+ service, increase equipment budget for power plant II project and authorize landscaping/playground project in early childhood laboratory; and consider policy related to gifts, loans, endowments, and bequests. The board will also meet in executive session.

Contact: William R. Johnson, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 563-2201.

Filed: October 7, 1988, 9 a.m.

TRD-8810383

Tuesday, October 18, 1988, 9 a.m. The board will approve minutes of the previous meeting; consider personnel matters; hear underenrolled class report and faculty workload report; consider curriculum, policy on honorary degrees, policy on disposition of abandoned personal property, budget adjustments for fiscal years 1988 and 1989, final budget positions for fiscal year 1988, select insurance agent for group coverage, select contractor for long distance 0+ service, increase equipment budget for power plant II project and authorize landscaping/playground project in early childhood laboratory; and consider policy related to gifts, loans, endowments, and bequests. The board will also meet in executive session.

Contact: William R. Johnson, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 563-2201.

Filed: October 7, 1988, 9 a.m.

TRD-8810380

Texas State University System

Friday-Saturday, October 14-15, 1988, 9 a.m. The Selection Advisory Committee for Texas State University System will meet in Boardroom 3, La Mansion del Norte, San Antonio. According to the agenda, the committee will discuss any and all matters relating to the employment of a president for Southwest Texas State University. (Executive session could be held for the listed subject).

Contact: Lamar Urbanovsky, (512) 463-1808.

Filed: October 11, 1988, 8:27 a.m.

TRD-8810487

The University of Texas at Austin

Wednesday, October 12, 1988, 4 p.m. The Intercollegiate Athletics for Women of the University of Texas at Austin met in Room 606, Belmont Hall, U. T. Campus, 21st and San Jacinto Streets, Austin. According to the agenda, the university called order, approved minutes of the previous meeting of September 21, 1988, heard announcements and information reports, discussed old business, met in executive session, and discussed new business.

Contact: Donna A. Lopiano, Belmont 606, U.T. Campus, Austin, Texas 78711, (512) 471-7693.

Filed: October 10, 1988, 2:34 p.m.

TRD-8810458

Thursday, October 13, 1988, 4 p.m. The Intercollegiate Athletics Council for Men for the University of Texas at Austin met in Room 240, Belmont Hall, 23rd and San Jacinto Streets, Austin. According to the agenda, the council met in executive session; introduced new council members; met in open session; approved minutes of the August 19, 1988, items from executive session; and discussed schedules, awards, academics, new business, tickets and ticket prices, construction, development, and old business.

Contact: Betty Corley, P.O. Box 7399, Austin, Texas 78713.

Filed: October 10, 1988, 11:39 a.m.

TRD-8810454

Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, unless otherwise noted. Dates, times, rooms, and agendas follow.

Tuesday, October 11, 1988, 9 a.m. The commission met in Room 118 in an emergency agenda revision to add executive directors request for authorization to refer a matter to the attorney general's office to intervene in State of Alabama law suit against environmental protection agency. The emergency status was necessary in order for the attorney general's office to have sufficient time to prepare for hearing to be heard by Alabama federal courts on October 21, 1988.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: October 10, 1988, 4:59 p.m.

TRD-8810484

Monday, October 24, 1988, 10 a.m. The commission will meet in Room 118 to consider executive director's preliminary enforcement report and petition for order requiring certain actions of the City of Gunter (Permit 10569-01) and consideration of the executive director's report of substantial noncompliance and petition for an order finding substantial noncompliance and requiring certain actions of the Town of Valley View (Permit 11164).

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 4675-2161.

Filed: October 6, 1988, 1:28 p.m.

TRD-8810362

Monday, October 24, 1988, 11 a.m. The commission will meet in Room 118 to consider application of DBC Utilities, Inc. for a

temporary order (Permit 12622-01) and the application by General Electric Railcar Services Corporation for a temporary permit (Permit 01782).

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161

Filed: October 6, 1988, 1:28 p.m.

TRD-8810361

Thursday, October 27, 1988, 10 a.m. The commission will meet in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission will consider the executive director's preliminary report and petition for order assessing administrative penalties and requiring certain action of PPG Industries, Inc. (solid waste registration 30583) and El Paso Products Company's violations of the Texas solid waste disposal act and rules of the commission (SWR 30142)

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: October 7, 1988, 3:31 p.m.

