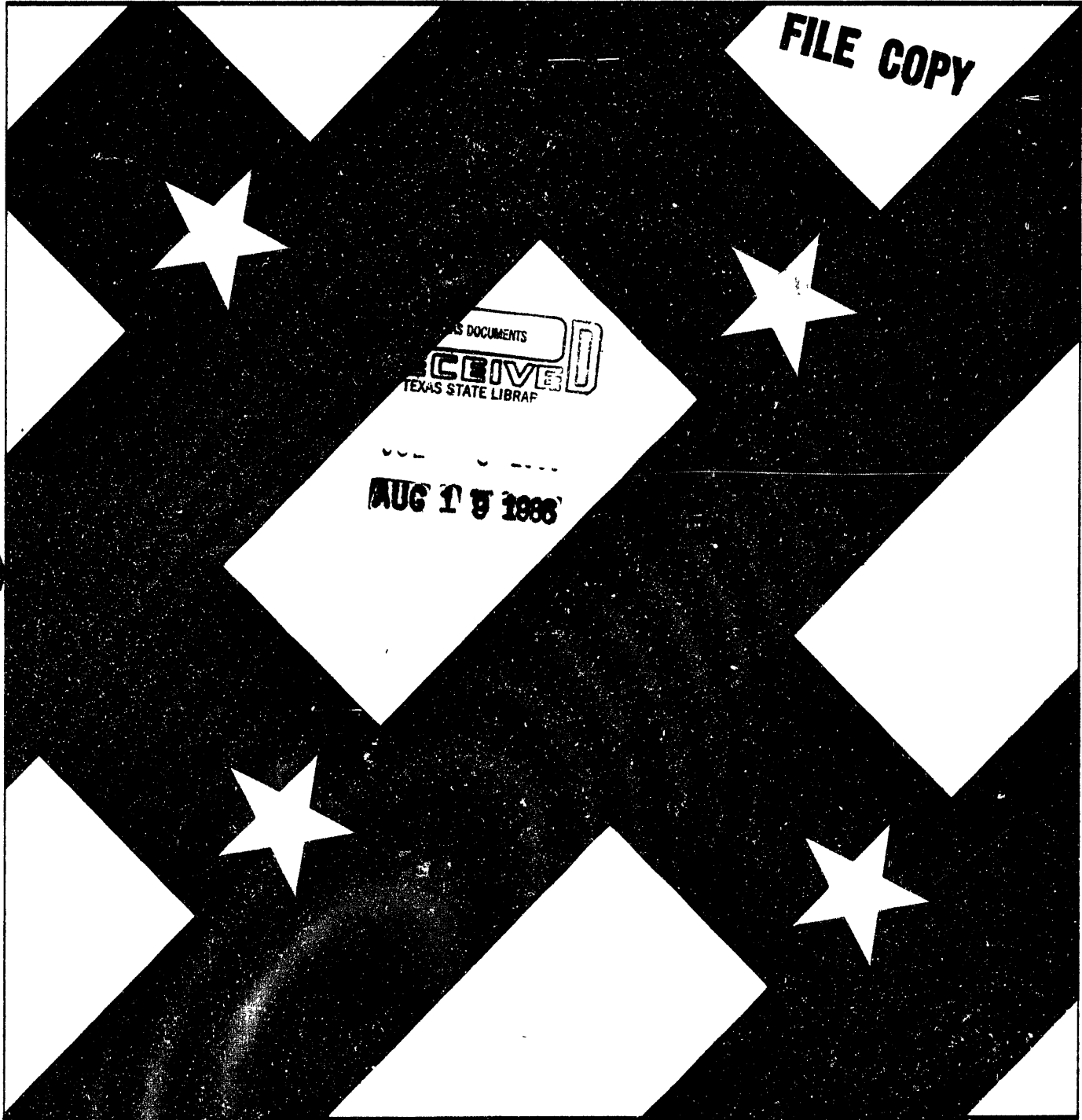


500.6
263
1:62

Texas Register

Volume 11, Number 62, August 19, 1986

Pages 3664-3707



Highlights

The Office of the Attorney General proposes a new section concerning contesting the reporting of past-due child support to consumer reporting agencies. Earliest possible date of adoption - September 19..... **page 3674**

The Texas Historical Commission proposes an amendment concerning administration of

federal programs, including the implementation of the certified local government process. Earliest possible date of adoption - September 19..... **page 3676**

The Railroad Commission of Texas adopts sections concerning conservation rules and regulations. Earliest possible date of adoption - September 1..... **page 3680**

**Office of
the Secretary
of State**

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1986 with the exception of June 24, September 2, December 2, and December 30 by the Office of the Secretary of State.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person for any purpose whatsoever without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director. The *Register* is published under Texas Civil Statutes, Article 6252-13a. Second class postage is paid at Austin, Texas, and additional entry offices.

POSTMASTER. Please send Form 3579 changes to the *Texas Register*, P.O. Box 13824, Austin, Texas 78711-3824.

Information Available: The 11 sections of the *Register* represent various facets of state government. Documents contained within them include:

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- The Legislature—bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
- In Addition—miscellaneous information required to be published by statute or provided as a public service

Specific explanations on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative quarterly and annual indexes to aid in researching material published.

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

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "11 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 11 TexReg 3."

How To Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code*, rule number, or TRD number.

Texas Administrative Code

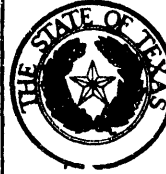
The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

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

1 indicates the title under which the agency appears in the *Texas Administrative Code*;

TAC stands for the *Texas Administrative Code*;

27.15 is the section number of the rule (27 indicates that the rule is under Chapter 27 of Title 1; 15 represents the individual rule within the chapter).



Texas Register Publications

a division of the
Office of the Secretary of State
P.O. Box 13824
Austin, Texas 78711-3824
512-463-5561

Myra A. McDaniel Secretary of State

Director
Dan Procter

Documents Section Coordinator
Cynthia Cooke

Document Editors
Lainie Crease
Molly Gardner
Jane Orcutt

Document Filing
Roberta Knight

Production Editors
Jody Allen
Lisa Bauer

Typographer
Dawn VanCleave

Circulation Section Coordinator
Dee Wright

Circulation Assistant
Kristine Hopkins Mohajer

TAC Editors
W. Craig Howell
Beth Glasnapp

Subscriptions—one year (96 regular issues and four index issues), \$80; six months (48 regular issues and two index issues), \$60. Single copies of most issues of the *Texas Register* are available at \$3.00 per copy.

Illustrations courtesy of Texas Parks and Wildlife Department.

Table of Contents

Attorney General

Requests for Opinions
3672— RQ-858—RQ-870

Emergency Rules

Texas Animal Health Commission
3673— Brucellosis

Proposed Rules

Office of the Attorney General
3674— Child Support
Texas Historical Commission
3676— Administration of Federal Programs
Texas Optometry Board
3676— Examinations
Comptroller of Public Accounts
3677— Tax Administration
Texas Commission on Jail Standards
3678— Definitions
3678— Life Safety Rules
3679— Supervision of Inmates

Adopted Rules

Chief Apiary Inspector
3680— Bees
Railroad Commission of Texas
3680— Oil and Gas Division
Texas Water Commission
3692— Industrial Solid Waste and Municipal
Hazardous Waste
Texas Department of Public Safety
3698— Organization and Administration
3698— Equipment and Vehicle Standards
Texas Commission for the Deaf
3699— General Rules of Practice and Procedure

Open Meetings

3700— Texas Aeronautics Commission
3700— Texas Department of Agriculture
3700— Texas Alcoholic Beverage Commission
3700— Texas Corn Producers Board
3700— Texas School for the Deaf
3701— Texas State Board of Dental Examiners
3701— Governor's Commission on Physical
Fitness
3701— Texas Department of Human Services
3701— Texas Industrial Accident Board
3701— Texas Department of Labor and
Standards
3701— Texas State Board of Medical Examiners
3701— Public Utility Commission of Texas
3702— Office of the Secretary of State
3702— Texas Surplus Property Agency
3702— Teacher Retirement System of Texas
3702— University of Texas System
3702— Texas Water Commission
3703— Texas Water Development Board
3703— Regional Agencies

In Addition

State Banking Board
3705— Notice of Hearing
Texas Department of Community Affairs
3705— Announcement of Contract Awards
Texas Department of Corrections
3705— Request for Proposal
Texas Department of Human Services
3706— Amended Contract Award
3706— Request for Proposal
Board of Nurse Examiners
3706— Correction of Error
Texas State Board of Registration for
Professional Engineers
3707— Board Approved Engineering Degrees
Rescinded

TAC Titles Affected

TAC Titles Affected—August

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

TITLE 1 ADMINISTRATION

Part I. Office of the Governor	
1 TAC §3 503, §3 506	3587
Part III. Office of the Attorney General	
1 TAC §55 102	3674
Part IV. Office of the Secretary of State	
1 TAC §81 16	3579
1 TAC §81 17	3579
1 TAC §81 18	3579
1 TAC §§87 44-87.46	3522, 3527
Part V. State Purchasing and General Services Commission	
1 TAC §§111.41-111 43	3475

TITLE 4 AGRICULTURE

Part I. Texas Department of Agriculture	
4 TAC §§216. 21.9, 21.11, 21.13	3456
4 TAC §21 51	3457
4 TAC §21.63, §21.66	3457
4 TAC §§21.82, 21.85-21.87	3457
4 TAC §21 105, §21.106	3459
4 TAC §21 122, §21.123	3459
Part II. Texas Animal Health Commission	
4 TAC §35.5	3673
Part IV. Chief Apiary Inspector	
4 TAC §71.31	3680

TITLE 7 BANKING AND SECURITIES

Part II. Banking Department of Texas	
7 TAC §10.2-10.6	3460
Part VII. State Securities Board	
7 TAC §111.4	3619
7 TAC §115.2	3641
7 TAC §117 1-117.9	3641
7 TAC §133.31	3645
7 TAC §§143.1-243.21	3645

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Community Affairs	
10 TAC §9.3	3574

TITLE 13 CULTURAL RESOURCES

Part II. Texas Historical Commission	
13 TAC §15.6	3676

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas	
16 TAC §§3.28-3.31	3680
16 TAC §§3.28, 3.30, 3.31	3680
16 TAC §3 34	3688
16 TAC §3.91	3691
16 TAC §5.28	3619
Part II. Public Utility Commission of Texas	
16 TAC §23.11	3579
16 TAC §23.21	3522, 3587
16 TAC §23.23	3544
16 TAC §23.24	3547
16 TAC §23.50	3547
16 TAC §23.51	3588
16 TAC §23.63	3591
16 TAC §23.84	3591

16 TAC §23.66	3579
16 TAC §23.68	3549

Part IV. Texas Department of Labor and Standards	
16 TAC §65.20	3527

TITLE 19. EDUCATION

Part I. Coordinating Board, Texas College and University System	
19 TAC §5.171, §5 172	3620
19 TAC §5 174	3621
19 TAC §5 285	3646
19 TAC §9 24	3646
19 TAC §§9.104-9 111	3622
19 TAC §§9 104-9.112	3621
19 TAC §§9.171-9 175	3623
19 TAC §§9 191-9.193	3616, 3624
19 TAC §§9.211-9 216	3624
19 TAC §§21.53, 21 55-21.66	3626
19 TAC §21 262	3629
Part II. Texas Education Agency	
19 TAC §§77 471-77.477, 77.479, 77.480	3475
19 TAC §81 62, §81 63	3477
19 TAC §§81.71-81 74	3478
19 TAC §§81 102, 81 104-81.106, 81.107, 81.110, 81.114-81 116, 81.119, 81.120, 81.122, 81.126, 81.127, 81.129, 81.136	3478
19 TAC §81.152	3479
19 TAC §81.153, §81 154	3480
19 TAC §81 164	3481
19 TAC §81.173	3481
19 TAC §121.1	3461
19 TAC §121 31, §121.34	3461

TITLE 22. EXAMINING BOARDS

Part II. State Board of Barber Examiners	
22 TAC §51.1	3455, 3461
22 TAC §89.21	3455
Part IV. Texas Cosmetology Commission	
22 TAC §83.1, §83.14	3481
22 TAC §83.29	3482
22 TAC §§89.1-89.4, 89.8-89.15, 89.17, 89.18, 89.22-89.26, 89.28, 89.30, 89.32, 89.34, 89.35, 89.37, 89.39-89.41, 89.46, 89.47, 89.51-89.54, 89.67, 89.70, 89.71	3482
22 TAC §§89.1-89 4, 89.6, 89 15, 89.17, 89.18, 89.22, 89 23, 89.25, 89.28, 89 30, 89.32, 89.34, 89.35, 89.39-89 41, 89.46, 89.47, 89.51-89.53, 89.67, 89.70, 89.71	3482
22 TAC §89.21	3462, 3483
22 TAC §89.72, §89.75	3484
Part XI. Board of Nurse Examiners	
22 TAC §217.1	3484
22 TAC §217.16	3484
22 TAC §§218.1-218.10	3549
Part XIV. Texas Optometry Board	
22 TAC §271.3	3676
22 TAC §271.5	3677
22 TAC §271.6	3677
Part XV. Texas State Board of Pharmacy	
22 TAC §281 24	3485
Part XXI. Texas State Board of Examiners of Psychologists	
22 TAC §461.15	3462
22 TAC §473.2	3629

Part XXII. Texas Real Estate Commission	37 TAC §21.6	3698
22 TAC §535.64	37 TAC §29.49	3466
22 TAC §543.4	3462	
22 TAC §535.92	3463	
3464		
Part XXIV. State Board of Veterinary Medical Examiners	Part IX. Texas Commission on Jail Standards	
22 TAC §579.1	37 TAC §253.1	3678
3630	37 TAC §263.53	3678
	37 TAC §275.1	3679
Part XXIX. Texas Board of Land Surveying	Part VII. Texas Commission on Law Enforcement Officer Standards and Education	
22 TAC §661.120	37 TAC §§211.85, 211.96, 211.98	3577
3485		
TITLE 28. INSURANCE	Part X. Texas Adult Probation Commission	
Part I. State Board of Insurance	37 TAC §321.3	3636
28 TAC §§5.7001, 5.7010, 5.7013, 5.7014		
3464, 3617		
28 TAC §§5.7001, 5.7013-5.7015		3474, 3640
TITLE 31. NATURAL RESOURCES AND CONSERVATION	TITLE 40. SOCIAL SERVICES AND ASSISTANCE	
Part I. General Land Office	Part I. Texas Department of Human Services	
31 TAC §3.10	40 TAC §2.1004, §2.1006	3529
3618	40 TAC §§4.1006, 4.1008, 4.1010, 4.1012	3530
Part II. Texas Parks and Wildlife Department	40 TAC §§4.1006, 4.1008, 4.1010, 4.1012, 4.1016	3530
31 TAC §59.105, §59.106	40 TAC §4.2002	3530
3552	40 TAC §10.4312	3646
31 TAC §§65.15, 65.17, 65.33, 65.46, 65.61-65.63	40 TAC §15.5802	3531
3591	40 TAC §§27.102, 27.103, 27.103, 27.105, 27.106	3647
31 TAC §65.61	40 TAC §27.1206	3637
3455	40 TAC §27.2701	3647
31 TAC §§65.190-65.203, 65.208-65.212, 65.215, 65.216, 65.218-65.220, 65.222-65.227, 65.229, 65.230	40 TAC §27.3007	3638
3552	40 TAC §27.3008	3639
31 TAC §§65.190-65.204, 65.208-65.212, 65.215, 65.216, 65.218-65.220, 65.222-65.226, 65.229, 65.230	40 TAC §27.4803	3648
3553	40 TAC §27.9801	3485
31 TAC §65.312, §65.313	40 TAC §29.403	3648
3553	40 TAC §§29.1501, 29.1502, 29.1504	3648
31 TAC §69.23-69.27	40 TAC §45.504	3486
3618	40 TAC §46.7001	3467
Part IV. School Land Board	40 TAC §47.902	3468
31 TAC §155.10	40 TAC §49.201-49.209	3648
3522	40 TAC §§69.1-69.3	3532
Part IX. Texas Water Commission	40 TAC §§69.21-69.26	3532
31 TAC §§335.1, 335.4, 335.6, 335.8, 335.9, 335.17, 335.22, 335.23	40 TAC §69.41	3532
3692	40 TAC §§69.51-69.55	3532
31 TAC §335.2, §335.24	40 TAC §§69.71-69.80	3532
3693	40 TAC §§69.91-69.94	3533
31 TAC §335.41, §335.44	40 TAC §69.114	3533
3695	40 TAC §§69.161-69.178	3533
31 TAC §335.43, §335.45	40 TAC §§69.201-69.262, 69.265-69.277	3533
3695	40 TAC §69.221	3533
31 TAC §335.61	40 TAC §§79.401-79.406	3543
3695	40 TAC §§79.501-79.505	3543
31 TAC §335.112	40 TAC §85.1406	3469
3696	40 TAC §§85.2001-85.2003, 85.2005, 85.2007, 85.2011-85.2013, 85.2017-85.2024, 85.2026-85.2028, 85.2030, 85.2033, 85.2035, 85.2040, 85.2041	3469
31 TAC §335.152	40 TAC §85.2036, §85.2037	3471
3696	40 TAC §85.2045	3472
31 TAC §335.201, §335.202	40 TAC §§85.4001, 85.4003, 85.4006, 85.4010, 85.4011, 85.4013-85.4015, 85.4017	3472
3696	40 TAC §85.4016	3473
31 TAC §§335.221-335.226	40 TAC §85.4021	3473
3696		
31 TAC §335.222	Part III. Texas Commission on Alcohol and Drug Abuse	
3697	40 TAC §§151.601-151.606	3486
31 TAC §§335.391-335.393	40 TAC §155.31-155.34	3486
3595		
TITLE 34. PUBLIC FINANCE	Part VI. Texas Commission for the Deaf	
Part I. Comptroller of Public Accounts	40 TAC §181.21	3699
34 TAC §3.163	Part IX. Texas Department of Agriculture	
3677	40 TAC §§267.1-267.14	3578
34 TAC §3.196	Part XII. Texas Advisory Board of Occupational Therapy	
3630	40 TAC §361.2	3487
34 TAC §5.111	40 TAC §383.1	3487
3631		
34 TAC §§5.112-5.114		
3631		
34 TAC §5.112		
3632		
34 TAC §5.113		
3632		
34 TAC §5.114		
3635		
Part III. Teacher Retirement System of Texas		
34 TAC §25.81		
3575		
34 TAC §25.172		
3575		
34 TAC §25.11		
3576		
Part IV. Employees Retirement System of Texas		
34 TAC §81.1		
3523, 3528		
34 TAC §81.3		
3523, 3528		
34 TAC §81.5		
3523, 3528		
34 TAC §81.7		
3524, 3528		
TITLE 37. PUBLIC SAFETY AND CORRECTIONS		
Part I. Texas Department of Public Safety		
37 TAC §1.32		3698
37 TAC §3.53		3486

TITLE 43. TRANSPORTATION

**Part 1. State Department of Highways and Public
Transportation**

43 TAC §21.152.....	3649
43 TAC §25.77	3649

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 may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Register*.

Requests for Opinions

RQ-858. Request from Erwin W. Barton, chairman, Human Services Committee, Texas House of Representatives, Austin, concerning whether the county auditor or the county treasurer is the county payroll disbursing officer for purposes of Texas Civil Statutes, Article 6228, §4(f).

TRD-8607872

★ ★ ★

RQ-859. Request from James B. Adams, director, Texas Department of Public Safety, Austin, concerning personnel information about an employee of the Texas Department of Public Safety under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

TRD-8607873

★ ★ ★

RQ-860. Request from Carl M. Anderson, Nolan County attorney, Sweetwater, concerning whether the City of Sweetwater is required to fund ½ the indigent health care costs of Rolling Plains Memorial Hospital.

TRD-8607874

★ ★ ★

RQ-861. Request from Robb Southerland, chairman, Texas Commission on Alcohol and Drug Abuse, Austin, concerning whether a proposed rule of the Texas Commission on Alcohol and Drug Abuse regarding certification of DWI education program contravenes state or federal anti-trust laws, and related questions.