TRD-8810419

Tuesday, November 29, 1988, 9 a.m. The commission will meet in Room 118, to determine whether Emergency Order 87-17E, reissued by the commission on September 27, 1988, to Hoechst Celanese Chemical Group (Hoechst Celanese), P.O. Box 937, Pampa, Texas 79066-0937, should be affirmed, modified, or set aside by the commission. The order permitted Hoechst Celanese to continue to store, process, and dispose of hazardous waste in its non-permitted, on-site wastewater treatment and disposal system and on-site incinerator and associated temporary tankage, at its plant in Pampa, Gray County. The applicant has stated that the request authorization is necessary to expedite cleanup efforts and to restart the facility's operation in order to prevent endangering the public health, safety, and the environment.

Contact: Lisa Montgomery, P.O. Box 13087, Austin, Texas 78701, (512) 463-8069.

Filed: October 6, 1988, 4:20 p.m.

TRD-8810378

Regional Meetings

Meetings Filed October 6, 1988

The Tax Appraisal District of Bell County, Board of Directors, will meet at 411 East Central Belton, on October 19, 1988, at 7 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, ext. 29.

The Comal Appraisal District, Board of Directors, will meet at 430 West Mill Street, New Braunfels, on October 17, 1988, at 7:30 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597.

The Concho Valley Council of Governments, Executive Committee, met at 5002 Knickerbocker Road, San Angelo, on October 12, 1988, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76903, (915) 944-9666.

The Edwards Underground Water District, Audit Committee and Board of Directors, met at 1615 North St. Mary's Street, San Antonio, on October 11, 1988, at 9:15 a.m. and 10 a.m., respectively. Information may be obtained from Russell L. Masters, 1615 North St. Mary's Street, San Antonio, Texas 78215, (512) 222-2204.

The Sabine Valley Regional MHMR Center, Board of Trustees, will meet in Suite E, Sabine Valley Center-Central Administration, 107 Woodbine Place, Longview, on October 25, 1988, at 2:30 p.m. Information may be obtained from Ron Cookston, P.O. Box 6800, Longview, Texas 75608, (214) 758-2471.

The South Plains Association of Governments, Executive Committee and Board of Directors, met at 1323 58th Street, Lubbock, on October 11, 1988, at 9 a.m. and 10 a.m., respectively. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452.

The Tyler County Appraisal District, Board of Directors, met at 806 West Bluff, Woodville, on October 11, 1988, at 10 a.m. The board will also meet at 10 a.m. and 11 a.m. on October 18, 1988. Information may be obtained from Mary F. Marn, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

Meetings Filed October 7, 1988

The Angellna and Neches River Authority, Board of Directors, met in the Travis Room, Pallas Hotel, 3400 South Street, Nacogdoches, on October 11, 1988, at 10 a.m. Information may be obtained from Chuck Thomas, P.O. Box 387, Lufkin, Texas 75902-0387, (409) 632-7795.

The Bosque County Appraisal District, Appraisal Review Board, met at 104 West Morgan, Meridian, on October 11-14, 1988, at 9 a.m., daily. Information may be obtained from Billye McGehee, P.O. Box 393, Meridian, Texas 76665, (812) 435-2305.

The Cherokee County Appraisal District, Board of Directors, met at 107 East Sixth Street, Rusk, on October 13, 1988, at 2:30 p.m. Information may be obtained from S.R. Danner, P.O. Box 494, Rusk, Texas 75785, (214) 683-2296.

The Dallas Area Rapid Transit, Planning and Development Committee and Mobility Impaired Committee, met at 601 Pacific Avenue, Dallas, on October 13, 1988, at 1 p.m. The Operations Committee met at the same location on the same date at 2 p.m. The Board of Directors met at the same location on the same date at 6:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Central Appraisal District, Board of Directors, met in Suite 500, 1420 West Mockingbird Lane, Dallas, on October 12, 1988, at 7:30 a.m. The Appraisal Review Board will meet at the same location on October 28, 1988, at 10 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0520.

The Eastland County Appraisal District, Board of Directors, will meet on October 19, 1988, at 1 p.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448.

The Education Service Center, Region VI, Board of Directors, will meet in Huntsville, on October 20, 1988, at 5 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161.

The Golden Crescent Service Delivery Area, Private Industry Council, Inc. met at 1301 East Rio Grande, Victoria, on October 12, 1988, at 6:30 p.m. Information may be obtained from Cleve Schoener, P.O. Box 2149, Victoria, Texas 77902.

The Grayson Appraisal District, Board of Directors, met at 205 North Travis, Sherman, on October 12, 1988, at noon. Information may be obtained from Deborah Reneau, 205 North Travis, Sherman, Texas 75090, (214) 893-9673.

The Hays County Appraisal District, Appraisal Review Board, met at 632 A East Hopkins, San Marcos, on October 12, 1988, at 9 a.m. The Board of Directors met at the same location on October 13, 1988, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 654-7400.

The Kendall County Appraisal District, Appraisal Review Board, will meet at 207 East San Antonio Street, Boerne, on October 18, 1988, at 9 a.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

The Lampasas County Appraisal District, Board of Directors, met at 109 East Fifth, Lampasas, on October 12, 1988, at 9:30 a.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76650, (512) 556-8058.

The North Central Texas Council of Governments for the North Central Texas Job Training Consortium Private

Industry Council, met at Tanglewood on Texoma, Pottsboro, on October 13, 1988, at 10 a.m. Information may be obtained from Mike Gilmore, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.

The North Texas Municipal Water District, Board of Directors, will meet at 505 East Brown, Wylie, on October 27, 1988, at 4 p.m. Information may be obtained from Carl W. Riehn, 505 East Brown, Wylie, Texas, (214) 442-5405.

The Central Appraisal District of Taylor County, Board of Directors, met at 340 Hickory Street, Abilene, on October 12, 1988, at 10 a.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.

The Wood County Appraisal District, Appraisal Review Board, met in the Conference Room, 217 North Main, Quitman, on October 11, 1988, at 9:30 a.m. Information may be obtained from W. Carson Wages, P.O. Box 951, Quitman, Texas 75783.

TRD-8810379

Meetings Filed October 10, 1988

The Austin Transportation Study, Right of Way Subcommittee, will meet in the O'Henry Room, Austin History Center, Austin, on October 14, 1988, at 4:30 p.m. Information may be obtained from Joseph P. Gisselman, P.O. Box 1748, Austin, Texas 78767, (512) 472-7483.

The Bastrop County Appraisal District, Board of Directors, met at the Appraisal District, 1200 Cedar Street, Bastrop, on October 13, 1988, at 2 p.m. Information may be obtained from Lorraine Perry, (512) 321-3925.

The Blanco County Appraisal District, Board of Directors, will meet in the Blanco County Courthouse Annex, Johnson City, on October 14, 1988, at 5 p.m. Information may be obtained from Hollis Petri, (512) 868-4624.

The Capital Area Planning Council, Executive Committee, will meet in Suite 100, 2520 IH 35 South, Austin, on October 18, 1988, at 2 p.m. Information may be obtained from Richard G. Bean, (512) 443-7653.

The Cass County Appraisal District, Board of Directors, will meet in the District Office, 400 North Main Street, Linden, on October 17, 1988, at 7 p.m. Information may be obtained from Janelle Clements, Box 1150, Linden, Texas 75563, (214) 756-7545.

The Comal Appraisal District, Board of Directors, will meet at 430 West Mill Street, New Braunfels, on October 17, 1988, at 7:30 p.m. The Appraisal Review Board will meet at the same location on November 7, 1988, at 9 a.m. Information

may be obtained from R. Richard Jones, P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597.

The Dewitt County Appraisal District, Board of Directors, will meet in the Appraisal District Office, 103 Bailey Street, Cuero, on October 18, 1988, at 7:30 p.m. Information may be obtained from Wayne K. Woolsey, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Education Service Center, Region VII, Board of Directors, will meet at the Holiday Inn, Henderson, on October 20, 1988, at 7 p.m. Information may be obtained from Don J. Peters, 818 East Main, Kilgore, Texas, (214) 984-3071.

The Education Service Center, Region XIV, Board of Directors, will meet at 1850 State Highway 351, Abilene, on October 20, 1988, at 5:30 p.m. Information may be obtained from Taressa Huey, Box 70-A, Route 1, Abilene, Texas 79605, (915) 676-8201.

The Edwards Underground Water District, Board of Directors, met at 1615 North St. Mary's Street, San Antonio, on October 11, 1988, at 10 a.m. Information may be obtained from Russell L. Masters, 1615 North St. Mary's Street, San Antonio, Texas 78215, (512) 222-2204.