TRD-8607875

★ ★ ★

RQ-862. Request from Robert C. Lanier, chairman, State Department of Highways

and Public Transportation, Austin, concerning whether a sales tax on motor fuels must be used exclusively for public roads by virtue of the Texas Constitution, Article VIII, §7(a).

TRD-8607876

★ ★ ★

RQ-863. Request from Ron Jackson, executive director, Texas Youth Commission, Austin, concerning the applicability of the 1985 federal fair labor standards amendments to child-care workers employed by the Texas Youth Commission.

TRD-8607877

★ ★ ★

RQ-864. Request from Richard G. Morales, Sr., Webb County attorney, Laredo, concerning the retirement status of a justice of the peace.

TRD-8607878

★ ★ ★

RQ-865. Request from Bob Bullock, Comptroller of Public Accounts, Austin, concerning whether hunting and fishing charges are subject to the sales tax.

TRD-8607879

★ ★ ★

RQ-866. Request from Lee F. Jackson, chairman, Business and Commerce Committee, Texas House of Representatives, Austin, concerning whether shares in an optional retirement account may be liquidated for the purpose of paying third-party management or timing fees under Title 110B, §36.105.

TRD-8607880

★ ★ ★

RQ-867. Request from Gary Thompson, chairman, County Affairs Committee, Texas House of Representatives, Austin; and Terrel R. Smith, chairman, Criminal Jurisprudence Committee, Texas House of Representatives, Austin, concerning whether a rural fire prevention district must continue to provide services to and assess taxes against residents of an area recently annexed by a municipality.

TRD-8607881

★ ★ ★

RQ-868. Request from F. E. Williams, Chambers County auditor, Anahuac, concerning calculation of maximum tax attributable to the road and bridge fund.

TRD-8607882

★ ★ ★

RQ-869. Request from Barry L. Macha, criminal district attorney, Wichita Falls, concerning whether the board of managers of an emergency communication district created under Texas Civil Statutes, Article 1432e, may be granted advance funds by the county for the purpose of educating the public about the district prior to the holding of a confirmation election.

TRD-8607883

★ ★ ★

RQ-870. Request from Lloyd Criss, chairman, Committee on Labor and Employment Relations, Texas House of Representatives, Austin, concerning the bargaining status of fire fighters and police officers who are not members of a fire or police department.

TRD-8607884

★ ★ ★

Emergency

Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state.

The rule 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 rules. New language added to an existing rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

TITLE 4. AGRICULTURE Part II. Texas Animal Health Commission

Chapter 35. Brucellosis Subchapter A. Eradication of Brucellosis

★4 TAC §35.5

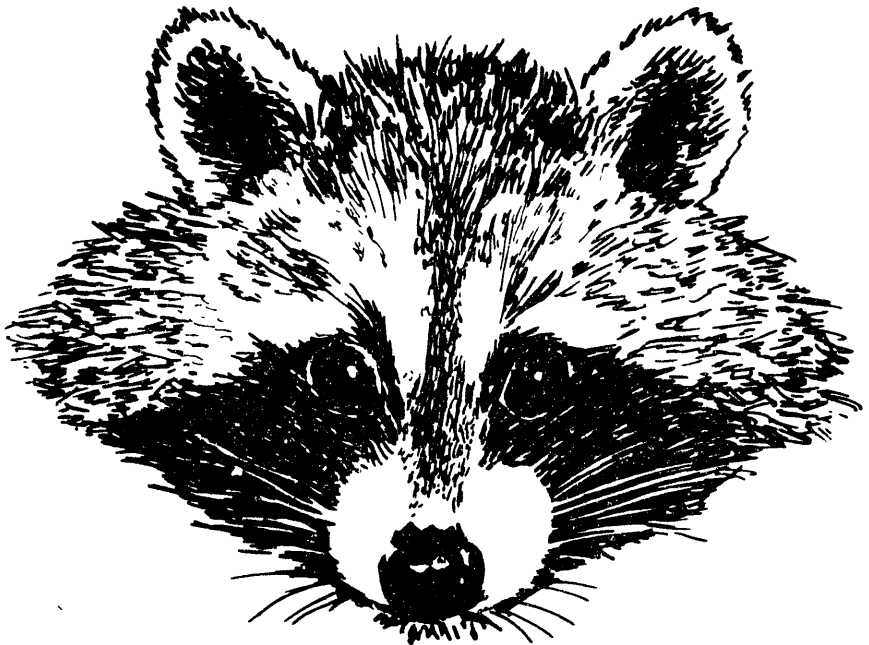
The Texas Animal Health Commission is renewing the effectiveness of the emergency adoption of the amendment to §35.5 for a 60-day period effective August 30, 1986. The text of the amended §35.5 was originally published in the May 9, 1986, issue of the *Texas Register* (11 TexReg 2136).

Issued in Austin, Texas, on August 12, 1986.

TRD-8607871

Jo Anne Conner
Executive Secretary
Texas Animal Health
Commission

Effective date: August 30, 1986
Expiration date: October 29, 1986
For further information, please call
(512) 479-6907.



★ ★ ★

Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *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 rule. Also, in the case of substantive rules, 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 rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

**TITLE 1.
ADMINISTRATION
Part III. Office of the
Attorney General
Chapter 55. Child Support
Subchapter C. Enforcement
★1 TAC §55.102**

The Office of the Attorney General proposes new §55.102, concerning contesting the reporting of past-due child support to consumer reporting agencies. This section establishes appeal procedures for the noncustodial parent whose past-due child support is to be reported to consumer reporting agencies by the Child Support Enforcement Division.

Title IV-D of the Social Security Act requires states to establish procedures to make information available to consumer reporting agencies upon their request regarding past-due support owed by non-custodial parents.

Neill Coble, budget analyst, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications on state government as a result of enforcing or administering the section. The effect on state government will be an estimated additional cost of \$2,449 in 1987 and \$7,349 in the years of 1988-1991. There will be no effect on local government or small businesses.

Mr. Coble also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increase in the number of non-custodial parents paying obligated child support, thus reducing required state-federal assistance. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Tom Laramey, General Counsel, Child Support Enforcement, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711.

The new section is proposed under the Texas Human Resources Code, Chapter 76, which provides the Office of the Attorney General with the authority to administer the program.

§55.102. Contesting Reporting to Credit Reporting Agencies.

(a) A noncustodial parent, who the attorney general's office has determined owes past-due child support and is therefore subject to being reported to consumer reporting agencies, may contest the accuracy of the past-due amount by contacting the attorney general's office and:

(1) seeking to informally resolve any dispute; or

(2) requesting a formal administrative review hearing. Seeking to informally resolve any dispute shall not preclude the noncustodial parent from subsequently requesting a formal hearing.

(b) A hearing shall be granted by the attorney general's office upon the noncustodial parent's submission of a completed request for administrative review form to be obtained from the attorney general's office.

(1) A copy of the request for administrative review form follows.



REQUEST FOR ADMINISTRATIVE REVIEW

TYPE OR PRINT CLEARLY:

I. NAME: _____ SOCIAL SECURITY NO. _____
ADDRESS: _____
TELEPHONE NO.: (____) _____

II. State your grounds for contesting the claimed amount of past-due child support (attach additional sheet if necessary):

III. List the witnesses you intend to call in support of your contentions and the nature of their testimony (attach additional sheet if necessary):

1. _____

2. _____

IV. Describe the evidence you intend to introduce (court orders, payment records, cancelled checks, etc.). Please attach copies.

V. Attach a copy of the notice you received from the Office of Child Support Enforcement.

Please note that only the evidence, testimony, witnesses and matters disclosed above may be considered at the hearing.

(Complete the following before a notary public only if you do not wish to personally appear at the hearing).

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____ who being by me duly sworn upon oath deposed and stated that the statements and allegations he/she has made in the above and foregoing Request for Administrative Review are true and correct to the best of his/her knowledge and that any and all attachments thereto are original copies or true and accurate reproductions of the original copies.

SUBSCRIBED AND SWORN TO BEFORE ME by _____ on this _____ day of _____, 19____, to certify which witness my hand and official seal.

Notary Public in and for
the State of Texas

My commission expires: _____

Form 1728
February 1986

(2) The request for administrative review must be submitted no later than 30 days from the date the noncustodial parent received notice of the proposed report of past-due amounts to a consumer reporting agency.

(c) The reporting of past-due child support information by the attorney general's office to consumer reporting agencies applies only to noncustodial parents residing in the state.

(d) The parties may appear in person, with or without a representative; however:

(1) if the noncustodial parent so desires, he or she may submit any contentions and evidence in the form of an affidavit properly acknowledged, thereby making his/her presence unnecessary; and

(2) in non-AFDC cases, should the custodial parent choose not to appear, the information and affidavit provided at the time of application shall be considered.

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

Issued in Austin, Texas, on July 29, 1986.

TRD-8607865

Lou McCreary
Special Assistant
Office of the Attorney
General

Earliest possible date of adoption:

September 19, 1986

For further information, please call
(512) 463-2087.

★ ★ ★

TITLE 13. CULTURAL RESOURCES

Part II. Texas Historical Commission

Chapter 15. Administration of Federal Programs

★13 TAC §15.6

The Texas Historical Commission (THC) proposes an amendment to §15.6, concerning administration of federal programs, including the implementation of the certified local government process. The amendment defines the partnership between local historic preservation programs and those of the THC. Rules will be printed in pamphlet form to make them readily available to the general public.

George Ramirez, fiscal officer, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Curtis Tunnell, executive director, has determined that for each year of the first five years the section is in effect the pub-

lic benefit anticipated as a result of enforcing the section will be increased contact and communications between local and state historic preservation officials, and an increased opportunity for public input into local and state historic preservation programs. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cindy Laguna Dally, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 6145, §§1.3(c), and 9(a), which provide the Texas Historical Commission with the authority to provide leadership and coordinate services in the field of historical preservation, to promulgate rules and regulations, and to administer the National Historic Preservation Act of 1966.

§15.6. Rules and Procedures for Certified Local Governments.

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

(e) **County participation.** Counties shall participate in the certified local government process through compliance with Texas Civil Statutes, Article 6145.1, as amended, which empowers the commissioners court of each county to appoint a county historical commission, and specifies the duties of such a commission.

(f)(e) Minimum requirements for certification of local governments.

(1) Cities and towns shall enforce appropriate state and local legislation for the designation and protection of historic properties. Ordinances of these municipal governments shall provide for the following:

(1) The local government shall enforce appropriate state and local legislation for the designation and protection of historic properties. Ordinances of this local government shall provide for the following:]

(A)-(H) (No change.)

(2)-(7) (No change.)

(g)(f) Participation by certified local governments in the process of nominating properties to the National Register.

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

(h)(g) Process for certification of local governments.

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

(4) Upon approval of a request for certification, according to the approved certification process, the state historic preservation officer shall prepare a written certification agreement that lists the specific responsibilities of the local governments when certified. The following shall be contained within the written certification agreement:

(A) the four minimum responsibilities required of all certified local governments as outlined in subsection (f)(e)(1)-(4) of this section.

(B)-(C) (No change.)

(5) (No change.)

(i)(h) Process for monitoring certified local governments.

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

(j)(i) Process for revoking certification.

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

(k)(j) Eligibility for receipt of historic preservation funds.

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

(l)(k) Federal requirements for state and local financial responsibility.

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

(m)(l) Application procedures for grants.

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

(4) The project contract. A contractual agreement, approved by the Office of the Texas Attorney General, specifying the approximate scope of work, a timetable for completion, and a list of budgetary concerns will be prepared by the Texas Historical Commission on the basis of the project proposal and consultations with the grant recipient. This contract shall also contain the minimum requirements for certified local governments as outlined in subsection (f)(e)(1)-(4) of this section. The agreement shall be signed jointly by the state historic preservation officer and the appropriate legal representative of the concerned local government prior to commencement of project work.

(5)-(8) (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 August 12, 1986.

TRD-8607903

Curtis Tunnell
Executive Director
Texas Historical
Commission

Earliest possible date of adoption:

September 19, 1986

For further information, please call
(512) 463-6100.

★ ★ ★

TITLE 22. EXAMINING BOARDS

Part XIV. Texas Optometry Board

Chapter 271. Examinations

★22 TAC §271.3

The Texas Optometry Board proposes an amendment to §271.3, concerning Examination Administration. This section clarifies language currently used in §271.3(c), referring to an overall average of 75 on all written tests. The section currently states an applicant must have an overall average of 75 on all written tests which were failed; failed tests are only a part of the written tests, and the intent of the section is for an applicant to obtain 75 on all written tests to pass.

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

Ms. Ewald also has determined that for each year of the first five years the section is in effect there will be no public benefits anticipated as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 1300 East Anderson Lane, Suite C-240, Austin, Texas 78752.

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

§271.3. Examination Administration.

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

(c) The examination shall be divided into two sections, one of which shall be practical and one of which shall be written. The passing grade for the practical shall be 70. The passing grade on each written test shall be 70. If an individual has failed to pass any single written test, then such applicant must have an overall average of 75 on all written tests to pass [which were failed.] Those applicants failing only the practical examination will be required to retake only the practical examination. Those applicants failing the practical and not having an overall average of 75 on the written tests must retake the practical examination and all written tests they failed.

(d)-(g) (No change.)

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

Issued in Austin, Texas, on August 8, 1986.

TRD-8607890 Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption:
September 19, 1986
For further information, please call
(512) 835-1938.

★ ★ ★

★22 TAC §271.5

The Texas Optometry Board proposes an amendment to §271.5, concerning Endorsement. This section informs the applicant in regard to those tests required to be retaken when failing grades are made by an endorsement applicant on the Texas Optometry Board clinical examination and written jurisprudence examination.

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

Ms. Ewald also has determined that for each year of the first five years the section is in effect there will be no public benefits anticipated as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 1300 East Anderson Lane, Suite C-240, Austin, Texas 78752.

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

§271.5. Endorsement.

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

(i) An endorsement applicant failing either the clinical examination or the examination in jurisprudence will be required to retake the failed examination. An endorsement applicant taking the examination for a third or subsequent time will be required to retake the failed examination, but must retake the clinical examination even if passed previously.

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 August 8, 1986.

TRD-8607890 Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption:
September 19, 1986
For further information, please call
(512) 835-1938.

★ ★ ★

★22 TAC §271.6

The Texas Optometry Board proposes an amendment to §271.6, concerning National Board Examination. This section informs the applicant in regard to those tests required to be retaken when failing grades are made by a national board examination (NBE) applicant on the Texas Optometry Board clinical examination and written jurisprudence examination.

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

Ms. Ewald also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 1300 East Anderson Lane, Suite C-240, Austin, Texas 78752.

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

§271.6. National Board Examination.

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

(g) An NBEO applicant failing either the clinical examination or the examination in jurisprudence will be required to retake the failed examination. An NBEO applicant taking the examination for a third or subsequent time will be required to retake the failed examination, but must retake the clinical examination even if passed previously.

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 August 8, 1986.

TRD-8607891 Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption:
September 19, 1986
For further information, please call
(512) 835-1938.

★ ★ ★

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

**Chapter 3. Tax Administration
Subchapter K. Hotel Occupancy Tax**

★34 TAC §3.163

The Comptroller of Public Accounts proposes an amendment to §3.163, concerning exemptions. The amendment expands the exemption to include employees representing religious, charitable, and educational organizations and governmental entities traveling on official business. The amendment simplifies collection of the hotel occupancy tax.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be a loss to general revenue as a result of enforcing or administering the section.

The loss to general revenue will be from hotel tax exemption changes of \$1.85 million in 1987, \$1.96 million in 1988, \$2.07 million in 1989, \$2.18 million in 1990, and \$2.31 million in 1991. The amendment will simplify procedures for small businesses and make it easier for them to enforce the exemption.

Mr. Moore also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an easier way for employees to pay their bills and be reimbursed by their organizations. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Burrell Lankford, Tax Administration, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the hotel occupancy tax.

§3.163. Exemptions.

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

(c) **Hotel occupancy derived from payments made by employees on official business representing religious, charitable, and educational organizations, and government entities are exempt from the hotel occupancy tax.**

(c) Municipal and county governments are required to pay hotel occupancy tax.

(d) The State of Texas and its agencies will not be subject to hotel occupancy tax when accommodations are contracted for in the name of the state and paid for by the state. A person traveling on official business for the State of Texas shall be required to pay the hotel occupancy tax if traveling on a per diem basis or by reimbursement of actual expenses incurred.

(e) The United States government, when it contracts and pays for room accommodations, will not be subject to the hotel occupancy tax.]

(d)[(f)] Any foreign government which contracts and pays for room accommodations will not be subject to the hotel occupancy tax.

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

Issued in Austin, Texas, on August 12, 1986.

TRD-8607885

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:

September 19, 1986

For further information, please call
(512) 483-4004.

★ ★ ★

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Texas Commission on Jail Standards

Chapter 253. Definitions

★37 TAC §253.1

The Texas Commission on Jail Standards proposes an amendment to §253.1, concerning definitions. The amendment provides for common language when dealing with jail matters. These changes clarify items that are used in discussion regarding construction, management, and operation of jails.

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

Mr. Viterna also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of areas for user agencies and establishment of common usage, thus precluding misunderstanding about similar functions. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Robert O. Viterna, executive director, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 5115.1, Title 18, which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

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

Control station—A secured space which maintains the safety and security of the jail through electronic equipment for surveillance, communication, fire ingress and egress to cells, dayrooms, corridors, and other space within the jail.

Corrections officer—A person who is Texas Commission on Law Enforcement Officer Standards and Education certified and who provides direct inmate supervision.

Guard station—A designated space from which a guard performs his functions. It need not be secure. It need not have extensive communications capacity. It is the space or area where one expects a guard to be found when not otherwise performing assigned duties or functions.

Supervision—This term, used in the context of supervision of prisoners, refers to

the act or process of performing watchful and responsible care over prisoners in one's charge. Supervision, which ensures the safety of prisoners and interaction with prisoner officers, requires more than mere observation or surveillance. It is an active process.

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 August 7, 1986.

TRD-8607888

Robert O. Viterna
Executive Director
Texas Commission on
Jail Standards

Earliest possible date of adoption:

September 19, 1986

For further information, please call
(512) 463-5505.

★ ★ ★

Chapter 263. Life Safety Rules

★37 TAC §263.53

The Texas Commission on Jail Standards proposes an amendment to §253.53, concerning smoke and fume removal. This requirement is applicable to all county jails. It provides for a safe environment and assists in creation of a safe and suitable jail. This standard establishes procedures that are used as jails are designed and tested.

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

Mr. Viterna also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of requirements for life safety and establishment of guidelines for architects and engineers when designing detention facilities as well as establishment of guidelines for inspection purposes. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Robert O. Viterna, executive director, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 5115.1, Title 18, which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§263.53. *Smoke and Fume Removal.* High velocity smoke and fume removal equipment (having a capacity of 15 air exchanges per hour) but always sufficient to create a

liveable environment within an acceptable period (4-6 minutes) of time as determined by commission staff shall be provided. [sufficient to accommodate the degree of hazards present considering the removal facilities available (ductwork, plenums, vents, windows, other air-handling equipment, or outside openings), shall be provided.] Use of the equipment shall be planned in such a manner that the exhausting of smoke from one area shall not pose of threat to the health or well being of persons in another area of the facility. Strategically located electrical outlets shall be provided to permit such equipment to be operated in all jail areas, and all custodial personnel shall be trained and periodic drills conducted in its use.

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

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

Issued in Austin, Texas, on August 7, 1986.

TRD-8607887

Robert O. Viterna
Executive Director
Texas Commission on
Jail Standards

Earliest possible date of adoption:

September 19, 1986

For further information, please call
(512) 463-5505.

Chapter 275. Supervision of Inmates

★ 37 TAC §275.1

The Texas Commission on Jail Standards proposes an amendment to §275.1, con-

cerning regular observation by corrections officer. This requirement outlines supervisory requirements for county jails and establishes a ratio between officer and inmates. This section clarifies the requirement for actual face to face observation of inmates for supervisory purposes.