The Grand Parkway Association, met in the Room 140, East Wing, 5757 Woodway,

Houston, on October 12, 1988, 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 Gray County Appraisal District, Board of Directors, met at 815 North Sumner, Pampa, on October 13, 1988, at 5 p.m. Information may be obtained from W. Pat Bagley, (806) 665-0791.

The Henderson County Appraisal District, Board of Directors, will meet at 1751 Enterprise, Athens, on October 17, 1988, at 7:30 p.m. Information may be obtained from Helen Marchbanks, 1751 Enterprise, Athens, Texas 75751, (214) 675-9296.

The Liberty County Central Appraisal District, Appraisal Review Board, will meet at 1820 Sam Houston, Liberty, on October 25, 1988, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575.

The Nortex Regional Planning Commission, Executive Committee, and North Texas State Planning Region Consortium, will meet in the Bounty Room, Trade Winds Motor Hotel, 1212 Broad Street, Wichita Falls, on October 20, 1988, at noon and 1 p.m., respectively. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, (817) 322-5281.

The Nueces-Jim Wells-Kleberg Soil and Water Conservation District, Board of Directors, will meet at 710 East Main Street, Robstown, on October 18, 1988, at 2 p.m. Information may be obtained from M. Brent Ocker.

The Palo Pinto Appraisal District, Board of Directors, will meet at the County Courthouse, Palo Pinto, on October 19, 1988, at 3 p.m. Information may be obtained from Jack F. Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-1234.

The South East Texas Regional Planning Commission, Executive Committee, will meet at the Beaumont City Council Chambers, Beaumont, on October 19, 1988, at 7 p.m. Information may be obtained from Jackie Vice, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384.

TRD-8810432



Meetings Filed October 11, 1988

The Trinity River Authority of Texas, Utility Services Committee, will meet at 5300 South Collins, Arlington, on October 17, 1988, at 10:30 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.

TRD-8810491



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 Agriculture Request for Proposals

The Texas Agriculture Diversification Board and Texas Department of Agriculture invite proposals to fund applied research and innovation projects, business training, and support service programs designed to address Texas' agricultural needs and opportunities. The Agricultural Diversification Grant Program was authorized by House Bill 49, 70th Legislature, Second Called Session, 1987. The purpose of the program is to support projects sponsored by non-profit organizations which will stimulate increased economic activity within Texas' food and agriculture industries. Funding proposals will be accepted in three categories: (1) Research and innovation (technology transfer). Grants up to \$30,000 will be considered for research and innovation (technology transfer) leading to organizational or marketing improvements in business based on agriculture or to the commercialization of new crops, new agricultural products, or new production processes. A grant recipient under this grant must match the amount of the state grant with an equal amount of other money, with at least one-half of the matching money coming from the private sector. (2) Business assistance (training). Grants up to \$30,000 will be considered for business assistance, including training, to increase the capabilities of community and regional organizations to provide training and assistance to new and expanding businesses based on agriculture. A grant recipient under this grant program must match the amount of the state grant with an equal amount of other money. (3) Small business incubators. Grants will provide up to \$100,000 to provide seed money for self-financing small business incubators. These incubators shall provide business services to small enterprises that process or market agricultural crops in this state or that produce alternative agricultural crops in this state. A grant recipient under this section must match the amount of the state grant with assets valued at \$3 for every \$1 of the state grant. The state grant must be primarily for professional services. The local matching share may be in the form of land, buildings, business assistance, and dedicated loan pools as well as cash contributions.

Funds are intended to be used for new activities or the expansion of qualifying activities. Proposals must have practical near-term commercial application involving new or alternative crops and technologies, production, processing, and marketing practices which will stimulate expanded agricultural development, economic activity, and employment growth. A recipient of a grant must be a non-profit regional organization or non-profit community, such as a university, community college, or council of government, or other institutions affiliated with a small business in an eligible project.

Proposals will be evaluated on the basis of conformity to the objectives and criteria indicated in the complete request for proposals, and the cost effectiveness of the proposal activity.

To obtain a complete copy of the request for proposals,

contact Alice Reynolds, Administrator, Texas Agricultural Diversification Program, Texas Department of Agriculture, P.O. Box 12847, 1700 North Congress Avenue, Stephen F. Austin Building, 10th Floor, Room 1001, Austin, Texas 78711, (512) 463-7446. A copy of the request for proposals may be obtained by calling or writing the department.