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

Mr. Viterna 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 provision of a classification that assists detention facility operators in assessing requirements for inmate supervision. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Robert O. Viterna, Executive Director, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 5115.1, Title 18, which provide the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§275.1. Regular Observation by Corrections Officers. Every detention facility housing inmates shall have a correction officer at the facility 24 hours each day. Detention facilities shall have an established procedure for visual, **face to face**, observation of all inmates by corrections officers at least once

every hour. Observation shall be performed on a more frequent basis in high-risk areas and in areas where inmates who are known to be assaultive, potentially suicidal, mentally ill, or who have demonstrated bizarre behavior are confined. There shall be a voice communications capability between inmates and custodial personnel at all times. In counties where a corrections officer lives in the facility, mandatory hourly observations is not required at night provided that the facility shall have a continuously operating means of communication with such corrections officer (by electrical intercommunication system, buzzer, alarm, or similar device) available at all times to each inmate for the purpose of notifying such corrections officer of emergencies, illnesses, personal attack, etc., and provided further than such corrections officer must be close enough to the inmate housing area to respond immediately to such notification. Closed circuit television (CCTV) may be used, but not in lieu of the hourly personal observation.

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 August 7, 1986.

TRD-8607888

Robert O. Viterna
Executive Director
Texas Commission on
Jail Standards

Earliest possible date of adoption:

September 19, 1986

For further information, please call
(512) 463-5505.

★ ★ ★

Adopted

Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule 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 rule 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 rule with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part IV. Chief Apiary

Inspector

Chapter 71. Bees

Quarantines

★4 TAC §71.31

The Chief Apiary Inspector adopts the repeal of §71.31, without changes to the proposed text published in the June 10, 1986, issue of the *Texas Register* (11 TexReg 2629).

Since the acarine mite was first discovered in the United States in 1984, this parasite of honey bees has been found in over 20 states. The regulatory burden and added cost to beekeepers are greater than the benefits from regulation, restricted movement, and continued quarantine. The economic severity of the mite has not been shown, and there are no known control methods other than destruction of the honey bees in the apiary.

Through discontinuation of regulations concerning the acarine mite, beekeepers will simply follow previously established regulations concerning the general inspections, permits, and monitoring for diseases and pests of honey bees.

Comments about the repeal were received from beekeepers involved in local, intra- and interstate beekeeping. Several beekeepers of the Texas Beekeepers Association and regional beekeeper associations supported deregulation of acarine mite, citing the economic hardships on both individuals and the industry, without any significant benefits or expected improvement in the future.

Those making comments in favor of the repeal were: Texas Beekeepers Association, Golden Triangle Beekeepers Association, Ken Horn, Gunter Honey Bee Company, L. John Milam, East Texas Bee Company, Dale Bauer, and Howard Weaver and Sons. No comments were made against the repeal.

While all beekeepers supported discontinuation of mite regulations, one beekeeper supported a buffer zone that would maintain a four-county quarantine in the Lower Rio Grande Valley to potentially impede the invasion of future pests. The apiary inspection service will continue to search

for new pests and can establish new quarantines and procedures as needed.

The repeal is adopted under the Texas Agricultural Code, §131.023(a), which provides the chief apiary inspector with the authority to adopt rules as necessary to control, eradicate, or prevent the introduction, spread, or dissemination of contagious or infectious diseases of bees.

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 College Station, Texas, on August 1, 1986.

TRD-8607866

Neville P. Clarke
Director
Texas Agricultural
Experiment Station

Effective date: September 2, 1986
Proposal publication date: June 10, 1986
For further information, please call
(409) 845-3511.

★ ★ ★

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division Conservation Rules and Regulations

★16 TAC §§3.28-3.31

The Railroad Commission of Texas adopts the repeal of §§3.28-3.31, without changes to the proposed text published in the February 25, 1986, issue of the *Texas Register* (11 TexReg 979).

The purpose and the effect of the repeal of these sections is to accommodate the adoption of new §§3.28, 3.30, and 3.31. The merits of those new sections are discussed in the separate adoption preamble for those sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Natural Resources Code, §§86.041, 86.042, and 86.081, which provides the Railroad Commission of Texas with the authority to prorate and regulate the production of natural gas to prevent waste and adjust

the correlative rights and opportunities of owners and gas to use or sell their gas.

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 August 11, 1986.

TRD-8607860

Mack Wallace
Commissioner
Railroad Commission
of Texas

Effective date: August 22, 1986
Proposal publication date: February 25, 1986
For further information, please call
(512) 463-7149.

★ ★ ★

★16 TAC §§3.28, 3.30, 3.31

The Railroad Commission of Texas adopts new §§3.28, 3.30, and 3.31, with changes to the proposed text published in the February 25, 1986, issue of the *Texas Register* (11 TexReg 979).

The new sections provide increased understanding of the sections; more fair and accurate gas proration through more accurate and reliable potential and deliverability tests and more fair and accurate nominations; and better understanding of assignment and adjustment of allowables.

Public comments were received regarding new §3.28. Those comments are summarized in the following discussion.

Comments were received both for and against the change to a one-point from a four-point potential test in the section. Comments were also received that proposed to completely eliminate the test and reduce the minimum time required for the test. Another suggestion was received regarding the time period for submitting the test. A commenter asked for a commission-approved alternative to the potential test procedure, and the section was therefore changed.

Comments were received regarding the initial deliverability test and semiannual deliverability tests. Comments were received regarding the record-keeping requirements for deliverability tests. The section was changed based on these comments. Some commenters wanted clarification regarding the custodian of records and regarding parties to which the records would be

available. Some commenters did not want to maintain records for two years.

Some commenters favor the purchaser signing the deliverability or G-10 test. Comment was received regarding the time period the purchaser has to object to the validity of the deliverability test. Comments were received requesting that purchasers be notified regarding testing and retesting and receive the results of such tests. Some comments were received about retesting after remedial work on a well. Comments were received regarding commission personnel witnessing tests. The section was changed based on these comments. A comment was received regarding limiting a retest request to the first purchaser as opposed to any purchaser. The section was changed based on this comment. A comment was received suggesting annual testing of nonprorated associated gas wells. The section was changed based on this comment. Comments were submitted which suggested that deliverability after the initial deliverability test should be based on past production. New §3.31 provides for use of both deliverability tests and past production in setting allowables.

Comments were received about the actual procedure for conducting a deliverability test. Comments were received both for and against a 72-hour test. Objections were raised regarding the requirement that a 24-hour shut-in wellhead pressure determination be made. Comment was made requesting that all wells producing less than 200 Mcf a day be exempted from testing. The section was changed to exempt wells making 100 Mcf or less a day based on this comment. Comments were received requesting that deliverability tests be scheduled with concurrence of the pipeline and that the deliverability test form be sent to purchasers.

Comments were received regarding the representative deliverability when conditions exist that do not allow a test to be run.

Comments were received seeking clarification of which parties can request a reduction in deliverability. The section was changed based on these comments.

Comments were received for and against coordinating testing with downstream purchasers.

Comments were received seeking that the district office be notified by the operator prior to tests.

The commission disagrees with the comments filed against the optional one-point test used to obtain absolute open flow (AOF). A properly stabilized one-point test will yield an acceptable AOF as comparable to a properly run four-point test. The one-point test is also less expensive and can be quicker, thus providing a cost savings to the operator. The commission also disagrees with comments filed to eliminate the AOF testing entirely. Many com-

panies use AOF data in exploration and development work. The commission disagrees with comments filed to reduce the test length of a one-point test from the proposed 72 hours. Many wells will not flow at a stable rate until 72 hours have passed. A stable flow rate is mandatory to calculate an accurate AOF. The commission disagrees with comments to extend the time period to file the test. An objective of this section is to promote more timely filing of data. Further, the time periods for filling data are specifically set out in §3.31. Extension of the time period would conflict with time periods set out in §3.31.

The commission disagrees with some comments received regarding keeping of records of deliverability testing. Records are to be kept as specified in §3.1. That section specifies in detail by whom and for how long any data and records filed with the commission are to be kept.

The commission disagrees with comments received favoring purchaser's signatures on deliverability (G-10) tests. The commission has for approximately a year had purchasers sign on G-10 tests. No measurable increase in accuracy of G-10 data has been seen. The commission believes purchasers' signatures on G-10 tests have not provided any measurable benefit. The commission disagrees with comments received concerning the time period the purchaser has to object to G-10 deliverability. The commission disagrees with comments that deliverability after the initial deliverability should be based on past production. The commission believes the options of use of a conventional G-10 test or the use of maximum production rate provide more flexibility, minimize costs, and insure accurate data.

The commission disagrees with comments opposed to 72-hour G-10 tests. The proposed 72-hour tests will provide more accurate data by a longer time period of constant flow which can be verified by three calculations of flow rate. Costs should not increase drastically as many wells currently need 72-hour flows to obtain accurate data. The commission disagrees with comments against a 24-hour shut-in wellhead pressure prior to the G-10 test. A 24-hour shut-in wellhead pressure (SIWHP) aids in reservoir monitoring and evaluation. It provides improved determination of reservoir depletion and standardizes well testing procedure.

The commission disagrees with comments made that pipelines should be able to request a reduction in the deliverability test on file with the commission. The well operator has the best and most accurate knowledge as to the production capability of a well. The commission believes only the well operator should be permitted to request a reduction in well deliverability. A well may appear to have incurred a reduction in deliverability from the pipeline standpoint but may actually be shut-in by the operator for routine maintenance.

The commission disagrees with comments against coordination of well testing with downstream purchasers. The section does not require witnessing by downstream purchasers, nor does it require that test results be mandatorily supplied to downstream purchasers. The section does make both an option available to downstream purchasers which improves information availability.

Comments were received regarding the provisions of new §3.30. Those comments are summarized in the following discussion.

Comments were submitted requesting changes to the definition of initial or first purchaser to include one purchasing natural gas from an operator, including any subsidiary or affiliate of such purchaser who uses the same pipeline system to transport any gas it purchases from an operator. Comments were also received against treating as one purchaser the parent company and its subsidiaries or affiliates who use the same pipeline system. The section was changed to make effective March 1, 1987, a definition of first purchaser that includes any subsidiary or affiliate of the purchaser who transports any natural gas it purchases from a well by use of the same pipeline system used by the first purchaser of which it is a subsidiary or affiliate.

Comments were received suggesting changes in the definition of downstream purchaser. The section was changed based on these comments. Commenters also sought to include definitions for initial nominator and system or pipeline system. The section was changed based on these comments.

Some comments were received that sought to add to the section a producer's forecast. Other comments were submitted that sought to do away with nominations and use past production.

Comments were filed regarding the reporting requirements for lease use gas. Changes were made in the section based on some of these comments.

Comments were submitted that sought to allow the first purchaser to designate another party as the initial nominator. The section was changed based on these comments. Comments were received about the requirement that nominators must include in their nominations the amount of gas which will be used by operators. Comments were submitted regarding the requirement that the initial nominator include the total amount nominated by its downstream purchasers and maintain records of downstream purchasers' nominations.

Comments were received about the provision which requires the initial nominator to ratably apportion its nominations among the various fields on a system from which it purchases. Some commenters disagree with the commission's apportionment meth-

od. One clarification of the method was made based on comments. Some commenters believe this provision is preempted by federal law and regulations.

Comments were submitted regarding the inclusion of producer-used gas in the nomination. Comments were filed about the treatment of special allowable wells in the nomination process. Comments were received both for and against including the nomination and actual takes of gas for the second prior month on the nomination form. Changes were made based on these comments.

Comments were filed regarding the priority categories for making nominations. Some commenters questioned making nominations on a pipeline system. Comments were filed requesting that casinghead gas be given the highest priority. Comments were submitted regarding the priority of special allowable wells including both existing and future special allowable wells. Changes were made based on these comments. Comments were received regarding the priority given to garbage gas. Changes were made based on the comments. Some commenters do not want multiple 49(b) wells limited to one allowable. Comments were received requesting priority treatment for limited wells and marginal wells.

Comments were filed requesting that the term "acceptance of deliveries" be defined.

The commission disagrees with comments to retain the producer's forecast. The commission believes that determination of market demand can be accurately made through nominations filed by first purchasers. Generally, producer's forecasts and pipeline nominations are in agreement. The commission has found that use of producer's forecasts over pipeline nominations is minimal. Elimination of producer's forecasts will also decrease paperwork. The commission also disagrees with comments to eliminate nominations and use past production. This would deter the system from reacting to changes in market demand, both up and down. Our current system uses past field production to adjust field allowables determined by nominations and A sheet adjustments.

The commission disagrees with comments filed concerning lease use gas. Operators should communicate their requirements to purchasers. Accurate nominations should include the amount of gas to be consumed by operators and should include amounts of gas nominated by a first purchaser's downstream purchasers; thus, the commission disagrees with comments made in these two areas. The commission need not be involved.

The commission disagrees with comments that purchasers include a separate tabulation of gas used by operators in their nominations. This data is best kept by purchasers, and the commission only needs this data when examining issues of rat-

ability. Not requiring this data to be filed also reduces paperwork.

The commission disagrees with comments that special allowable wells should not be considered in the nomination process and that lack of consideration would cause nominations to be inaccurate.

The commission disagrees with comments against nominations on a pipeline system. The commission's statutory duty is to insure ratability in a pipeline system; thus, nominations by pipeline system are required. The commission takes the position that the priority categories listed in §3.30 are correctly categorized to accomplish the purposes of this section and governing statutes. The commission disagrees with comments filed regarding all casinghead gas being given highest priority. Some casinghead gas can be safely curtailed without physical damage. Some, if not all, special allowable wells will suffer irreparable physical damage if curtailed. The commission believes these special allowables should precede some casinghead gas in priority. The commission also believes that casinghead gas from enhanced recovery projects should be given highest priority. These projects require continuous flow, and market demand curtailment would inhibit the current projects and prevent planned projects. The commission disagrees with comments filed concerning the limiting of multiple 49(b) wells to one allowable. This reduction will not cause waste or harm correlative rights as there are provisions in the section to allow underproduction under certain circumstances. Reducing these well's production to one allowable will minimize gas curtailment effects on oil wells. The commission also disagrees with comments requesting priority for gas from limited and marginal wells. These wells will not be curtailed until all wells in a field are reduced to their level; thus, the sections already afford some protection.

The commission disagrees with comments requesting definition of the term "acceptance of deliveries." The commission disagrees that it is necessary to define the term "acceptance of deliveries" because the language is self-explanatory as used in this section.

The Railroad Commission disagrees with the commenters who believe the commission is federally preempted from promulgating this section. This section is promulgated under the statutory authority given to the Railroad Commission of Texas to regulate production of natural gas to prevent waste, to protect correlative rights, to prevent discrimination, and to conserve the natural resources of this state. Further, the commission is given specific authority to regulate common purchasers of gas in the Texas Natural Resources Code, Chapter 111. The commission's state regulatory jurisdiction over purchasers' nominations for gas to be purchased does not encroach upon the jurisdiction of the Fed-

eral Energy Regulatory Commission (FERC) under the Natural Gas Act of 1938 (NGA) or the Natural Gas Policy Act of 1978 (NGPA). The FERC is not vested with jurisdiction over the production and gathering of gas which is within the jurisdiction of the Railroad Commission, and this section is promulgated under that jurisdiction. The requirement of nominations to be filed by purchasers by regulation per this section is a necessary incident of the exercise of the commission's authority to prevent waste, including production in excess of market demand, to protect correlative rights, to prevent discrimination, and to conserve the natural resources of this state. These functions of the state are clearly production and gathering of natural gas and not within the jurisdiction of the FERC. Any effect of this regulation on interstate commerce is minimal.

Comments were received regarding the provisions of new §3.31, which are summarized in the following discussion.

Comments regarding the effective date of assignment of allowables were received. Comments were filed requesting the deletion or modification of the allowable penalty for late filing of reports. Additionally, comments were received regarding the effective date of assignment of changes in allowables. Some commenters objected to the procedure for assignment of allowables to a multicompleted well. Comments were submitted both for and against a re-completed well being required to make up overproduction accrued in the old field.

Comments were received which suggest clarifying distance limitations to mean diagonal distance limitations. Comments were filed regarding the filing of certificates of pooling. The section was changed based on these comments. Comment was received requesting that language be included to deal with problems relating to acreage completely surrounded by a proration unit but not included in the unit. One commenter sought an additional provision dealing with filing requirements when the allocation formula involved other factors than acreage or bottom-hole or reservoir pressure. The section was changed based on this comment.

Comments were received regarding the allocation of allowables in prorated fields based on nominations and consideration of nominations at the statewide market demand hearing. The section was changed based on these comments. A comment was submitted seeking to have special allowables removed from consideration in allocation of allowables and in suspension and reinstatement of a field allocation formula.

Comments were received seeking clarification of the definitions of prorated and nonprorated wells. Comments were filed with suggested changes to the definition of special allowable wells, O* allowable wells and X allowable wells. Some commenters wanted to delete O* allowable

wells and X allowable wells. One commenter wanted to add an additional provision that no gas well of any kind shall be assigned an allowable in excess of its physical capability to produce as indicated on the well's latest G-10 form. Changes were made based on this comment.

Comments were filed that suggested that limited wells in certain situations be allowed to accrue underproduction.

Comments were received regarding the balancing provisions for underproduction and overproduction in prorated gas reservoirs. Comments suggesting that the balancing periods be reduced to two months were submitted. One commenter wanted balancing provisions applied to 49(b) fields only after notice and hearing. The section was changed based on this comment. Comments were received regarding the commission's treatment of requests to carry forward underproduction. The section was changed based on these comments. Comments also were received regarding the setting of limited allowables on consistently underproduced wells.

Comments were filed regarding the time period to request approval to produce a well in excess of its monthly allowable. Comments were received regarding when a well should be considered overproduced after two balancing periods. Comments were submitted regarding the rate at which wells overproduced for two balancing periods could be produced and regarding the hearing procedure for such requests. Comments also were filed about the correct method of making up overproduction.

Comments were received regarding the suspension and reinstatement of a field allocation formula. One commenter wanted the terms "pipeline limitation" and "100% capacity allowable" more clearly defined.

A comment was received against assigning administrative special allowables. A comment was also filed seeking clarification of the procedure for obtaining an administrative special allowable. Changes were made in the section based on these comments.

The commission disagrees with comments filed regarding effective dates of allowables. The proposed section enumerates the current commission procedure and will serve to insure timely filing of required paperwork. The commission disagrees with comments filed regarding the allowable penalty. The proposed allowable penalty will also serve as impetus to file required paperwork timely. The commission also disagrees with comments on effective dates for allowable changes. The proposed changes will also insure timely filing of data. An overall purpose of this section is to make the data on record with the commission more accurate. The times for filing data and penalties set out in this section will reinforce and stimulate parties to file on time. The commission dis-

agrees with comments filed concerning multicompleted wells. The proposed section will align the procedure and time for allowable approval on a multicompleted well with that specified for a single completion. The commission disagrees with comments filed against a well being required to make up overproduction in an old field before being reassigned to a new field upon recompletion. Forgiving the subject overproduction would confound the proration system in that recompletions would then allow operators to escape penalties for overproduction. Recompletions would thus make the requirements to produce in line with allowables unenforceable.

The commission disagrees with comments to clarify distance limitations. Strict definitions could allow creation of distorted tracts solely to escape the distance limitations. The commission disagrees with comments filed to include language relating to pooling when acreage is surrounded but not included in a unit. The requested changes could alter or affect the sections on forced pooling.

The commission disagrees with comments to remove special allowables from consideration in allocation of allowables. Special allowables are currently not included in allowable allocation.

The commission disagrees with comments on 0* allowables. Comments to change the 0* procedure so as to remove new wells from inclusion would complicate and reduce the effectiveness of the 0*. The commission disagrees with comments to delete 0* and X allowable wells. Both are quite useful currently. Deleting X allowables would cause many wells to become prorated with vastly increased paperwork requirements on both the commission and industry.

The commission disagrees with comments to allow limited wells to accrue underproduction. Current procedure incorporated into the proposed sections will accommodate some wells. The comments would increase paperwork and complexity disproportionate to the benefits.

The commission disagrees with comments to change the balancing periods. Shorter balancing periods would greatly increase commission paperwork and staffing requirements. The industry workload to attempt to comply with shorter balancing periods would outweigh the benefits.

The commission disagrees with comments filed concerning the time period to request approval to produce in excess of twice the monthly allowable. Most comments would permit a longer time period than that proposed. A longer time period would inhibit the commission in enforcing balancing sections and prevent the commission from approving the rate as early as possible. Longer time periods would also prevent the commission from monitoring as soon as possible the allow-

able status in a field where an operator chose to produce in excess of twice the allowable. The commission disagrees with comments concerning when a well is to be considered overproduced. These comments tend to extend the time a well can remain overproduced without shut-in. This impedes regulatory authority to keep a field in balance and protect correlative rights. The commission disagrees with comments concerning the correct method and the rate at which an overproduced well can produce to make up the overproduction. A fixed percentage of allowable would detract from flexibility to accommodate various producers and differing wells.

The commission disagrees with comments filed concerning suspension and reinstatement of allowables. Market demand in excess of field deliverability will cause all wells' allowables to go to maximum. The allocation formula is then moot. The converse is true if market demand falls below field deliverability.

The commission disagrees with some of the comments filed against administrative special allowables. The allowables (less than 100 Mcf a day) are only for wells whose deliverability is less than 100 Mcf a day. The allowables represent a very small fraction of market share and help optimize recovery of reserves.

Commenters in favor of §3.28 were Fandhandle Producers and Royalty Owners Association; Phillips Petroleum Company; Inland Ocean, Inc.; Ensearch Exploration, Inc.; EP Operating Company; Texas Independent Producers and Royalty Owners Association; Texas Mid-Continent Oil and Gas Association; Corpus Christi Oil and Gas Association; Mobil Producing Texas and New Mexico; Permian Basin Petroleum Association; Association of Texas Intra-state Natural Gas Pipelines; Perry Pipeline Company, Inc.; Clayton W. Williams, Jr. and Williams Company; Pioneer Production Corporation; Mesa Limited Partnership; Saxon Oil Company; Conquest Exploration Company; Marshall Exploration, Inc.; Tenneco Oil; Valero Transmission Company; Quintana Petroleum Corporation; Texaco, U.S.A.; Texas Utilities Fuel Company; Arco Oil and Gas Company; Pitts Energy Group; U.S. Operating, Inc.; Thomas D. Coffman, Inc.; HECI Exploration Company; Claron Gas Company; Northern Natural Gas Company; Quinoco Petroleum, Inc.; W. R. Edwards, Jr.; Trans-Pan Gathering, Inc.; Mid-Central Energy, Inc.; Seymour G. Hootkins; R. C. Hagens; Mewbourne Oil Company; Caliche Pipeline Company; Pogo Producing Company; Tennasco Corporation; Lone Star Gas Company; Cabot Pipeline Corporation; TransAmerican Gas Transmission Corporation; Westar Transmission Company; Cities Service Oil and Gas Corporation; Rockland Pipeline System; Southern Union Gas Company; Cabot Gas Processing and Fuel Supply Division; High Plains Natural Gas Company; American Penn Energy.

Commenters against §3.28 were: Lone Star Gas Company; West Central Texas Oil and Gas Association; Mosbacher Energy Company; J. L. Davis; BTA Oil Producers; Cotton Petroleum Corporation; Dyne Oil and Gas, Inc.; Marshall Exploration, Inc.; Winchester Production Company; Colorado Interstate Gas Company; Panhandle Eastern Pipeline Company.

Commenters in favor of §3.30 were: BTA Oil Producers; Cotton Petroleum Corporation; Marshall Exploration, Inc.; Winchester Production Company; Arco Oil and Gas Company; Pitts Energy Group; U.S. Operating, Inc.; Thomas D. Coffman, Inc.; HECI Exploration Company; Wagner and Brown II; Claion Gas Company; Northern Natural Gas Company; Quinoco Petroleum Company; Caliche Pipeline Company; Mowbourne Oil Company; W. R. Edwards; Trans-Pan Gathering, Inc.; Midcentral Energy Corporation; Seymour G. Hootkins; R. C. Hagens; Phillips Petroleum Company; Panhandle Producers and Royalty Interest Association; Conoco, Inc.; Kimball Production Company; Dyne Oil and Gas, Inc.; Texas Independent Producers and Royalty Owners Association; Transcontinental Gas Pipe Line Corporation; Texas Mid-Continent Oil and Gas Association; Inland Ocean, Inc.; West Central Texas Oil and Gas Association; Amoco; Sun Exploration and Production Company; Corpus Christi Oil and Gas Company; Mobil Producing Texas and New Mexico, Inc.; Permian Basin Petroleum Association; Association of Texas Intrastate Natural Gas Pipelines; Perry Pipeline Company Inc.; Clayton W. Williams for Williams Company; Mesa Limited Partnership; Saxon Oil Company; Penzoll Producing Company; Marshall Exploration, Inc.; Tenneco Oil; Quintana Petroleum Corporation; Trunkline Gas Company; Texaco, U.S.A.; Cities Service Oil and Gas Corporation; North Texas Oil and Gas Association; American Penn Energy.

Commenters against §3.30 were Lone Star Gas Company; Northwest Central Pipeline Corporation; Mosbacher Energy Company; Tom Brown, Inc.; Tenngasco Corporation; Valero Transmission Company; Coquina Oil Corporation; Cabot Corporation; WTG Exploration, Inc.; J. L. Davis; Davis Gas Processing, Inc.; Texas Utilities Fuel Company; Neches Gas Distribution Company; Texaco Gas Marketing Company; El Paso Natural Gas Company; Colorado Interstate Gas Company; Pogo Producing Company; Tenngasco Corporation; Lone Star Gas Company; Cabot Pipeline Company; TransAmerican Gas Transmission Corporation; Westar Transmission Company; Southern Union Gas Company; Cabot Gas Processing and Field Supply Division; High Plains Natural Gas Company; Panhandle Eastern Pipe Line Company.

Commenters in favor of §3.31 were: Phillips Petroleum Company; Panhandle Producers and Royalty Owners Association; Inland Ocean, Inc.; Texas Independent Producers and Royalty Owners Association; Conoco, Inc.; Texas Mid-Continent Oil

and Gas Association; West Central Texas Oil and Gas Association; Amoco; Sun Exploration and Production Company; Corpus Christi Oil and Gas Company; Mobil Producing Texas and New Mexico, Inc.; Permian Basin Petroleum Association; Association of Texas Intrastate Natural Gas Pipeline; Perry Pipeline Company, Inc.; Clayton W. Williams, Jr., for William Company; Pioneer Production Company; Mesa Limited Partnership; Saxon Oil Company; Conquest Exploration Company; Marshall Exploration Company; Valero Transmission Company; Quintana Petroleum Corporation; Texaco, U.S.A.; BTA Oil Producers; Cotton Petroleum Corporation; Dyne Oil and Gas, Inc.; Marshall Exploration, Inc.; Winchester Production Company; El Paso Natural Gas Company; Arco Oil and Gas Company; Colorado Interstate Gas Company; Pitts Energy Group; U.S. Operating, Inc.; Thomas D. Coffman, Inc.; Wagner and Brown II; Claion Gas Company; Northern Natural Gas Company; W. R. Edwards, Jr.; Trans-Pan Gathering, Inc.; Midcentral Energy Corporation; Seymour G. Hootkins; R. C. Hagens; Caliche Pipeline Company; Mowbourne Oil Company; Tenngasco Corporation; Lone Star Gas Company; Cabot Pipeline Corporation; TransAmerican Gas; Transmission Corporation; Westar Transmission Company; Rockland Pipeline System; Southern Union Gas Company; Cabot Gas Processing and Fuel Supply Division; High Plains Natural Gas Company; American Penn Energy; Cities Service Oil and Gas Corporation.

Mosbacher Energy Company commented against §3.31.

These new sections are adopted under the Texas Natural Resources Code, §§86.041, 86.042, 86.081, and 111.113, which provides the Railroad Commission of Texas with the authority to prorate and regulate the production of natural gas to prevent waste and adjust the correlative rights and opportunities of owners of gas to use or sell their gas.

§3.28. Potential and Deliverability of Gas Wells to be Ascertained and Reported. Rule 28.

(a) The absolute daily open flow potential of each producing associated or non-associated gas well shall be ascertained, and a report shall be filed as required on the appropriate commission form in the appropriate commission office within 30 days of completion of the well. The test shall be performed in accordance with the commission's publication, "Back Pressure Test for Natural Gas Wells, State of Texas," or other test procedure approved in advance by the commission and shall be reported on the commission's prescribed form. An operator, at his option, may determine absolute open flow potential from a stabilized one-point test. For a one-point test, the well shall be flowed on a single choke setting until a stabilized flow is achieved, but not less than 72 hours. The shut-in and flowing bottom hole

pressures shall be calculated in the manner prescribed for a four-point test. A back pressure curve to determine a calculated absolute open flow shall be drawn at an angle of 45° through the point representing this rate of flow when plotted in the manner specified for a four-point test. The commission may authorize a one-point test of shorter duration for a well which is not connected to a sales line, but a test which is in compliance with this section must be conducted and reported after the well is connected before an allowable will be assigned to the well. Backdating of allowables will be performed in accordance with §3.31 of this title (relating to Gas Well Allowables).

(b) After conducting the test required by subsection (a) of this section each operator of a gas well shall conduct an initial deliverability test not later than 10 days after the start of production for one or more legal purposes and shall report such initial deliverability test on the prescribed form. If a 72-hour one-point back pressure test on a well connected to a sales line was conducted as provided in subsection (a) of this section, the same test may be used to determine initial deliverability, provided the test was conducted in accordance with subsection (c) of this section. After the initial deliverability test has been conducted, the following schedule for well testing applies. Nonassociated gas wells shall be tested semiannually. Associated 49(b) gas wells shall be tested annually. Wells with current reported deliverability of 100 Mcf a day or less are not required to test as long as deliverability and production remain at or below 100 Mcf a day but are required to file Form G-10 according to the instructions on the form. Wells operating under special field rules which conflict with this subsection shall test in accordance with the special field rules. Notwithstanding the above provisions on frequency of testing, gas wells commingling liquid hydrocarbons before metering must comply with the testing provisions applicable to such wells. All deliverability tests shall be conducted in accordance with subsection (c) of this section and the instructions printed on the Form G-10. The results of each test shall be attested to by the operator or his appointed agent. The first purchaser or its representative upon request to the operator shall have the right to witness such tests. Gas meter charts, printouts, or other documents showing the actual measurement of the gas produced or other data required to be recorded during any deliverability test conducted under this subsection shall be preserved as required by §3.1 of this title (relating to Organization Name to be Filed and Records to be Kept) (Statewide Rule 1). In the event that the first purchaser and the operator cannot agree upon the validity of the test results, then either party may request a retest of the well. The first purchaser upon request to the operator shall have the right to witness the retest. If either party requests a representative from the commission to witness a retest of the well, the results of a

commission-witnessed test shall be conclusive for the purposes of this section until the next regularly scheduled test of the well. In the event a retest is witnessed by the commission, the retest shall be signed by the representative of the commission. In the event that downhole remedial work or other substantial production enhancement work is performed, or if a pumping unit, compressor, or other equipment is installed to increase deliverability of a well subject to the commission-witnessed testing procedure described in this subsection, a new test may be requested and shall be performed according to the procedure outlined in this subsection.

(c) Unless applicable special field rules provide otherwise or the director of the oil and gas division or the director's delegate authorizes an alternate procedure due to a well's producing characteristics, deliverability tests shall be performed as follows. Deliverability tests shall be scheduled by the producer within the testing period designated by the Railroad Commission, and only the recorded data specified by the Form G-10 is required to be reported. All deliverability tests shall be performed by producing the subject well at stabilized rates for a minimum time period of 72 hours. A deliverability test shall be conducted under normal and usual operating conditions using the normal and usual operating equipment in place on the well being tested, and the well shall be produced against the normal and usual line pressure prevailing in the line into which the well produces. The average daily producing rate for each 24-hour period, the wellhead pressure before the commencement of the 72-hour test, and the flowing wellhead pressure at the beginning of each 24-hour period shall be recorded. In addition, a 24-hour shut-in wellhead pressure shall be determined either before or after the flow test and recorded. The flow rate during each day of the first 48 hours of the test must be as close as possible to the flow rate during the final 24 hours of the test, but must equal at least 75% of such flow rate. The deliverability of the well during the last 24 hours of the flow test shall be used for allowable and allocation purposes. If pipeline conditions exist such that a producer believes a representative deliverability test cannot be performed, the producer with pipeline notification may request in writing that the commission use either of the following as a representative deliverability:

(1) the deliverability test performed during the previous testing period; or

(2) the maximum daily production from any of the 12 months prior to the due date of the test as determined by dividing the highest monthly production by the number of days in that month.

(d) If the deliverability of a well changes after a test is reported to the commission, the deliverability of record for a well will be decreased upon receipt of a written request from the operator to reduce the deliverability of record to a specified amount. If the de-

liverability of a well increases, a retest must be conducted in the manner specified in this section and must be reported on Form G-10 before the deliverability of record will be increased.

(e) First purchasers with packages of gas dedicated entirely to a downstream purchaser shall coordinate testing with and provide test results to that downstream purchaser if requested by the downstream purchaser. In these cases, the downstream purchaser upon request to the operator shall have the right to witness all deliverability tests and retests.

(f) The appropriate district office shall be notified at least 24 hours prior to any test. Tests of wells connected to a pipeline shall be made in a manner that no gas is flared, vented, or otherwise wastefully used.

§3.30. Gas Nominations Required. Rule 30.

(a) The following words and terms, when used in this section and in §§3.28, 3.31, and 3.34 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported, Gas Well Allowables and Gas to be Produced and Purchased Ratably), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Initial or first purchaser—The first purchaser of natural gas produced from a well, effective through February 28, 1987. Effective March 1, 1987, initial or first purchaser shall mean the first purchaser of natural gas produced from a well and shall include any subsidiary or affiliate of the purchaser who transports any natural gas it purchases from a well by use of the same pipeline system used by the first purchaser of which it is a subsidiary or affiliate.

(2) Downstream purchaser—One who purchases natural gas for resale and is not a first purchaser.

(3) Initial nominator—First purchaser or the designated representative of the first purchaser.

(4) Pipeline system—A network of physically connected pipelines with any common ownership in pressure communication under normal operating conditions, with the ability to deliver natural gas to market.

(b) Purchasers who purchase gas from various gas fields; or who purchase gas at the wellhead of the wells; or who purchase gas at a common purchase point must determine if they are the initial purchaser. If they are the initial purchaser, they shall file gas nominations. An operator using 100% of the gas from a gas well or wells for his own operations, either on leases or in a fuel system, shall file gas nominations. An operator using a portion of the gas produced from a well must notify the initial nominator in writing of the volume or percentage of total volume required, including shrinkage due to liquid separation prior to sale. The initial nominator must include that amount in its nominations. After initial notification, the operator need only inform the initial nominator

of changes in the volume or percentage of total volume required.

(c) In order that the commission may determine market demand and set allowables for ratable production not exceeding market demand, initial nominators shall file in the appropriate commission office by the ninth day of each month nominations of requirements for gas to be purchased and/or used by them from each reservoir or field during the following month. Designated representatives must file nominations in the name of first purchasers. By the fourth day of each month, an initial nominator shall inform each of its producers of the amount it intends to nominate for that producer by field.

(d) An initial nominator shall nominate for a total quantity of gas equal to the sum of:

(1) the quantity for which the operator and/or the initial purchaser are the ultimate consumers. This amount will include lease usage, shrinkage, line loss, plant fuel, compressor fuel, and the gas which the initial purchaser may consume prior to the point of final delivery;

(2) the total quantity of gas nominated by its downstream purchasers in accordance with the following provisions:

(A) all downstream purchasers who take more than 10 MMcf per day shall submit monthly to their initial or first nominators of gas a downstream purchaser's nomination based on a firm forecast of that purchaser's actual demand;

(B) if a downstream purchaser takes gas from more than one source of supply, that downstream purchaser's nomination shall show expected demand from each source;

(C) written monthly nominations from downstream purchasers shall be kept on file by the initial nominator for a period of no less than two years for commission inspection and shall be filed with the commission on its request; and

(3) the remaining quantity of gas which the initial nominator expects to take for direct sale to end-users and any other volumes for which no nomination has been made under paragraphs (1) or (2) of this subsection.

(e) Nominations for a field by an initial nominator shall not exceed the deliverability available to that nominator from that field. The initial nominator shall within a pipeline system ratably apportion without unjust or unreasonable discrimination its nominations among the various fields from which it purchases gas. The nomination for each field shall be a consistent percentage of the total deliverability available to the nominator from all fields or other apportionment which the nominator can demonstrate will not result in unjust or unreasonable discrimination. The nominator shall include the following on the nomination form:

(1) the nomination for each field as a volume of gas in Mcf, including gas purchases and gas consumed by the operator

and/or the first purchaser (lease usage, shrinkage, line loss, plant fuel, compressor fuel, and the gas which the initial purchaser may consume prior to the point of final delivery); and

(2) the nomination in each field as a percentage of the total deliverability of wells connected to the nominator's pipeline system.

(f) Nominations by an initial nominator for gas within a pipeline system shall be made according to the following priorities, in order.

(1) First priority in the nominations for the purchase of gas shall be given to casinghead gas produced from certified tertiary recovery projects approved by the commission and secondary recovery projects involving water injection, gas injection, or pressure maintenance approved by the commission to prevent waste.

(2) Second priority shall be given to gas from special allowable wells as defined in §3.31(f)(5) of this title (relating to Gas Well Allowables) (Statewide Rule 31) granted special allowable status after the effective date of this section to prevent physical waste. Wells classified as special allowable wells prior to the effective date of this section pursuant to notice and hearing shall be given second priority unless a new determination is made that the special allowable status is not necessary to prevent physical waste.

(3) Third priority shall be given to the remainder of casinghead gas so that gas produced in association with oil production shall not be wastefully vented and oil production shall not be unnecessarily curtailed. Gas recovered from a landfill or sewage process shall also be given third priority.

(4) Fourth priority shall be given to gas from wells classified under §3.49(b) of this title (relating to Gas-Oil Ratio) (Statewide Rule 49(b)), but only to the extent of one full allowable for multiple 49(b) wells.

(5) Fifth priority shall be given to gas from administrative special allowable wells as defined in §3.31(f)(6) of this title (relating to Gas Well Allowables), to gas from special allowable wells (as defined in §3.31 (f)(5) of this title relating to Gas Well Allowables) granted that status prior to the effective date of this section (see paragraph (2) of this subsection) without notice and hearing, and to gas from special allowable wells granted that status by the commission subsequent to the effective date of this section after notice and hearing for other reasons than to prevent physical waste.

(6) Sixth priority shall be given to the remainder of gas well gas.

(g) Curtailments of production and acceptance of deliveries of gas shall be performed in accordance with the provisions of §3.34 of this title (relating to Gas to be Produced and Purchased Ratably) (Statewide Rule 34).

§3.31. Gas Well Allowables. Rule 31.

(a) General.

(1) Allowables of gas wells not currently assigned an allowable will not be made effective:

(A) prior to the well's completion or reclassification date; or

(B) more than 15 days prior to the date all reports or information necessary to the assignment of an allowable are received in the appropriate commission office.

(2) If a report or item of information necessary to the assignment of an allowable is not filed on time, there shall be a one-day allowable reduction for each day the report or information is late.

(b) Changes in gas well allowables.

(1) Changes in allowables of gas wells currently assigned an allowable will be effective on the date of the test or date of the change affecting the well's allowable (when the operator submits special tests or information), provided this is not more than 15 days prior to the date the special test or information is received in the appropriate district office.

(2) With respect to a multicompleted well, the allowable of the second and succeeding zones will be made effective no earlier than the date the last report or item necessary for the assignment of an allowable is received in the appropriate commission office.

(3) When a well is recompleted as a gas well in a different field, any overproduction that has occurred in the old field must be made up before an allowable is assigned in the new field.

(c) Requirements for gas wells in a field for which an allocation formula has been adopted.