Proposals may be delivered by mail or in person to the address stated previously. To be considered for funding, proposals must be received no later than 4 p.m. on October 31, 1988. Proposals received after that time will not be considered.

Issued in Austin, Texas on October 5, 1988.

TRD-8810375 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Filed: October 6, 1988

For further information, please call (512) 463-7583

State Banking Board Notice of Hearing Cancellation

As no opposition has been noted in the application for domicile change by United States Fidelity Trust Company, Dallas, the hearing previously scheduled for October 12, 1988, has been cancelled.

Issued in Austin, Texas on October 4, 1988.

TRD-8810371 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: October 6, 1988

For further information, please call (512) 479-1200

Texas Department of Commerce Weekly Report on the 1988 Allocation of the State Ceiling on Certain Private Activity Bonds

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1988 is \$834,100,000.

State legislation, Senate Bill 1382, Chapter 1092, Acts of the 70th Legislature, (the Act), established the allocation process for the State of Texas. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation.

Pursuant to the Act, the aggregate amount for qualified mortgage bond subceiling is \$278,033,300, with \$185,355,500 available to the local housing authorities and \$92,677,800 available to the Texas Housing Agency. The aggregate amount for state-voted issues is \$208,525,000 and the amount for all other bonds requiring an allocation is \$347,541,700.

Generally, the state ceiling is allocated on a first-come, first-served basis, with the Texas Department of Commerce (the department) administering the allocation system.

The information that follows is a weekly report of the allocation activity for the period, September 26, 1988-September 30, 1988.

Weekly report on the 1988 allocation of the state ceiling on certain private activity bonds as pursuant to Senate Bill 1382.

Total amount of state ceiling remaining unreserved for the \$278,033,300 subceiling for qualified mortgage bonds under the Act as of September 30, 1988: \$92,507,800

Total amount of state ceiling remaining unreserved for the \$208,525,000 subceiling for state-voted issues under the Act as of September 30, 1988: \$208, 525,000.

Total amount of state ceiling remaining unreserved for the \$347,541,700 subceiling for all other bonds under the Act as of September 30, 1988: \$226,700.

Total amount of the \$834,100,000 state ceiling remaining unreserved as of September 30, 1988: \$301,259,500.

Comprehensive listing of bond issues which have received a reservation date pursuant to the Act from September 26, 1988-September 30, 1988: None

Comprehensive listing of bonds issued and delivered as pursuant to the Act from September 26, 1988-September 30, 1988: None.

Issued in Austin, Texas, on October 3, 1988.

TRD-8810315 J. William Lauderback
Executive Director
Texas Department of Commerce

Filed: October 5, 1988

For further information, please call (512) 472-5059

Texas Department of Health

Notice of Emergency Cease and Desist and Impoundment Order

Notice is hereby given that BDC Electronics, Inc., P.O. Box 5203, Midland, Texas 79704, holder of radioactive material license L03865, is ordered to cease and desist from manufacturing smoke detector devices containing radioactive material and from participating in the manufacture of such devices. Also, the licensee is ordered to collect all radioactive materials and devices in its possession containing radioactive materials and secure them under lock and key at their current physical locations. The licensee is ordered to perform a physical inventory of the collected radioactive materials and devices, prepare a written record of the physical inventory, and transmit a copy of the inventory record to the agency within 10 days of the effective date of the order. Further, it is ordered that said radioactive materials and devices be impounded in place until such time as the agency rescinds the order or authorizes in writing their transfer or disposal.

The order was issued because the agency determined that the licensee has manufactured smoke detectors containing radioactive material for the purpose of distribution. The license authorizes the research and development of smoke detectors and does not authorize the manufacture and distribution of smoke detectors.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a. m.-5 p.m. (except holidays).

Issued in Austin, Texas on October 5, 1988.

TRD-8810425 Robert A. MacLean, M.D.
Deputy Commissioner, Professional
Services
Texas Department of Health

Filed: October 7, 1988

For further information, please call (512) 835-7000

Notice is hereby given that the Maxtron Corporation is ordered to cease and desist from manufacturing smoke detector devices containing radioactive material and from participating in the manufacture of such devices. The company is also ordered to collect all radioactive materials and devices containing radioactive materials in its possession and secure them under lock and key at their current physical locations. The company is ordered to perform a physical inventory of the collected radioactive materials and devices, prepare a written record of the physical inventory, and transmit a copy of the inventory record to the agency within 10 days of the effective date of the order. The agency further ordered that said radioactive materials and devices be impounded in place until such time as the agency rescinds the order or authorizes in writing their transfer or disposal.