(1) If acreage is a factor in the allocation formula, a certified plat showing the acreage assigned to the well for proration purposes shall be submitted. The plat must be accompanied by a statement that all of the acreage claimed can reasonably be considered productive of gas in that field, and that the distance limitations of the field rules have not been exceeded. If all of the acreage claimed is not contained in a single lease, a certificate of pooling authority must be submitted on the appropriate commission form. If the distance limitations of the field rules are shown to have been exceeded, the plat must show the number of acres within and beyond the distance limitations. An operator may request an exception to the distance limitations which may be administratively approved by the director of the oil and gas division (director) or the director's delegate if all the acreage can be considered productive. If approval of the request is declined or protest is received, the request may be set for hearing. If all of the acreage cannot be considered productive, the plat must also show the productive limit of the acreage. If a plat shows acreage in the proration unit in excess of the maximum number of acres permitted by the field rules, it will not be accepted.

(2) If bottom-hole or reservoir pressure is a factor in the allocation formula, it shall be submitted on the appropriate commission form and shall be measured at, or corrected to, the proper datum plane.

(3) If any other information, data, or parameter is a factor in the allocation formula, it shall be submitted on the appropriate commission form.

(d) Ascertaining allowables by adjustment of gas nominations and deliverabilities.

(1) The allocation of allowables to all wells in prorated gas fields will be determined from the nominations submitted. Prorated gas fields are reservoirs or fields in which an allocation formula is in effect. In order to ascertain the reasonable reservoir market demand for the gas, nominations for gas may be adjusted by comparing the latest reported production from the field to the nominations filed for the field for that period.

(2) The total nominations for a field for gas from prorated wells for a month shall be determined by subtracting the total allowable assigned to nonprorated wells for the month from the total nominations for that month for gas from all wells in the field.

(3) Nothing in this subsection shall be interpreted as binding to prevent the commission from making other adjustments to nominations when necessary to bring allowables for gas to an amount equal to market demand as required by statute.

(4) No gas well shall be given an allowable in excess of an amount determined by the lesser of the well's latest deliverability test on file with the commission or the well's highest daily production in any month during the last 12 months in the production records of the commission at the time the allowable is assigned. The daily production is the reported monthly production divided by the number of days in the month. If there is a substantial increase in production, the commission may determine the highest daily production from monthly data submitted by the operator which is more recent than that in the production records of the commission.

(e) Fields operating under statewide rules.

(1) A statewide prorated field is any nonassociated gas field in which no special field rules have been adopted and in which at least one well in the field has a current reported deliverability of greater than 200 Mcf a day. Daily allowable production of gas from individual wells in a statewide prorated field shall be determined by allocating the allowable production among the individual wells in the proportion that each well's capability to produce (based on the latest adjusted deliverability test of record as determined in subsection (d)(4) of this section) bears to the summation of the most recent reported capabilities of all wells producing from the same field.

(2) A statewide exempt field is any non-associated gas field in which no special field rules have been adopted and in which

no well in the field has a current reported deliverability of greater than 200 Mcf a day. Wells in statewide exempt fields shall be assigned allowables equal to their capacity to produce.

(f) Allowables for prorated and non-prorated wells.

(1) A prorated well is a well for which an allowable is determined by an allocation formula.

(2) 0* Allowable wells are prorated wells with an allowable assigned on a field-wide basis, excluding special allowable wells, that aids in balancing production in that field. Under a 0* allowable all production in the month that the allowable is assigned is considered overproduction.

(3) A nonprorated well is a well for which an allowable is not determined by an allocation formula.

(4) A limited well is a nonprorated well with an allowable set below the maximum allowable it would receive under the allocation formula. A limited well shall be assigned an allowable at the rate that the well is capable of producing.

(5) A special allowable well is a non-prorated well granted a fixed allowable by the commission after notice and hearing.

(6) An administrative special allowable well is a nonprorated well that has been granted a fixed allowable pursuant to subsection (j) of this section.

(7) Exempt allowable (X) wells are nonprorated wells in an exempt field and are assigned an allowable on a field-wide basis that allows wells to produce at capacity.

(g) Allowable adjustments and balancing provisions for limited wells.

(1) A limited well shall not be allowed to accumulate underproduction.

(2) If the most recent production figures reported to the commission show a limited well to be overproduced, the allowable will be revised to cover overproduction up to the maximum allowable which the well can be assigned under an allocation formula. If the indicated capability of a well to produce, plus its latest recorded overproduction, is less than its formula allowable, sufficient allowable will be assigned to balance the allowable with production.

(3) If a limited well is assigned an allowable that results in its removal from the nonprorated classification, the underage status of the well shall be reinstated in the amount discontinued at the time the well was placed in the nonprorated category. However, credit will not be given for underproduction attributable to those months when the well was in a nonprorated category, nor will credit be given for underproduction that accumulated prior to the immediately preceding balancing period.

(h) Balancing provisions for overproduction and underproduction of gas for wells completed in prorated gas fields.

(1) Balancing provisions for prorated fields. Except as provided in subsection (g) of this section or as necessary to pre-

vent waste or protect correlative rights, balancing provisions will be applied for wells completed in prorated gas fields

(2) Balancing periods. For the purpose of computing and balancing overproduction and underproduction in prorated gas fields, the dates 7 a.m., March 1, and 7 a.m., September 1, are to be known as balancing dates; and the six-month periods beginning 7 a.m., March 1, and ending 7 a.m., September 1, and beginning 7 a.m., September 1, and ending 7 a.m., March 1 will be considered as separate entities and will be known as balancing periods.

(3) Balancing provision for 49(b) fields. The balancing provisions may be applied by commission action after notice and hearing to fields where the well allowables are determined by §3.49(b) of this title (relating to Gas-Oil Ratio) (Statewide Rule 49(b)).

(4) Underproduction.

(A) If during the balancing period a prorated gas well does not produce as much gas as is allocated to it by the commission, the operator of the well shall be permitted to carry the underproduction forward to the next succeeding balancing period as future allowable credit to be produced during that period.

(B) The amount of underproduction to be carried forward into any new balancing period as allowed production during such new balancing period shall consist of the actual underproduction that accrued in the balancing period immediately preceding such new balancing period; and the accumulative well status as to underproduction will be adjusted on each balancing date accordingly. An operator may request that underproduction not balanced during a second balancing period be carried forward to subsequent balancing periods. The operator's request must include evidence of increased market demand that will allow underproduction to be produced in the subsequent balancing period. The request may be granted administratively by the director or the director's delegate if the request was filed no later than the last day of the balancing period following the date the underproduction is canceled, the operator has given at least 21 days notice to all other operators in the field and the first purchaser of gas from the subject well, and no protest to the request has been filed. The request may also be approved administratively if the operator provides written waivers of objection from all to whom notice would be given as an alternative to notice and absence of protest. If the director or the director's delegate declines to grant administratively the request, the operator may request a hearing.

(C) If a producing well has been accumulatively underproduced on each of two successive balancing dates, the well shall not be assigned a monthly allowable greater than the highest monthly production from the well during the immediately preceding balancing period; provided, however, the

limited allowable assigned to the well may be adjusted to a value not to exceed the allowable applicable to the well under the allocation formula upon certification to the commission from the operator that such well is producing gas in excess of the limited allowable assigned to it.

(5) Overproduction.

(A) Subject to the following prescribed conditions, the operator of a gas well, may produce the well in excess of the monthly allowable allocated to the well. No well shall in any one month be produced at a rate in excess of its underproduction plus twice its monthly allowable without obtaining approval from the commission prior to the due date for the production report for the overproduced month. A well which is balanced or overproduced may not in any one month produce an amount in excess of twice its monthly allowable without obtaining approval from the commission prior to the due date for the production report for the overproduced month. A well which is balanced or overproduced will not be granted such authority for more than two months in any six month balancing period.

(B) A well overproduced as of a balancing date, which was also overproduced on the balancing date immediately preceding and remained overproduced for the entire period between the two balancing dates, shall be shut-in until the overproduction, existent as of the later of such two balancing dates, is made up. Upon request by an operator, the commission may grant authority to produce such a well at a fractional part of its monthly allowable (reduced rate) until its production and allowable are in balance. The director or the director's delegate may determine the permissible rate.

(C) If a protest is received or the commission declines to approve a request to produce at a reduced rate, the operator of a well which under the provisions of subparagraph (B) of this paragraph is required to be shut-in, may request a hearing before the commission to determine whether shutting-in the well would damage it. Notice of the hearing will be given to all operators in the field and the first purchaser of the subject well. If, after consideration of the evidence submitted at the hearing, the commission finds that the well would be damaged if shut-in, the commission may allow the overproduction charged against it to be made up at a lesser rate than it would be made up if the well were shut-in. The director or the director's delegate may determine the permissible rate pending the result of the hearing.

(D) Except where a well is shut-in to make up overproduction or is producing at a reduced rate, overproduction existent as of any balancing date shall be made up at any time during the next period; i.e., a specified fractional part of the overproduction need not be made up during each month of that balancing period, so long as all of such overproduction is made up during that balancing period.

(I) Suspension of allocation formula.

(1) The director or the director's delegate may administratively suspend the allocation formula for a particular gas field if:

(A) each first purchaser from that field has a market for 100% of the deliverability available to that purchaser from the field;

(B) none of the operators or first purchasers from the field object to suspension of the formula; and

(C) suspension will not cause a pipeline limitation for any field.

(2) Suspension of the allocation formula may be initiated by the director, by the director's delegate, by one of the operators in the field, or by one of the first purchasers in the field.

(A) The director or the director's delegate will determine which fields are appropriate for suspension utilizing the criteria of paragraph (1) of this subsection. The allocation formula may be suspended administratively by the director or the director's delegate if the applicant has given at least 21 days notice of intent to suspend the allocation formula for a particular field to each of the operators and first purchasers in the field and no protest has been made.

(B) If it is anticipated that suspension of the allocation formula will cause a pipeline limitation in a field, first purchasers in the field for which suspension of the allocation formula is requested shall notify the director or the director's delegate within 21 days of the mailing date of the notice of intent to suspend the allocation formula.

(C) The allocation formula may also be suspended administratively if the applicant provides written waivers of objection from all to whom notice would be given. If the director or the director's delegate declines to suspend administratively the allocation formula, the applicant may request a hearing as provided for in paragraph (4) of this subsection.

(3) Reinstatement of the allocation formula may be initiated by the director, by the director's delegate, by one of the operators in the field, or by one of the first purchasers in the field.

(A) If the market demand for gas from a field with suspended allocation drops below 100% of deliverability at any time, the operators and/or first purchasers for the field shall immediately notify the director or director's delegate and give an explanation of the reduction in demand. The director or director's delegate will then make a determination of whether the allocation formula should be reinstated and may immediately reinstate the allocation formula.

(B) If a pipeline limitation occurs after suspension of the allocation formula, first purchasers in the field shall immediately notify the director or the director's delegate. The director or the director's delegate will then make a determination of whether the

allocation formula should be reinstated and may immediately reinstate the allocation formula.

(C) An operator or first purchaser may request that the allocation formula for a field be reinstated administratively. The request may be approved administratively by the director or the director's delegate if the applicant provides to the commission written waivers of objection from all operators and first purchasers for a field. If the applicant fails to secure all necessary waivers or if the director or the director's delegate declines to approve the request, the operator may request a hearing as provided for in paragraph (4) of this subsection. If the matter is set for hearing, the allocation formula may be reinstated administratively by the director or the director's delegate pending the result of the hearing. The notice of request for reinstatement shall specify the date on which allocation again becomes effective.

(4) If the director or the director's delegate denies administratively a request to suspend or reinstate the allocation formula in a particular field, the applicant may request a hearing. In addition to the criteria set forth in paragraph (1) of this subsection, the commission will consider whether suspension or reinstatement is necessary to prevent waste or protect correlative rights.

(5) Suspension of the allocation formula will balance the field's production status at zero, and provide for a 100% capacity allowable.

(j) Administrative special allowable. A well which demonstrates by both deliverability test and production data a daily deliverability of 100 Mcf or less is eligible for an administrative special allowable equal to its deliverability.

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 August 11, 1986.

TRD-8607861 Mack Wallace
Commissioner
Railroad Commission
of Texas

Earliest possible date of adoption:

September 1, 1986

For further information, please call
(512) 463-7149.

★ ★ ★

Conservation Rules and Regulations

★ 16 TAC §3.34

The Railroad Commission of Texas adopts new §3.34, with changes to the proposed text published in the February 21, 1986, issue of the *Texas Register* (11 TexReg 943).

The Railroad Commission's reasons for adopting §3.34 and the effects of the new

section are to clarify the agency's regulation of ratable production of natural gas and to further the agency's duties to prevent waste, to protect correlative rights, to prevent discrimination, and to further conserve the natural resources of this state through the enforcement of ratable production and purchasing of natural gas.

Comments were received regarding adoption of the new section. The comments are summarized in the following discussion.

Comments were received both for and against treating as one purchaser a parent company and its subsidiaries or affiliates who use the same pipeline system in transporting their purchases of gas. This section was changed, effective October 15, 1986-February 28, 1987, to require that a first purchaser shall not within a pipeline system curtail first, second, or third priority category gas if lower priority category gas is being purchased in the same pipeline system by the purchaser or by the purchaser's subsidiary or affiliate who uses the same pipeline system in purchasing the lower priority category gas. Effective March 1, 1987, a first purchaser shall not within a pipeline system curtail gas from a priority category if the purchaser is purchasing lower priority category gas on the same pipeline system. It should be noted that the definition of initial or first purchaser was changed in §3.30 to make effective March 1, 1987, a definition of first purchaser which includes any subsidiary or affiliate of the purchaser who transports any natural gas it purchases from a well by use of the same pipeline system used by the first purchaser of which it is a subsidiary or affiliate.

Comments were filed requesting that the term "pipeline system" be defined. Changes were made in the section based on the comments. Some commenters wanted to delete the term "pipeline system" from the section. Comments were submitted suggesting that waste prevention be added to the purpose of the section. The section was changed based on these comments. Comments were received both for and against the inclusion of transporters in the entitlements required to accept ratable deliveries of gas. One commenter suggested that the requirements of ratable purchasing and production only apply to wells committed to a purchaser on a pipeline system or under contract to a purchaser. Changes in the section were made based on the comments. Some commenters submitted alternate drafts of a ratable purchase section. Comments were received that requested the term "acceptance of deliveries" be deleted.

Comments were filed that argued that the entire section is federally preempted. Other comments suggest the entire section should be withdrawn.

Comments were received that disagreed with the formula set out in the section for ratable purchases and acceptance of de-

liveries of gas between fields and within a field. Some commenters wanted a hearing to be held before a purchaser can discriminate between fields.

Comments were filed both for and against underproduction and overproduction being considered by the purchaser in establishing an appropriate pattern of purchases or takes to restore ratability. Comments were filed regarding the method for takes from casinghead gas wells. Comments were received regarding the curtailment of purchases from limited wells. Changes were made in the section based on these comments.

Comments were received about the subsection dealing with pipelines which transport gas for hire. Some comments filed favored the subsection. Some commenters thought the subsection should be deleted because it seeks to regulate in a federally preempted area of pipeline regulation. Comments were submitted asserting that the Railroad Commission has no statutory authority to promulgate this subsection. Other comments were filed that assert the Railroad Commission of Texas does have such statutory authority. Comments were also received that were in favor of the subsection with certain changes.

Comments were received regarding the method for curtailment of casinghead gas. Some commenters made alternative suggestions about how the curtailment should be done. Other commenters did not agree with the proposed method, stating that it penalized wells with net gas/oil ratios.

Comments were filed regarding the subsection requiring producers to apportion purchasers' delivery requests ratably without discrimination to all wells in each field. Comment was filed that sought to change the term producer to operator. Changes were made based on these comments. Comments were submitted requesting that the subsection be deleted. Some comments were received in favor of the subsection with certain changes.

Comments were filed regarding priority gas to be taken on a pipeline system. Comments were submitted that seek to have the priority categories apply to gas purchasers subsequent to the first purchaser. One commenter thought the subsection should be clarified to include only purchasers and not transporters. Comments were filed requesting that casinghead gas be given the highest priority. One commenter wanted first priority for wells which produce carbon dioxide that is dedicated to an enhanced recovery project. Some comments were filed objecting to the high priority given to casinghead gas. One commenter wanted second priority given to gas from sour gas treating plants. Comments were received that requested combining the priority categories for casinghead gas and special allowable wells. Comments were submitted regarding the priority of special allowable wells, in-

cluding both existing and future special allowable wells. Changes were made to the section based on the comments. Comments were received regarding the priority treatment for limited wells and marginal wells.

Comments were received regarding the subsection that prohibits a purchaser discriminating between or against natural gas of a similar kind or quality in favor of its own production or production in which it may be directly or indirectly interested in whole or in part. Some comments were in favor of the subsection. Comments were submitted that sought to have the subsection clarified or modified.

Comments were submitted about the subsection dealing with a producer who is denied by a pipeline or a purchaser the opportunity to produce a ratable share of gas being able to file a complaint with the commission and request a hearing. Comments were filed both in favor of and against the procedure set out in this subsection. Some commenters wanted the provisions deleted. Other commenters wanted the provisions modified to some extent. Comments were submitted seeking to clarify that the subsection applies to first purchasers. Changes were made to the section based on the comments.

Comments were received regarding the subsection dealing with the purchaser filing a complaint after the producer's failure to ratably reduce production to comply with a purchaser's request. Comments were received in favor and against this subsection.

The commission disagrees with comments to delete the term "pipeline system." This term is integral to the application of ratability. The commission disagrees with comments to include transporters in the entitlements required to purchase ratably. The commission chooses not to include transporters within the regulation of ratable purchases of gas. The commission considers itself to have statutory jurisdiction over transporters who are common purchasers under the Texas Natural Resources Code, Chapter 111. The commission also disagrees with comments to delete the phrase "acceptance of deliveries." This term is central in issues of ratability because gas purchased but not taken is not subject to ratability.

The Railroad Commission disagrees with commenters who stated that this section is federally preempted by the Natural Gas Act (NGA) and the Natural Gas Policy Act (NGPA) under the Supreme Court's rationales in *Transcontinental Gas Pipe Line Corporation vs. State Oil and Gas Board of Mississippi*, 106 S. Ct. 709 (1986) and *Northern Natural Gas Company vs. State Corporation Commission of Kansas*, 83 S. Ct. 646 (1963). The system embodied in this section is based on the state's statutory authority recognized by the Supreme Court, to conserve its natural resources by preventing waste, protecting correlative

rights, and preventing discrimination. This authority is embodied in a comprehensive body of conservation laws (the Texas Natural Resources Code, Chapter 86) designed to ensure production of natural gas in accordance with market demand and to prevent its waste. The Federal Energy Regulatory Commission is not vested with jurisdiction over production of gas, regulation of which is clearly reserved for the states. One of the state's enforcement tools in carrying out this legitimate conservation authority is the regulation of common purchasers pursuant to the Natural Resources Code, Chapter 111. Yet the section does not direct its prohibitions solely to purchasers. Operators are required to produce ratably and in compliance with priority categories and are forbidden to produce in excess of market demand. Because production is dictated by a pipeline's capacity and market demand, the section addresses itself to an integrated system in which the production and purchasing of natural gas are inextricable elements, regulation of which achieves the state's legitimate conservation goals. The regulatory requirement of ratable purchasing of gas by first purchasers under this section is a necessary incident of the exercise of the commission's authority to prevent waste (including production in excess of market demand), to protect correlative rights, to prevent discrimination, and to conserve the natural resources of this state through ratable production. Thus, the section avoids placing the sole enforcement burden on purchasers, a burden which the court found violative of the comprehensive federal regulatory scheme in *Northern Natural and Transco*.

That the section requires ratable production and purchases to be based on actual market demand additionally distinguishes this section from the state rules struck down in *Northern Natural and Transco*. Once market demand is determined, the ratable production/purchase requirement imposes no greater quantity requirement on a pipeline than it would incur absent the rule. The rule thus does not interfere with any pipeline's purchasing practices in violation of the NGA and the NGPA. Nor does it impermissibly burden interstate commerce by requiring increased takes from Texas, or in any other way. The structuring of ratable production and purchase based on market demand is consistent with the NGPA's scheme of unimpeded free market determinations.

The commission disagrees with comments concerning the formula for ratability between fields and within a field. The commission considers this section to set out a guideline for operators and purchasers based on the statutory standard. The commission does not believe it is necessary to provide for a hearing in this subsection. Provisions for hearings on a complaint are provided for in later subsections.

The commission disagrees with comments that did not want a purchaser to consider

underproduction and overproduction in establishing an appropriate pattern of purchases. The commission disagrees and believes consideration of underproduction and overproduction is necessary to obtain and return ratability.

The commission disagrees with comments regarding the method of takes and curtailment from casinghead wells. Allowing these wells to be curtailed while other gas flows will adversely affect oil production and increase imports. The commission believes highest priority should be given to casinghead gas from enhanced recovery projects, and next in order to some special allowable wells. The remainder of casinghead gas would follow in priority. This system will protect the wells whose recovery is contingent on continuous flow processes. The remaining casinghead gas would be curtailed before those previously mentioned. Although this would decrease current oil production rate, these wells should return to production unharmed when market demand returns. Ultimate recovery should go relatively unaffected. The commission disagrees with comments filed to utilize net gas/oil ratio sections in curtailments. Many wells with nets do not utilize the entire net and would thus enjoy an unnecessary advantage in curtailments where the net is used.

The commission disagrees with comments regarding the subsection on producers ratably apportioning purchaser's requests. Correlative rights are protected by ratable production.

The commission disagrees with comments to have priority categories apply to downstream purchasers. The commission believes the priority categories more appropriately apply to first purchasers.

The commission disagrees with commenters who suggested giving high priority to fields producing carbon dioxide for use in enhanced recovery processes. The commission has no way to identify these, and no comments that other carbon dioxide sources were unavailable were filed. The commission also disagrees with comments to give priority to gas from sour gas plants. No data were presented indicating that waste would occur if these plants were curtailed. The commission disagrees with commenters who suggested combining categories of casinghead and special allowable gas. All gas within these categories will not be affected equally should curtailment occur. The commission believes enhanced recovery projects and special allowables should receive higher priority as they are more in danger of suffering waste, should either of these continuous flow categories be curtailed. The remaining casinghead should be able to be curtailed and return to production unaffected; thus, it should receive lower priority.

The commission disagrees with commenters who suggested modifying the subsection that requires purchasers not to

discriminate in favor of their own production. This subsection will protect correlative rights by preventing drainage from an operator's wells to a purchaser's operated wells. This section also insures ratability by precluding purchasers from selectively curtailing fields.

The commission disagrees with comments filed to delete the subsection that allows an operator to request a hearing if he believes he is denied an opportunity to produce ratably. Similarly, the commission disagrees with comments against the subsection allowing the purchaser to file a complaint against a producer failing to reduce production ratably. The hearing process is a way to examine and insure ratability and to protect the rights of all involved. Deletion of this subsection would prevent the commission from fulfilling its statutory responsibility on ratability.

Commenters in favor of the new section were: Kimball Production Company; Phillips Petroleum Company; Panhandle Producers and Royalty Owners Association; Shell Western E & P, Inc.; Texas Independent Producers and Royalty Owners Association; Hydroex, Inc.; Texas Mid-Continent Oil and Gas Association; Permian Basin Petroleum Association; Inland Ocean, Inc.; Amoco Production Company; Exxon Corporation; Sun Exploration and Production Company; Corpus Christi Oil and Gas Company; Mobile Producing Texas and New Mexico, Inc.; Perry Pipeline Company, Inc.; Clayton W. Williams, Jr. and Williams Company; Mesa Limited Partnership; Saxon Oil Company; Pennzoil Producing Company; Conquest Exploration Company; Marshall Exploration, Inc.; Quintana Petroleum Corporation; Texaco, U.S.A.; Shell Oil Company; Chaparro Pipeline Company; Shell Offshore, Inc.; Shell Pipe Line Corporation; Shell Western E & P, Inc.; BTA Producers; Cotton Petroleum Corporation; Dyne Oil and Gas, Inc.; Marshall Exploration, Inc.; Winchester Production Company; Hemus, Inc.; Arco Oil and Gas Company; Pitts Energy Group; U.S. Operating, Inc.; Thomas D. Coffman, Inc.; Claion Gas Company; H. L. Brown, Jr.; Northern Natural Gas Company; Quinoco Petroleum, Inc.; W. R. Edwards, Jr.; Trans-Pan Gathering, Inc.; Midcentral Energy Corporation; Seymour G. Hootkins; R. C. Hagens; Pogo Producing Company; Coastal Oil and Gas Association; West Central Texas Oil and Gas Association; Cities Service Oil and Gas Corporation; Texas Tertiary; Chevron, U.S.A.; East Texas Producers and Royalty Owners Association; American Penn Energy; HECI Exploration Company.

Commenters against the new section were: Sablo Oil and Gas, Inc.; Transcontinental Gas Pipeline Corporation; City of Del Rio, Western Oil Corporation; Western Oil Corporation; Northwest Central Pipeline Corporation; Panhandle Eastern Pipeline Company; Colorado Interstate Gas Company; North Texas Oil and Gas Association; Exxon Gas System, Inc.; Association of Texas Intrastate Pipelines; Mosbacher Energy

Company; Tom Brown, Inc.; Tennasco Corporation; City of Corpus Christi; Tenneco Oil; W. R. Edwards, Jr. and Trans-Pan Gathering, Inc.; Southern Union Gas Company; City of San Antonio City Public Service Board; Trunkline Gas Company; Coquina Oil Corporation; Grey Forest Utilities; Cabot Corporation; WTG Exploration, Inc.; J. L. Davis; Davis Gas Processing, Inc.; Texas Utilities Fuel Company; Neches Gas Distribution Company; Texacc Marketing Company; El Paso Natural Gas Company; Colorado Interstate Gas Company; Wagner and Brown II; Southwestern Gas Pipeline, Inc.; Caliche Pipeline Company; Mowbourne Oil Company; B. W. Wiseman, Jr.; Lone Star Gas Company; Cabot Pipeline Corporation; TransAmerican Gas Transmission Corporation; Westar Transmission Company; Rockland Pipeline System; Southern Union Gas Company; Cabot Gas Processing and Fuel Supply Division; High Plains Natural Gas Company; Ensearch Gas Company; Ensearch Gas Transmission Company; Southwestern Gas Pipeline, Inc.; Union Carbide Corporation; West Texas Utilities Company.

The new section is adopted under the Texas Natural Resources Code §§81.052, 85.202, 86.012, 86.041, 86.042, 111.090, and 111.133, which provides the Railroad Commission of Texas with the authority to adopt sections for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission; to prevent waste of oil and gas in drilling and producing operations; to effectuate the provision and purposes of Chapter 86 of the Texas Natural Resources Code; to conserve and prevent waste of gas; and to regulate common purchasers of oil and gas to achieve the prior purposes.

§3.34. Gas to be Produced and Purchased Ratably. Rule 34.

(a) This section is promulgated to promote and maintain ratable production of natural gas and to require production in compliance with priority categories established by the commission for the purposes of preventing waste, including production in excess of market demand, protecting correlative rights, preventing discrimination and conserving the natural resources of this state. An operator shall not produce in excess of its ratable share of the market demand. An operator shall produce ratably as set out in subsection (b) of this section and shall produce in compliance with subsection (f) of this section which establishes priority categories of natural gas. Because production is dictated by pipeline capacity and market demand, pipelines are an integral part of production regulation. The requirements imposed on pipelines by §§3.28, 3.30, and 3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported, Gas Nominations Required, and Gas Well Allowables) (Statewide Rules 28, 30, and 31) and by this section are enforced to assist in the regulation of production and

are providing the most effective method by which such production regulation can be enforced and market demand met as required by statutory law. A first purchaser shall not discriminate between different wells from which it purchases in the same field, nor shall it discriminate unjustly or unreasonably between separate fields. The provisions of this section requiring ratable production and purchasing of gas apply to purchases and production from wells on a pipeline system as pipeline system is defined in §3.30(a)(4) of this title (relating to Gas Nominations Required) (Statewide Rule 30).

(b) An operator shall produce without discrimination between its wells in the same field on the same pipeline system and without unjust or unreasonable discrimination between its wells in separate fields on the same pipeline system. An operator shall apportion a first purchaser's delivery requests ratably to its wells in each field on the same pipeline system without discrimination in the same manner as provided in subsections (a), and (c)-(f) of this section and shall not produce in excess of market demand or in excess of its ratable share of the market demand. An operator shall produce in compliance with the priority categories of gas production established by the commission in subsection (f) of this section.

(c) In making purchases and accepting deliveries between fields, a first purchaser of natural gas which purchases and accepts delivery of gas from more than one field must accept from each field a consistent percentage of the aggregate deliverability available to that purchaser, unless the purchaser can demonstrate a just and reasonable basis for discriminating between fields.

(d) In making purchases and accepting deliveries within fields, a first purchaser of natural gas which purchases and accepts delivery of gas from different gas wells in the same priority category (see subsection (f) of this section) in the same field shall purchase and accept from the wells from which it purchases in the field a consistent percentage of the maximum allowable that a well is entitled to under the field's allocation formula. Purchases and deliveries of casinghead gas shall be based on the well's gas limit (see §3.49 of this title relating to Gas-Oil Ratio) (Statewide Rule 49) as provided in subsection (e) of this section. Overproduction and underproduction of gas is administered by the provisions of §3.31 of this title (relating to Gas Well Allowables) (Statewide Rule 31). A first purchaser shall not reduce purchases from a limited well (see §3.31(f)(4) of this title (relating to Gas Well Allowables)) until all prorated gas wells from which it purchases in the field connected to that pipeline system are reduced to the assigned allowable of the limited well. Below that point, purchases from all prorated wells and limited wells should be reduced ratably by purchasing and accepting delivery of the same percentage of the maximum allowable established by the field's allocation formula.

When purchases of gas described in subsection (f)(2) or (5) of this section are to be reduced, they shall be reduced ratably within each priority category. If purchases and deliveries from different wells in the same field become nonratable, the first purchaser shall consider commission-assigned underproduction and overproduction in establishing an appropriate pattern of purchases or acceptance of deliveries to restore ratability.

(e) When purchases and deliveries of casinghead gas described in subsection (f)(1) or (3) of this section are to be reduced, each well's share of the reduction shall be calculated by multiplying the total reduction by the fractional share that each well's gas limit bears to the arithmetic sum of the gas limits of all wells in the field. A well operating under net gas/oil ratio authority shall produce no more gas than its gas limit as it would be reduced by the above procedure absent the net gas/oil ratio authority.

(f) First purchasers of gas shall satisfy their pipeline system demand for gas by accepting delivery of gas from the following priority categories in ascending numerical order. Lower priority category gas is gas from a higher numerical category. Effective from October 15, 1986, through February 28, 1987, a first purchaser shall not within a pipeline system curtail first, second, or third priority gas if lower priority category gas is being purchased in the same pipeline system by purchaser or by the purchaser's subsidiary or affiliate who uses the same pipeline system in purchasing the low priority category gas. Effective March 1, 1987, a first purchaser shall not, within a pipeline system, curtail gas from a priority category if the purchaser is purchasing lower priority category gas on the same pipeline system.

(1) First priority shall be given to casinghead gas produced from certified tertiary recovery projects approved by the commission and secondary recovery projects involving water injection, gas injection, or pressure maintenance approved by the commission to prevent waste.

(2) Second priority shall be given to gas from special allowable wells as defined in §3.31(f)(5) of this title (relating to Gas Well Allowables) (Statewide Rule 31) granted special allowable status after the effective date of this section to prevent physical waste. Wells classified as special allowable wells pursuant to notice and hearing prior to the effective date of this section shall be given second priority unless a new determination is made that the special allowable status is not necessary to prevent physical waste.

(3) Third priority shall be given to the remainder of casinghead gas so that gas produced in association with oil production shall not be wastefully vented and oil production shall not be unnecessarily curtailed. Gas recovered from a landfill or sewage process shall also be given third priority.

(4) Fourth priority shall be given to gas from wells classified under §3.49(b) of this title (relating to Gas-Oil Ratio) (State-

wide Rule 49(b)), but only to the extent of one full allowable for multiple 49(b) wells.

(5) Fifth priority shall be given to gas from administrative special allowable wells as defined in §3.31(f)(6) of this title (relating to Gas Well Allowables) (Statewide Rule 31), to gas from special allowable wells (see §3.31 (f)(5) of this title) (relating to Gas Well Allowables) granted that status prior to the effective date of this section (see paragraph (2) of this subsection) without notice and hearing, and to gas from special allowable wells granted that status by the commission subsequent to the effective date of this section after notice and hearing for other reasons than to prevent physical waste.

(6) Sixth priority shall be given to the remainder of gas well gas, including limited wells (see subsection (d) of this section).

(g) A first purchaser of natural gas may not discriminate between or against natural gas of a similar kind or quality in favor of its own production or production in which it may be directly or indirectly interested in whole or in part.

(h) Any operator who is denied by the first purchaser in violation of this section the opportunity to produce a ratable share of gas may file a complaint with the commission and request the commission to direct the first purchaser to end the discriminatory practices. The complainant may request a hearing regarding discriminatory practices.

(i) If an operator fails to comply with a first purchaser's request to ratably reduce production after reasonable notice by the purchaser, the purchaser may file a complaint with the commission and request the commission to direct the operator to comply with the purchaser's requests to ratably reduce production. The complainant may request the commission to take further action, including setting the issue for hearing.

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 August 11, 1986.

TRD-8807862 Mack Wallace
Commissioner
Railroad Commission
of Texas

Effective date: September 1, 1986
Proposal publication date: February 21, 1986
For further information, please call
(512) 463-7149.

Miscellaneous

★ 16 TAC §3.91

The Railroad Commission of Texas adopts the repeal of §3.91, without changes to the proposed text published in the February 21, 1986, issue of the *Texas Register* (11 TexReg 944).

The purpose of the effect of the repeal of this section is to accommodate the adoption of new §3.34. The merits of the new

§3.34 are discussed in the separate adoption preamble for that section.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Natural Resources Code, §§85.202, 111.083, 111.090, and 111.133, which provides the Railroad Commission of Texas with the authority to prevent waste of oil and gas and the authority to prevent, by regulation, discriminatory purchasing of natural gas.

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 August 11, 1986.

TRD-8607863

Mack Wallace
Commissioner
Railroad Commission
of Texas

Effective date: September 1, 1986
Proposal publication date: February 21, 1986
For further information, please call
(512) 463-7149.

★ ★ ★

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste Management in General

★ 31 TAC §§335.1, 335.4, 335.6, 335.8,
335.9, 335.17, 335.22, 335.23

The Texas Water Commission adopts new §§335.2, 335.24, 335.43, 335.45, and 335.221-335.226, amendments to §§335.1, 335.4, 335.6, 335.8, 335.9, 335.17, 335.22, 335.23, 335.41, 335.44, 335.61, 335.112, 335.152, 335.201, and 335.202, and the repeal of §335.222. New §335.24 and §335.221 are adopted with changes to the proposed text published in the July 11, 1986, issue of the *Texas Register* (11 TexReg 3194). The other sections are adopted without changes and will not be republished.

These sections address new requirements relating to the recycling of hazardous waste established by the administrator of the United States Environmental Protection Agency (EPA) on November 29, 1985, (50 FedReg 49164) pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 United States Code §§6901 *et seq.* The new federal rules initiate regulation of hazardous wastes that are marketed and burned for energy

recovery and require all existing marketers and burners who store hazardous waste fuel and who are not currently operating under interim status to file a notification of storage activities with EPA by January 29, 1986, and submit a Part A permit application to EPA by May 29, 1986. Marketers and burners already operating pursuant to interim status but who operate existing hazardous waste fuel storage facilities newly subject to regulation by the November 29, 1985, rules, must also have filed a notification by January 29, 1986, and submit an amended Part A application by May 29, 1986. Because the rules have been promulgated pursuant to the Hazardous and Waste Amendments of 1984 (HSWA), §3004(q), which amended RCRA, they are immediately effective in authorized states.

Section 335.2 concerns permit requirements for the storage, processing, and disposal of industrial solid waste and hazardous waste. Subsection (c) of this section, is amended to specify statutory and regulatory amendments under either the Texas Solid Waste Disposal Act or the federal RCRA that render the facility subject to a permit requirement will trigger the requirements to obtain interim status. The effect of this provision is to allow on-site facilities to obtain interim status based on the enactment of federal as well as state requirements and is useful in those cases where federal action precedes imposition of requirements under state law by a considerable period of time. Specifically, this provision allows facilities covered by the November 29 EPA rulemaking to obtain state interim status (without the need for state rulemaking) if they file a Part A application with the state by May 29, 1986.

Section 335.43 includes the same requirements as proposed in §335.2(c).

Section 335.45(b) provides that facilities in existence on or before the effective date of requirements under RCRA that render a facility subject to a hazardous waste permit requirement may obtain interim status provided they file an application and by the effective date of those requirements. This provision, therefore, operates to allow interim status for facilities newly covered by new federal requirements relating to the recycling of hazardous waste, rather than limiting itself to the initial January 4, 1985, EPA regulation. As the other provisions of §335.2 and §335.43, this subsection specifically allows facilities newly covered by the November 29, 1985, rules to obtain interim status.

Sections 335.24 and 335.221-335.226 are based on the emergency sections adopted by the commission in February, 1986, except that these sections reflect the new requirements relating to hazardous waste burned for energy recovery established by EPA on November 29, 1985.

Section 335.24(c) specifically reflects new exemptions established in 40 Code of Fed-

eral Regulations §261.6(a)(3), relating to fuels derived from petroleum refining waste and coke derived from indigenous petroleum refinery wastes.

Sections 335.24(h) and 335.221-335.226, which establish specific waste management standards, reflect new EPA provisions which remove the conditional exemption from regulation for spent materials and by-products exhibiting a characteristic of hazardous waste; and the exemption for hazardous waste fuels produced from hazardous waste by blending or other treatment by a person who neither generated the waste nor burns the fuel. In addition, these sections establish administrative controls, including notification and record keeping, for those persons who market and burn hazardous waste; prohibit the burning of hazardous waste fuels in nonindustrial boilers; provide that hazardous waste fuels, including processed or blended fuel, are subject to storage requirements; and require the use of a manifest for shipments of hazardous waste fuels.

Section 335.222 is repealed because this provision was substantially modified by the November 29, 1985, rulemaking.

Section 335.221(b)(1) is modified to clarify that used oil regulated by EPA under 40 Code of Federal Regulations Part 266, Subpart E, is also subject to §335.24(g) and that the exception in paragraph (b)(1) would not apply (and therefore used oil would be regulated as a hazardous waste fuel) if such oil were mixed with hazardous waste, or if the used oil is considered by EPA to be a hazardous waste under 40 Code of Federal Regulations §266.40(c). This subsection states that used oil which is mixed with hazardous waste is considered to be a hazardous fuel and also establishes the rebuttable presumption that used oil containing more than 1000 ppm of total halogens is hazardous because it has been mixed with halogenated hazardous waste.

Section 335.61(c) adds paragraph (11) to provide that small quantity generators who mix hazardous wastes with used oil will be subject to the requirements of §335.4 and §335.6, will be regulated by EPA pursuant to 40 Code of Federal Regulations Part 266, Subpart E, if the mixture is to be burned for energy recovery.

One comment was received regarding the proposed sections. The commenter urged a revision to §335.45(b) so that facility owners or operators would not be required to file Part A applications to obtain interim status until the state had made the necessary changes in its rules, rather than require filing based on the effective federal date of federal law. The commenter believed that otherwise, a facility may be required to submit a permit application for operations which could go unregulated. The commission disagrees with the comment. As an authorized state program under the Resource Conservation and Recovery Act

(RCRA), the state program is based on the federal RCRA program. Conformity with the federal program facilitates understanding of, and compliance with, the state program on the part of the regulated community. Moreover, pursuant to 40 Code of Federal Regulations §271.21(e), an authorized state must modify its program within one year (or two years if a statutory change is required) of the date of promulgation of federal program changes. Therefore, the concern of the commenter that the application would not be based on substantive requirements, appears unlikely. Historically, the state has moved quickly to incorporate changes based on the federal program. This rulemaking is an example. It should also be noted that under §335.45(b), changes to both the Texas Solid Waste Disposal Act and Resource Conservation and Recovery Act may trigger a requirement to file a Part A application.