The order is issued because the Maxtron Corporation does not hold a Texas radioactive material license authorizing the manufacture and distribution of smoke detectors containing radioactive material.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, from 8 a.m.-5 p.m. (except holidays).

Issued in Austin, Texas on October 5, 1988.

TRD-8810426 Robert A. MacLean, M.D.
Deputy Commissioner, Professional
Services
Texas Department of Health

Filed: October 7, 1988

For further information, please call (512) 835-7000

Texas Higher Education Coordinating Board

Notice of Meeting

The Advisory Committee on Teacher Induction will meet on Tuesday, October 11, 1988, at 9:30 a.m. The meeting will be held in Room 255 in the Bevington Reed Building, at 200 East Riverside Drive in Austin. For additional information, contact the Texas Academic Skills Program (TASP) Office at the Coordinating Board at (512) 462-6485.

Note: This meeting of the full committee is being called to review the document prepared by the Writing Subcommittee. This document will be mailed to each committee member as soon as it is completed.

Issued in Austin, Texas on October 4, 1988.

TRD-8810441 James McWhorter
Assistant Commissioner for Planning and
Administration
Texas Higher Education Coordinating Board

Filed: October 10, 1988

For further information, please call (512) 462-6420

◆ ◆ ◆
Texas Industrial Accident Board
Correction of Error

The Texas Industrial Accident Board submitted proposed sections which contained errors as published in the September 27, 1988, issue of the *Texas Register* (13 TexReg 4772).

In the preamble for §§42.28, 42.33, and 42.78: : The first sentence of the third paragraph should read: "Mr. McAnally 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 heightened understanding by claimants, providers, and carriers of their rights and duties under the law, resulting in fewer disputes over reimbursement for health care services provided to injured workers, which will, in turn, accelerate delivery of, and payment for, such services."

In §42.78: Paragraph (3) should read: "(3) upon receipt of narrative reports submitted by the treating doctor pursuant to §42.40 of this subchapter (relating to Required Reports: Subsequent Reports);"

In §42.101: The text of the section should read: "The fee guidelines promulgated in this subchapter are intended to establish presumptively fair and reasonable charges for health care services and supplies which may be covered under the Act."

◆ ◆ ◆
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 Midwest Security Life Insurance Company, a foreign life insurance company. The home office is in Indianapolis, Indiana.
2. Application for a name change of Equicor Life Insurance Company, a foreign life insurance company. The home office is in Los Angeles, California. The proposed new name is First Equicor Life Insurance Company.
3. Application for admission to do business in Texas of Old Dominion Life Insurance Company, a foreign life insurance company. The home office is in Roanoke, Virginia.
4. Application for incorporation of Security Services Insurance Company, a domestic casualty insurance company. The home office is in Dallas.
5. Application for admission to do business in Texas of Commonwealth General Insurance Company, a foreign casualty insurance company. The home office is in Kansas City, Missouri.
6. Application for a name change by National Reserve Life Insurance Company, a foreign life insurance company. The home office is in Sioux Falls, South Dakota. The

proposed new name is National United Life Insurance Company.

7. Application for admission to do business in Texas of the Investment Life and Trust Company, a foreign life insurance company. The home office is in Mullins, South Carolina.

8. Application for incorporation of J.C. Penney Reinsurance Company, a domestic life insurance company. The home office is in Stamford, Connecticut. The proposed new name is Life Reassurance Corporation of America.

9. Application for a name change by General Reassurance Corporation, a foreign life insurance company. The home office is in Stamford, Connecticut. The proposed new name is Life Reassurance Corporation of America.

10. Application for incorporation of MHN, Inc., a domestic health maintenance organization. The home office is in Dallas.

Issued in Austin, Texas, on October 5, 1988.

TRD-8810418 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: October 7, 1988

For further information, please call (512) 463-6327.

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Texas Public Finance Authority
Notice of Public Hearing

In the October 7, 1988, issue of the *Texas Register*, the Texas Public Finance Authority (the Authority) proposed new §§221.1-221.5, concerning the general guidelines, criteria, and procedures regarding the issuance of bonds and the disbursement of bond proceeds.