Section 335.112(a)(14) and §335.152(a)(13) provide that the interim status and permitting standards applicable to incinerators shall apply to owners and operators who burn hazardous waste in boilers or industrial furnaces for any recycling purpose and elect to be regulated under these provisions.

The amendments are adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission. The amendments are also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

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 August 11, 1986.

TRD-8607849

James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: September 1, 1986
Proposal publication date: July 11, 1986
For further information, please call
(512) 463-8087.

★ ★ ★

★ 31 TAC §335.2, §335.24

The new sections are adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission. The new sections also are adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§335.24. *Requirements For Recyclable Materials and Nonhazardous Recyclable Materials.*

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d)-(f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) and (i) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and

Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision):

(1) recyclable materials used in a manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities);

(3) used oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under the provisions governing incinerators that are adopted by reference in §335.112(a)(14) of this title (relating to Standards) and §335.152(a)(13) of this title (relating to Standards);

(4) recyclable materials from which precious metals are reclaimed;

(5) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B-I of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, and Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Prohibition on Open Dumps), respectively, or Chapter 305 of this title (relating to Consolidated Permits) or Chapter 261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final

Decision), except as provided in subsections (g) and (h) of this section:

(1) industrial ethyl alcohol that is reclaimed;

(2) used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

(3) used oil that exhibits one or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery;

(4) scrap metal;

(5) fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(6) oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;

(7) coke from the iron and steel industry that contains hazardous waste from the iron and steel production process;

(8) the following hazardous waste fuels:

(A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 Code of Federal Regulations §266.40(e) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining, production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 Code of Federal Regulations §266.40(c);

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 Code of Federal Regulations §266.40(e); and

(9) petroleum coke produced from petroleum refinery hazardous wastes containing oil at the same facility at which such wastes were generated, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 Code of Federal Regulations Part 261, Subpart C.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Sub-

chapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision), and the notification requirement under §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a)-(c) of this section:

(1) notification requirements under §335.6 of this title (relating to Notification Requirements);

(2) section 335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(g) Except as provided in subsection (h) of this section, recyclable materials (excluding those listed in subsections (c)(1) and (5)-(9) of this section), remain subject to the requirements of §335.4 of this title (relating to General Prohibitions), §335.6 of this title (relating to Notification Requirements), §335.9 of this title (relating to Shipping and Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §335.11 of this title (relating to Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste), §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.13 of this title (relating to Record-Keeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §335.14 of this title (relating to Record-Keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste), and §335.15 of this title (relating to Record-Keeping and Reporting Requirements Applicable to Owners or

Operators of Storage, Processing, or Disposal Facilities), as applicable.

(h) Industrial solid wastes that are non-hazardous recyclable materials; and recyclable materials listed in subsection (b)(4) and subsection (c)(2)-(4) of this section remain subject to the requirements of §335.4 of this title (relating to General Prohibitions) and §335.6 of this title (relating to Notification Requirements). Such wastes may also be subject to the requirements of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §335.11 of this title (relating to Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste), §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.13 of this title (relating to Record-Keeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §335.14 of this title (relating to Record-Keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste), and §335.15 of this title (relating to Record-Keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into nonharmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(9) other relevant factors.

(i) Except as provided in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(f)(1), facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recycl-

able materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

- (1) whether managing nonhazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;
- (2) whether hazardous and non-hazardous wastes that are incompatible are stored and/or processed in the same or connected units;
- (3) whether the management of recyclable materials and nonhazardous recyclable materials is segregated within the facility;
- (4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;
- (5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;
- (6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;
- (7) the potential for the objectionable constituent to degrade into nonharmful constituents;
- (8) the degree to which the objectionable constituent bioaccumulates in ecosystems;
- (9) the plausible types of improper management to which the waste could be systems;
- (10) the nature and severity of potential damage to the public health and environment.
- (11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;
- (12) other relevant factors.

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 August 11, 1986.

TRD-8607850 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: September 1, 1986
Proposal publication date: July 11, 1986
For further information, please call
(512) 463-8087.

Subchapter B. Hazardous Waste Management General Provisions

★ 31 TAC §335.41, §335.44

These amendments are adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and

other laws of this state and to establish and approve all general policy of the commission. These amendments are also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

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 August 11, 1986.

TRD-8607851 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: September 1, 1986
Proposal publication date: July 11, 1986
For further information, please call
(512) 463-8087.

★ 31 TAC §335.43, §335.45

These new sections are adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission. These new sections are also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and haz-

ardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

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 August 11, 1986.

TRD-8607852 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: September 1, 1986
Proposal publication date: July 11, 1986
For further information, please call
(512) 463-8087.

Subchapter C. Standards Applicable to Generators of Hazardous Waste

★ 31 TAC §335.61

The amendment is adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission. The amendment is also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

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 August 11, 1986.

TRD-8607853

James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: September 1, 1986

Proposal publication date: July 11, 1986

For further information, please call
(512) 463-8087.

★ ★ ★

Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

★31 TAC §335.112

The amendment is adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission. The amendment is also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

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 August 11, 1986.

TRD-8607854

James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: September 1, 1986

Proposal publication date: July 11, 1986

For further information, please call
(512) 463-8087.

Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

★31 TAC §335.152

The amendment is adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission. The amendment is also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

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 August 11, 1986.

TRD-8607855

James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: September 1, 1986

Proposal publication date: July 11, 1986

For further information, please call
(512) 463-8087.

★ ★ ★

Subchapter G. Location Standards for Hazardous Waste Storage, Processing, or Disposal

★31 TAC §335.201, §335.202

These amendments are adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other

laws of this state and to establish and approve all general policy of the commission. These amendments are also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

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 August 11, 1986.

TRD-8607856

James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: September 1, 1986

Proposal publication date: July 11, 1986

For further information, please call
(512) 463-8087.

★ ★ ★

Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities Hazardous Waste Burned for Energy Recovery

★31 TAC §335.222

The repeal is adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission. The repeal is also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial

solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

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 August 11, 1986.

TRD-8607858

James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: September 1, 1986
Proposal publication date: July 11, 1986
For further information, please call
(512) 463-8067.

★ 31 TAC §§335.221-335.226

The new sections are adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission. The new sections are also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§335.221. Applicability.

(a) The regulations of §§335.221-335.226 of this title (relating to Hazardous Waste Burned for Energy Recovery) apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace that is not regulated under the provisions governing incinerators that are adopted by reference in §335.112(a)(14) of this title (relating to Standards), or §335.152(a)(13) of this title (relating to Standards), except as provided by subsection (b) of this section. Such hazardous wastes burned for energy recovery are termed "hazardous waste fuel." Fuel produced from hazardous waste by processing, blending, or other treatment is also hazardous waste fuel. (Sections 335.221-335.226 of this title (relating to Hazardous Waste Burned for Energy Recovery) do not apply, however, to gas recovered from hazardous waste management activities when such gas is burned for energy recovery.)

(b) The following hazardous wastes are not regulated under §§335.221-335.226 of this title (relating to Hazardous Waste Burned for Energy Recovery):

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 Code of Federal Regulations Part 261, Subpart C. Such used oil is subject to regulation by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 266, Subpart E. This exception does not apply if the used oil has been mixed with hazardous waste, or if the used oil is considered to be a hazardous waste by EPA under 40 Code of Federal Regulations §266.40 (c). Used oil exhibiting a characteristic of hazardous waste, as well as hazardous waste fuels, remain subject to the requirements of §335.24(g) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Material); and

(2) hazardous wastes that are exempt from regulation under the provisions of 40 Code of Federal Regulations §261.4, and §335.24(c)(5)-(9) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Material), and hazardous wastes that are subject to the special requirements for small quantity generators under the provisions of §335.61(c) of this title (relating to Purpose, Scope, and Applicability).

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 August 11, 1986.

TRD-8607857

James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: September 1, 1986
Proposal publication date: July 11, 1986
For further information, please call
(512) 463-8067.

Subchapter J. Hazardous Waste Generation, Facility, and Disposal Fees System

★ 31 TAC §§335.322, 335.324, 335.325, 335.332

The Texas Water Commission adopts amendments to §§335.322, 335.324, 335.325, and 335.332, without changes to the proposed text published in the July 8, 1986, issue of the *Texas Register* (11 TexReg 3147).

The Texas Water Commission is required under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §§11-14, as amended by Senate Bill 249 and House Bill 2359, 69th Legislature, 1985, to establish a hazardous waste generation, facility, and disposal fee program. The fees are to be collected on schedules established for each fee program and deposited, including interest and penalties for late payment, to the appropriate fund in the state treasury.

The result of enforcing these amendments will be enhanced enforcement of the provisions of the Texas Solid Waste Disposal Act and regulations of the Texas Water Commission, protection of the quality of the waters of the state, and remediation of hazardous waste sites posing a threat to human health and the environment, under the provisions of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1990 (Public Law 96-510) and the Texas Solid Waste Disposal Act, as amended by House Bill 2358, 69th Legislature, 1985.

The disposal fee is imposed on the operator of a hazardous waste land disposal facility as defined in the Texas Solid Waste Disposal Act, §12, as amended. This fee is to be assessed quarterly and deposited in the hazardous waste disposal fee fund. This fund is to be used by the commission in supplementing the disposal facility response fund under the Texas Water Code, Chapter 26, Subchapter H; for necessary and appropriate remedial action at sites at which hazardous waste has been disposed; and if additional funds are needed to match federal funds for remedial action.

The Solid Waste Disposal Act, §12(d), requires that the state treasurer certify, after each quarterly assessment of disposal fees, the amount deposited in the disposal fee fund during the current quarter and the cumulative amount collected for the current fiscal year. The Act further requires that the commission monitor the cumulative deposits to the fund and on or before June 1, 1986, estimate the total amount of hazardous waste disposal fees that will be collected during the biennium. If the estimate is less than \$10.75 million, on or before September 1, 1986, the commission, by rule, shall increase the fee assessment rate to an amount the commission feels will cause a cumulative amount of not less than \$10.75 million nor

more than \$12 million to be collected during the 1986-1987 biennium.

The Texas Water Commission adopted §§335.751-335.762 (now §§335.321-335.332), concerning the hazardous waste generation, facility, and disposal fees system, effective October 31, 1985, to implement the hazardous waste fee program. Section 335.325 describes the assessment of disposal fees. The quarterly disposal fee assessment under §335.325(a), currently in effect, is \$4.00 per dry weight ton of hazardous waste disposed in a hazardous waste land disposal facility, except for certain wastes derived from primary metal production which are assessed at 25% of the fee.

Estimates of disposal fee income to Fund 580, based on the amounts collected under the current assessment, indicate that substantially less than the minimum of \$10.75 million will be available to the fund in the 1986-1987 biennium. At the present rate of collection, less than \$6 million is anticipated to be deposited before the end of fiscal year 1987.

The purpose of this amendment is to establish a disposal fee assessment rate which will result in the collection and deposit to the disposal fee fund of the minimum of \$10.75 million required under the Solid Waste Disposal Act, as amended. This amends §335.325 by increasing the current disposal fee from \$4.00 per dry weight ton to \$8.00 per dry weight ton.

The amendment to §335.322 amends the definition of interim status to refer to the status of any person who owns or operates a facility required to have a permit under Chapter 335 and who is required to submit an application for permit pursuant to §335.2(c) or §335.43(b). Actual submission of an application to the commission or its predecessor agency would no longer be a requirement. The amendment embodies the agency's current policy of assessing the facility fee under §335.324 against all facilities subject to the requirement to obtain a hazardous waste permit. The alternative approach, which would eliminate the assessment for those who had not complied with the law by filing an application, is unfair and inconsistent with the discerned legislative intent to assess fees on all facilities within the hazardous waste permitting program. It should be noted that this definition is intended for purposes of Subchapter J only to avoid the undesirable result that similarly situated facilities would be treated differently under the fees program, depending upon whether they had fully complied with application filing requirements.

The amendment to §335.324 revises subsection (d) to refer to hazardous waste management units which are authorized or subject to authorization, rather than authorized hazardous waste management units. This change more clearly describes the legal status of facilities subject to the fee assessment pursuant to subsection

(a). The amendment to §335.332 is to accurately cite §335.756 as §335.326.

This increase will result in the collection of fees in an amount consistent with the estimates of fiscal impact described in the hazardous waste fee section adopted in October, 1985.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, as amended by Senate Bill 249 and House Bill 2359, 69th Legislature, §§11-14, which provides the Texas Water Commission with the authority to adopt a hazardous waste generation, facility, and disposal fee system establish a fund to supplement appropriate remedial and corrective action at sites at which hazardous wastes have been disposed.

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 August 11, 1986.

TRD-8607859

James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: September 1, 1986
Proposal publication date: July 8, 1986
For further information, please call
(512) 463-8067.

★ ★ ★

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Personnel and Employment Policies

★ 37 TAC §1.32

The Texas Department of Public Safety adopts an amendment to §1.32, without changes to the proposed text published in the July 8, 1986, issue of the *Texas Register* (11 TexReg 3150).

The amendment broadens the pool of applicants for the position of trooper utilizing military or law enforcement experience in lieu of required college hours and ensures the citizens of the State of Texas that persons who served in the military service conducted themselves properly and received a discharge under honorable conditions are eligible for consideration for the position of trooper with the Department of Public Safety.

The amendment allows substitution of the required 60 semester hours of college by either military experience or law enforcement officer experience or a combi-

nation of college hours, military, and law enforcement experience. This was previously handled by waiver of required college hours and substitution of aforementioned experience. The amendment clarifies the requirement of possessing a valid Texas driver's license. The military service discharges that can be accepted, considered, or rejected in the application requirements for employment as a trooper are clarified.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4413(4), which provide the Public Safety Commission with the authority to establish grades and positions for the department and set standards of qualifications for each such grade and position so established.

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 August 11, 1986.

TRD-8607897

James B. Adams
Director
Texas Department of
Public Safety

Effective date: September 2, 1986
Proposal publication date: July 8, 1986
For further information, please call
(512) 465-2000.

★ ★ ★

Chapter 21. Equipment and Vehicle Standards

Equipment and Vehicle Standards

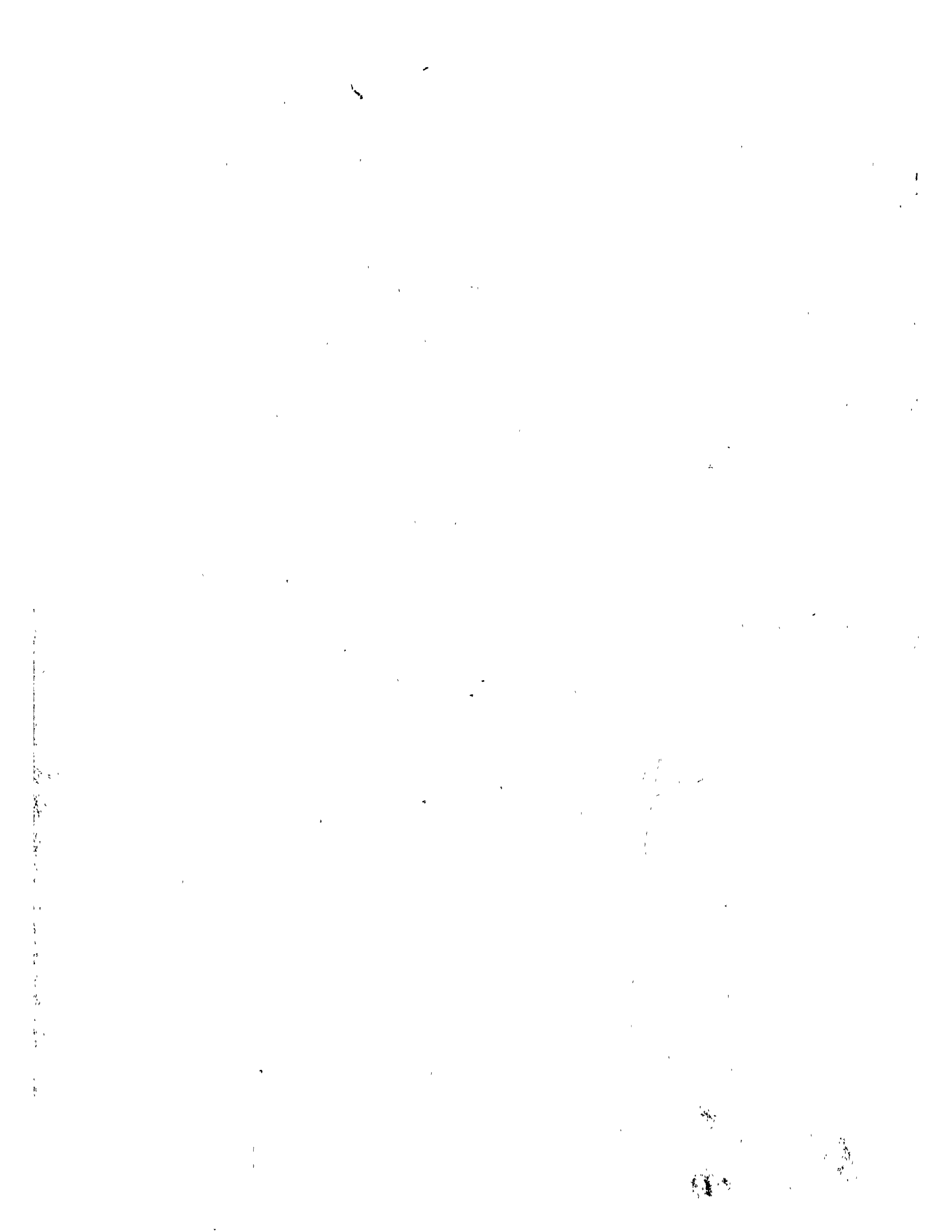
★ 37 TAC §21.6

The Texas Department of Public Safety adopts new §21.6, without changes to the proposed text published in the July 8, 1986, issue of the *Texas Register* (11 TexReg 3150).

The new section ensures establishment of a uniform criteria for enforcement of the weight regulations as they relate to commercial transportation.

The new section establishes minimum standards for scales not furnished by the Texas Department of Public Safety and used for law enforcement purposes. The interpretation of Texas Civil Statutes, Article 6701d-11, §6(1), indicates scales may not be used for law enforcement purposes by officers other than DPS unless first approved by the Department of Public Safety. This new section promulgates the minimum standards for semiportable, fixed scale models, and portable wheel weigher models, the approval procedures, list of approved scales, and procedures for cancellation or suspension of approval.

No comments were received regarding adoption of the new section.



The new section is adopted under Texas Civil Statutes, Article 6701d-11, §6, which provide the Texas Department of Public Safety with the authority to approve portable and stationary scales to be used by any law enforcement officer, authorized by Texas Civil Statutes, Article 6701d-11, §6, to weigh motor vehicles, when such officers have reason to believe that the gross weight or axle weight of a loaded motor vehicle is not in compliance with the applicable 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 August 11, 1986.

TRD-8607898

James B. Adams
Director
Texas Department of
Public Safety

Effective date: August 23, 1986
Proposal publication date: July 8, 1986
For further information, please call
(512) 465-2000.

**TITLE 40. SOCIAL
SERVICES AND
ASSISTANCE**
**Part VI. Texas Commission
for the Deaf**
**Chapter 181. General Rules of
Practice and Procedures
Operations**

★ 40 TAC §181.21

The Texas Commission for the Deaf adopts the repeal of §181.21, without changes to the proposed text published in the May 6, 1986, issue of the *Texas Register* (11 Tex-Reg 2088).

The repeal is necessary to conform the commission's sections with a recent amendment to the Texas Human Resources Code, §81.010, which abolished the technical advisory council. Therefore, the commission is no longer empowered to conduct the technical advisory council for planning and operations.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §81.008(b)(3), which provides the commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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 August 5, 1986.