A public hearing will be held to hear testimony and comments relevant and material to the proposed amendments at 10 a.m. on Thursday, November 3, 1988, in Room 104 of the Reagan Building, 105 West 15th Street, Austin. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the Authority reserves the right to restrict testimony in terms of time or repetitive content. Due to a possible time limit for testimony, all persons desiring to testify or comment are strongly urged to reduce as much of their testimony and comments to writing as possible and present such material to Ann Moriarty by November 15, 1988.

For further information, please contact Ann Moriarty, Deputy Assistant Administrator, P.O. Box 12906, Austin, Texas 78711, or by calling (512) 463-5544.

Issued in Austin, Texas on October 3, 1988.

TRD-8810365 Ann Moriarty
Deputy Assistant Administrator
Texas Public Finance Authority

Filed: October 6, 1988

For further information, please call (512) 463-5544

◆ ◆ ◆
Request for Proposals

The Texas Public Finance Authority (the TPFA) is requesting proposals for fire and extended coverage insurance in the amount of 100% of the replacement value of the building or the outstanding bonds, whichever is less, with no coinsurance for facilities on which bond issues or

other financial obligations are outstanding; and business interruption insurance equal to two year's debt service on the outstanding bonds. The deadline for proposal submission is noon, October 17, 1988.

Selection will be based on lowest cost for the one year period, provided that all criteria and specifications are met or exceeded.

Copies of the proposal request may be obtained by calling or writing Ann Moriarty, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

Issued in Austin, Texas on October 6, 1988.

TRD-8810365 Ann Moriarty
Deputy Assistant Administrator
Texas Public Finance Authority

Filed: October 6, 1988

For further information, please call (512) 463-5544

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Public Utility Commission of Texas
Consultant Proposal Request

Notice of Request for Proposals: Pursuant to Texas Civil Statutes, Article 6252-11c, the Public Utility Commission of Texas (PUC), the state agency charged with the regulation of the rates and services of public utilities (electric and telephone, not including municipal corporations), announces a request for proposals (RFP) to conduct a comprehensive audit of the management and operations of the Public Utility Commission of Texas. The RFP will be available on or about October 20, 1988.

The audit is intended to provide an analysis of various management processes and operating systems within the agency. The audit scope will include such areas as agency management and organization, workload management, records management, management information systems, and human resources management.

Contact Person: Parties interested in offering services to conduct such an audit should contact Hershel S. Meriwether, Acting Director of Administration, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, (512) 458-0165, for a complete copy of the RFP.

Closing Date: Audit proposals should be received by the PUC no later than 5 p.m., November 17, 1988. The period of performance is estimated to be January 2, 1989, to March 31, 1989.

Award Procedure: Selection of the consultant will be based on demonstrated competence, experience, knowledge, and qualifications in the areas of service desired and on the reasonableness of the proposed cost for the services. All proposals received shall be subject to evaluation by a committee of qualified PUC personnel to select the proposal which most clearly meets the requirements of the RFP. The staff will make a recommendation to the PUC commissioners who will make the final selection. Consultants may be asked to make an oral presentation of their proposal prior to the commissioners' final selection.

The PUC reserves the right to accept or reject any or all proposals submitted. The PUC is under no legal or other requirement to execute a resulting contract on the basis of this notice or the distribution of the RFP. Neither this notice nor the RFP commit the PUC to pay for any costs incurred prior to the execution of a contract.

Issued in Austin, Texas on October 7, 1988.

TRD-8810416 Phillip A. Holder
Secretary
Public Utility Commission of Texas

Filed: October 7, 1988

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

◆ ◆ ◆
Railroad Commission of Texas
Notice of Intent

The Railroad Commission of Texas is submitting a request for funds under Title IV of the Federal Surface Mining Control and Reclamation Act of 1977 to reclaim the Searcy abandoned uranium mine in Karnes County. The uranium mine consists of a pit with nearly vertical highwalls located within 62 feet of a curve on Highway FM 791. The pit contains acid mine water at an approximate depth of 25 feet. A poorly revegetated spoil pile consisting of overburden from the pit remains on site. Work on the project would be accomplished in accordance with the Texas Abandoned Mine Land Program administered by the Railroad Commission of Texas.

Proposed reclamation of the site would: backfill both ends of the pit to grade; alter the slopes of all highwalls associated with the remaining pit to 4h: 1v or less; eliminate all impounded acid mine water; lime, fertilize, seed, and mulch with grasses; and fence site to insure successful establishment of vegetation.

Interested persons are invited to comment on any possible impact this proposed project might have on the area or community. Comments or inquiries may be submitted to J. Randel (Jerry) Hill, Director, Railroad Commission of Texas, Surface Mining and Reclamation Division, P.O. Drawer 12967, Austin, Texas 78711.

Issued in Austin, Texas on October 7, 1988.

TRD-8810393 Bob Biard
Legal Examiner, Legal Division
Railroad Commission of Texas

Filed: October 7, 1988

For further information, please call (512) 463-7187

◆ ◆ ◆
State Securities Board
Correction of Error

The State Securities Board adopted an amendment which contained an error as published in the September 30, 1988, issue of the *Texas Register* (13 TexReg 4851).

The effective date for §109.13 should read: "Effective date: October 31, 1988"

◆ ◆ ◆
Texas Water Commission
Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the Brazos River Authority, Permit 11318-01 on October 6, 1988, imposing

stipulated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Debra C. Eccles, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on October 6, 1988.

TRD-8810423 Gloria A. Vasquez
 Notices Coordinator
 Texas Water Commission

Filed: October 7, 1988

For further information, please call (512) 463-8069.

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the Town and Country Mobile Home Park, Permit 11641-01 on October 5, 1988, imposing stipulated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Debra C. Eccles, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on October 6, 1988.

TRD-8810424 Gloria A. Vasquez
 Notices Coordinator
 Texas Water Commission

Filed: October 7, 1988

For further information, please call (512) 463-8069.



Public Hearing Notice

The Texas Water Commission will conduct a public hearing beginning at 10 a.m., November 30, 1988, Room 1149B, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, in order to receive testimony concerning the waste load evaluation for Nolan River in the Brazos River Basin (Segment 1227). The public hearing shall be

conducted in accordance with the Texas Water Code, §26.011 and §26.037.

The primary purpose of a waste load evaluation is to define treatment levels for wastewater dischargers to a segment and to specify other program actions that need to be taken in order to attain and maintain the water quality standards, describe nonpoint source pollution from areas tributary to a segment, and identify treatment level alternatives using receiving stream water quality simulations. A section containing recommended treatment levels and other proposed recommended actions is also included.

The public is encouraged to attend the hearing and to present relevant evidence or opinions concerning the waste load evaluation. Written testimony which is submitted prior to or during the public hearing will be included in the record. The commission would appreciate receiving a copy of all written testimony at least five days before the hearing. Copies of written testimony and questions concerning the public hearing should be addressed to Daniel E. Beckett, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, or call (512) 463-8452.

A limited number of copies of the draft waste load evaluation are available for review in the Texas Water Commission Library, Room 511 of the Stephen F. Austin Building, 1700 North Congress Avenue in Austin; or may be obtained by writing to Dale White, P.O. Box 13087, Austin, Texas 78711-3087, or call (512) 463-8452. There are no charges for the pre-hearing draft copies of the waste load evaluation; however, a fee will be charged for the finalized post-hearing copies.

The date selected for this hearing is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 45 calendar days prior to the hearing date is due to the necessity of scheduling the hearing on the date selected.

Issued in Austin, Texas on October 7, 1988.

TRD-8810430 James F. Haley
 Director, Legal Division
 Texas Water Commission

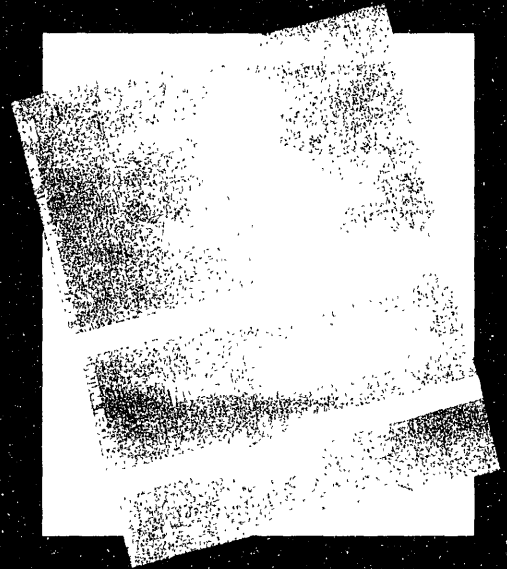
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