TRD-8607901

Larry D. Evans
Executive Director
Texas Commission for
the Deaf

Effective date: September 2, 1986
Proposal publication date: May 6, 1986
For further information, please call
(512) 469-8891.

★ ★ ★

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 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 *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Aeronautics Commission

Tuesday, August 26, 1986, 11:30 a.m. The Texas Aeronautics Commission will meet at Louie B's Restaurant, 601 East Sixth Street, Austin. According to the agenda summary, the commission will have lunch and may discuss items on the commission meeting agenda scheduled for August 26, 1986, at 1:30 p.m. This function is primarily a social event and no formal action is planned.

Contact: Lydia Scarborough, P.O. Box 12607, Austin, Texas 78711, (512) 476-9262.

Filed: August 14, 1986, 8:43 a.m.
TRD-8607943

Tuesday, August 26, 1986, 1:30 p.m. The Texas Aeronautics Commission will meet in Room 221, Anson Jones Building, 410 East Fifth Street, Austin. According to the agenda summary, the commission will consider the Aviation Facilities Development Program and the director's report.

Contact: Lydia Scarborough, P.O. Box 12607, Austin, Texas 78711, (512) 476-9262.

Filed: August 14, 1986, 8:43 a.m.
TRD-8607942

★ ★ ★

Texas Department of Agriculture

Tuesday, September 9, 1986, 10 a.m. The Texas Department of Agriculture will meet in the district office, 2935 Westhollow Drive, Houston. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §76.116(a)(1), by Brad Schulz, doing business as Vegetation Management, Inc., holder of a commercial applicator license.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 13, 1986, 2:01 p.m.
TRD-8607930

Tuesday, September 9, 1986, 10:15 a.m. The Texas Department of Agriculture will meet in the district office, 2935 Westhollow Drive, Houston. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §76.116(a)(1), by Melvin Cross, doing business as Vegetation Management, Inc., holder of a commercial applicator license.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 13, 1986, 2:01 p.m.
TRD-8607931

Thursday, September 11, 1986, 10 a.m. The Texas Department of Agriculture will meet in the district office, 4502 Englewood Avenue, Lubbock. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §76.116(a)(2), by Lee Everitt, doing business as Everitt Flying Service, holder of commercial applicator license.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: August 13, 1986, 2:01 p.m.
TRD-8607932

★ ★ ★

Texas Alcoholic Beverage Commission

Monday, August 25, 1986, 1:30 p.m. The Texas Alcoholic Beverage Commission will meet in the hearing room, third floor, 1600 West 38th Street, Austin. According to the agenda, the commission will approve the minutes of the June 2, 1986, meeting; the administrator's and staffs' report of agency activity; and approve affidavits of destruction of tested alcoholic beverages.

Contact: W. S. McBeath, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: August 12, 1986, 10:45 a.m.
TRD-8607893

★ ★ ★

Texas Corn Producers Board

Thursday, August 21, 1986, 9 a.m. The Texas Corn Producers Board of the Texas Department of Agriculture will meet in the Corn Board Office, 218 East Bedford, Dimmitt. According to the agenda, the board will discuss the financial statement; Azodrin; and the grit plant.

Contact: Carl King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: August 13, 1986, 1:22 p.m.
TRD-8607927

★ ★ ★

Texas School for the Deaf

Friday, August 22, 1986, 9:30 a.m. The Governing Board Policy Subcommittee of the Texas School for the Deaf will meet in the Administration Conference Room, Texas School for the Deaf, 1102 South Congress Avenue, Austin. Items on the agenda include the review of policies in Section B—School Governance; Section D—School Personnel; and Section E—School Instruction.

Contact: Susan R. Nixon, 1102 South Congress Avenue, Austin, Texas 78704, (512) 440-5335.

Filed: August 12, 1986, 12:39 p.m.
TRD-8607895

Friday, August 22, 1986, 1 p.m. The Governing Board of the Texas School for the Deaf will meet in the boardroom, Texas School for the Deaf, 1102 South Congress Avenue, Austin. According to the agenda summary, the board will approve the minutes from audience wishing to make a report or comment;

consider business requiring board action; consider business for information purposes; and comments from the board members.

Contact: Susan R. Nixon, 1102 South Congress Avenue, Austin, Texas 78704, (512) 440-5335.

Filed: August 12, 1986, 12:39 p.m.
TRD-8607896

★ ★ ★

Texas State Board of Dental Examiners

Wednesday and Thursday, August 20 and 21, 1986, 5 p.m. daily. The Texas State Board of Dental Examiners will meet in the board meeting room, University of Texas Health Science Center, 7703 Floyd Curl Drive, San Antonio. Items on the agenda include the discussion of upcoming meetings; the discussion of the 1987 fiscal year budget; and the appointment to the Texas Dental Association's Peer Assistance Committee.

Contact: William S. Nail, Suite 503, 411 West 13th Street, Austin, Texas 78701, (512) 463-5536.

Filed: August 12, 1986, 3:27 p.m.
TRD-8607902

★ ★ ★

Governor's Commission on Physical Fitness

Wednesday, August 13, 1986, noon. The Executive Committee of the Board of Directors of the Governor's Commission on Physical Fitness met in emergency session in the Headliner's Club, American Bank Tower, 421 Sixth Street, Austin. According to the agenda summary, the committee reviewed the special session legislative action; considered the transfer of the Texas Youth Fitness Awards Program; and considered what action should be taken for the disposition of foundation gifts. The emergency status was necessary because the special legislature is discussing zero funding of the agency.

Contact: Donald Haydon, 7703 North Lamar Boulevard, Suite 508, Austin, Texas 78752, (512) 467-7141.

Filed: August 13, 1986, 9:04 a.m.
TRD-8607919

★ ★ ★

Texas Department of Human Services

Friday, August 22, 1986, 9 a.m. The EPSDT Dental Professional Advisory and Review

Committee of the Texas Department of Human Services will meet in Room 1-W, West Tower, 701 West 51st Street, Austin. According to the agenda summary, the committee will consider old business concerning reorganization of the advisory committee, the dental utilization review, and the NHIC provider payment policy; and new business, including program changes, orthodontic services, the fiscal year 1986 program utilization expenditures report, 3430 approvals, the pilot project report, and the schedule for the October meeting. The committee also will meet in executive session to discuss dental utilization review findings.

Contact: Bridget Cook, P.O. Box 2960, Austin, Texas 78769, (512) 450-4127.

Filed: August 13, 1986, 1:05 p.m.
TRD-8607926

★ ★ ★

Texas Industrial Accident Board

Monday, August 18, 1986, 9:30 a.m. The Texas Industrial Accident Board met in Room 107, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the board discussed Executive Order MW-39. The board also met in executive session pursuant to the workers' compensation statute to review board files.

Contact: William Treacy, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: August 13, 1986, 4:02 p.m.
TRD-8607938

Monday, August 18, 1986, 9:30 a.m. The Texas Industrial Accident Board made a revision to the agenda for a meeting held in Room 107, Bevington A. Reed Building, 200 East Riverside Drive, Austin. The revision concerned related budget items.

Contact: William Treacy, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: August 14, 1986, 9:54 a.m.
TRD-8607948

★ ★ ★

Texas Department of Labor and Standards

Friday, August 22, 1986, 10:30 a.m. The Vehicle Storage Advisory Board Committee of the Texas Department of Labor and Standards will meet in the basement conference room, G. J. Sutton Building, 321 Center Street, San Antonio. According to the agenda, the committee will consider the rules and regulations final discussion; the regional concept; enforcement; and an update.

Contact: Orlando S. Mata, 920 Colorado Street, 10th Floor, Austin, Texas 78711, (512) 463-3128.

Filed: August 14, 1986, 9:56 a.m.
TRD-8607949

★ ★ ★

Texas State Board of Medical Examiners

Thursday-Saturday, August 21-23, 1986, 8 a.m. daily. The Texas State Board of Medical Examiners will meet at 1101 Camino La Costa, Austin. According to the agenda, the board will approve orders, sanctions, duplicates, budget, and programs; conduct hearings of fee and registration rules; appearances and decisions on licensure, special requests, probationers, and proposals for decisions; the director's report; committee meetings and reports; discuss discipline, JM-512 and 454, statute changes, bills, rules on drugs, standing orders, sanction, and licensure; and the picture. The board also will meet in executive session under the authority of Texas Civil Statutes, Article 6252-17, as related to Article 4495b, §§2.07, 3.05(d), 4.05(d), 5.06(e)(1), and Attorney General Opinion H-484, 1974.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 12, 1986, 4:13 p.m.
TRD-8607905

★ ★ ★

Public Utility Commission of Texas

Thursday, August 21, 1986, 9 a.m. The Administrative Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will approve minutes of the July 24, 1986, meeting; discuss reports; discuss and act on budget and fiscal matters; the proposed commission comments on the General Services Administration's proposed rule regarding federal procurement of utility services; the staff report on the proposed notice of inquiry on the extended area service rule; and set the time and place for the next meeting. The division also will meet in executive session to consider personnel matters and litigation matters.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 13, 1986, 3:18 p.m.
TRD-8607934



Office of the Secretary of State

Tuesday, September 9, 1986, 10 a.m. The Election Advisory Committee of the Office of the Secretary of State will meet in Room 202, State Bar Building, 1414 Colorado Street, Austin. Items on the agenda include the overview of the secretary of state election night returns, including the features of the system and introduction of key staff, and services offered to the media; the coordination with county officials; the approval of the operations manual; set the date for the next meeting; and hold and election for election night observers.

Contact: Jessica Lazarus, 201 East 14th Street, Austin, Texas 78711, (512) 463-5609.

Filed: August 12, 1986, 11:29 a.m.
TRD-8607894

★ ★ ★

Texas Surplus Property Agency

Friday, August 22, 1986, 9:30 a.m. The Governing Board of the Texas Surplus Property Agency will meet in the administration office, Texas Surplus Property Agency, 2103 Ackerman Road, San Antonio. According to the agenda, the board will approve minutes of the last board meeting, consider the fiscal year 1987 budget, and fiscal years 1988 and 1989 biennial budget.

Contact: Marvin J. Titzman, P.O. Box 8120, San Antonio, Texas 78208, (512) 661-2381.

Filed: August 12, 1986, 1:51 p.m.
TRD-8607900

★ ★ ★

Teacher Retirement System of Texas

Tuesday, September 9, 1986, noon. The Medical Board of the Teacher Retirement System of Texas will meet in the boardroom, fourth floor, 1001 Trinity Street, Austin. According to the agenda, the board will discuss the members' files that are due a re-examination report.

Contact: Don Cadenhead, 1001 Trinity Street, Austin, Texas 78701, (512) 397-6400.

Filed: August 13, 1986, 2:01 p.m.
TRD-8607929

★ ★ ★

University of Texas System

Friday, August 22, 1986, 1:30 p.m. The Intercollegiate Athletics Council for Men of the University of Texas at Austin will meet on

the ninth floor, Belmont Hall, San Jacinto Street between 21st and 23rd Streets. According to the agenda summary, the council will approve the minutes of the June 30, 1986, meeting; the team schedules and changes; budgets and budget changes; approve the awards and awards policies; consider personnel matters; old business; tickets and ticket policies; construction; and new business.

Contact: Haila Kauffman, P.O. Box 7399, Austin, Texas 78713, (512) 471-1332.

Filed: August 12, 1986, 4:42 p.m.
TRD-8607914

★ ★ ★

Texas Water Commission

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Days, times, and agendas follow.

Tuesday, September 2, 1986, 2 p.m. The commission will consider administrative penalties on Torque Petroleum Company (Solid Waste Registration 34323); application by G. McKinney, doing business as McKinney and Moore, Inc., for Proposed Permit 13137-01 to discharge treated domestic wastewater, Neches River Basin in Smith County; and application by Durwood B. Greene (RE-0217) for approval of as-built plans for construction of channel modifications and bank stabilization on San Marcos River, Caldwell and Guadalupe Counties, and complaint filed by A. Leon Thompson, Jr., doing business as Thompson Properties, against the City of Bruceville-Eddy (Docket 7009D).

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 12, 1986, 4:05 p.m.
TRD-8607906

Tuesday, September 2, 1986, 3 p.m. The commission will consider the adoption of the 1987 operating budget for the Texas Water Commission.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 13, 1986, 4:04 p.m.
TRD-8607939

Wednesday, September 3, 1986, 10 a.m. The commission will consider administrative penalties for the City of Mount Pleasant (Permit 10575-03).

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 12, 1986, 4:05 p.m.
TRD-8607908

Wednesday, September 3, 1986, 2 p.m. The commission will consider administrative pen-

alties of Marathon Le Tourneau Company (Solid Waste Registration 30062); and Rohm and Haas, Texas, Inc., (Solid Waste Registration 30041).

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 12, 1986, 4:05 p.m.
TRD-8607909

Tuesday, September 9, 1986, 2 p.m. The commission will consider administrative penalties of Dixie Metals Company (Solid Waste Registration 30136); Mobile Oil Corporation (Solid Waste Registration 30587); the application by Huffmeister 157 LTD for Proposed Permit 13237-01 to authorize the discharge of treated domestic wastewater effluent from the proposed Harris County MUD No. 289 wastewater treatment plant; and the application by Steve Neusse and Michael Hammond for and amendment to Permit 12723-01, Tarrant County, Trinity River Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 12, 1986, 4:05 p.m.
TRD-8607910

Monday, September 15, 1986, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet in Room 1149-A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider Docket 7022-R—application for a rate increase filed by Western Hills Water System, Inc.

Contact: Duncan C. Norton, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 13, 1986, 4:05 p.m.
TRD-8607940

Tuesday, September 16, 1986, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet in Room 1028, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the office will consider Docket 6353—inquiry of the executive director of the Texas Water Commission into the overcollection of charges by Plains Utility Company.

Contact: Steve Dickman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 12, 1986, 4:05 p.m.
TRD-8607911

Tuesday, September 16, 1986, 3 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider the petition for creation of Grand Mission Municipal Utility District No. 1, containing 484.4145 acres of land.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 12, 1986, 4:04 p.m.
TRD-8607912

Wednesday, September 17, 1986, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider the application by the City of La Grulla for a Proposed Permit 13187-01 to authorize disposal by irrigation of treated domestic wastewater, Starr County, Rio Grande Basin; Docket 6714—inquiry into the service rendered and the rates charged by J & R Water Supply, Inc.; and the application by Ray Moore for a Proposed Permit 13197-01 to authorize a discharge of treated domestic wastewater by pipeline into the San Gabriel River, Brazos River Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 12, 1986, 4:06 p.m.
TRD-8607913

Wednesday, October 1, 1986, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet in Room 215, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the office will consider Docket 7034-R—application for a rate increase filed by Hill Country Waterworks Company.

Contact: Charmaine Rhodes, P.O. Box 3087, Austin, Texas 78711, (512) 463-7875.

Filed: August 13, 1986, 4:05 p.m.
TRD-8607941

★ ★ ★

Texas Water Development Board

Thursday, August 21, 1986, 1:30 p.m. The Texas Water Development Board will meet in the Camilia Room, Houstonian Hotel, 111 North Post Oak Lane, Houston. According to the agenda summary, the board will consider the minutes of the emergency meeting of July 23, 1986, and the regular meeting of July 24, 1986; the development fund manager's report; the Red River Authority (City of Blossom) extension of loan commitment; financial assistance, Brazosport Water Authority in the amount of \$5,000,000; the City of Laredo, financial assistance in the amount of \$5,000,000; Crosby MUD, financial assistance in the amount of \$700,000; Crockett County WD&ID, financial assistance in the amount of \$785,000; the project priority list; the grant increase from New Caney MUD in the amount of \$184,276; the funding agreement between TWDB and USGS; the joint funding revision mapping program with USGS; the contract with the Department of Health; cooperative agreements for bays and estuaries studies; the application for the loan of \$100,000 by Comal Guadalupe Soil and Water Conservation District 6 ap-

plication for grant of \$56,985 from the City of Dripping Springs; the operating agreement with the Texas Water Commission; an agreement relating to bays and estuary studies to be signed by the chairman, on behalf of the board, with the Texas Parks and Wildlife Department and the Texas Water Commission; and an application from High Plains Underground Water Conservation District 1 for a loan in the amount of \$1,000,000.

Contact: Charles E. Nemir, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: August 13, 1986, 9:21 a.m.
TRD-8607920

★ ★ ★

Regional Agencies Meeting Filed August 11

The Texas Regional Planning Commission's Employee Benefit Plan Agency, Board of Trustees, met at 508 West 12th Street, Austin, on August 14, 1986, at 10 a.m. Information may be obtained from Pam K. Weatherby, (915) 563-1061.
TRD-8607809

★ ★ ★

Meetings Filed August 12

The Brazos Valley Development Council, Executive Committee, will meet at 3006 East 29th Street, Bryan, on August 21, 1986, at 1 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77801, (409) 776-2277.

The Central Counties for Mental Health and Mental Retardation Services, Board of Trustees, will meet at the Cameron Chamber of Commerce, 102 East First Street, Cameron, on August 19, 1986, at 7:45 p.m. Information may be obtained from Steven B. Schnee, P.O. Box 518, Temple, Texas 76503, (817) 778-4841.

The Dallas Area Rapid Transit, Search Committee, met in emergency session at 601 Pacific Avenue, Dallas, on August 12, 1986, at 3:45 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Education Service Center Region XIV, Board of Directors, will meet at 1850 State Highway 351, Abilene, on August 21, 1986, at 5:30 p.m. Information may be obtained from Taressa Huey, Route 1, P.O. Box 70-A, Abilene, Texas 79601, (915) 676-8201.

The Harris County Appraisal District, Board of Directors, will meet on the eighth floor, 2800 North Loop West, Houston, on August

20, 1986, at 1:30 p.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-5203.

The Lavaca County Central Appraisal District, Appraisal Review Board, will meet at 113 North Main, Hallettsville, on August 22, 1986, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Trinity River Authority of Texas, Utility Services Committee, met at 5300 South Collins, Arlington, on August 18, 1986, at 10 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.

TRD-8607892

★ ★ ★

Meetings Filed August 13

The Cherokee County Appraisal District, Board of Directors, will meet at 107 East Sixth Street, Rusk, on August 21, 1986, at 2:30 p.m. Information may be obtained from S. R. Danner, P.O. Box 494, Rusk, Texas 77585, (214) 683-2296.

The Denton County Appraisal District, Board of Directors, will meet at 3911 Morse, Denton, on August 21, 1986, at noon. Information may be obtained from John D. Brown, 3911 Morse, Denton, Texas 76205, (817) 566-0904.

The Education Service Center Region VI, Board of Directors, will meet at the Hilton Inn, College Station, on August 21, 1986, at 5 p.m. Information may be obtained from M. W. Schlotter, 3332 Montgomery Road, Huntsville, Texas 77840, (409) 295-9161.

The Education Service Center Region XII, Administrative—Board of Directors, will meet at 401 Franklin Avenue, Waco, on August 21, 1986, at 2:30 p.m. Information may be obtained from Weldon Mills, P.O. Box 1249, Waco, Texas 76703.

The Education Service Center Region XV, Board of Directors, will meet at 612 South Irene Street, San Angelo, on August 21, 1986, at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6517.

The Guadalupe-Blanco River Authority, Board of Directors, will meet at 933 East Court Street, Sequin, on August 21-22, 1986, at 10 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Sequin, Texas 78156-0271, (512) 379-5822.

The Houston-Galveston Area Council, Project Review Committee, and Board of Directors, will meet in the fourth floor conference

room, 3555 Timmons, Houston, on August 19, 1986, at 8:30 a.m. and 9:30 a.m., respectively. Information may be obtained from Aquina Janice, 3555 Timmons, Houston, Texas 77027, (713) 627-3200, ext. 555.

The Liberty County Central Appraisal District, Board of Directors, will meet at 1820 Sam Houston, Liberty, on August 27, 1986, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 712, Liberty, Texas 77575, (409) 336-6771.

The Limestone County Appraisal District, Board of Directors, will meet at the Limestone County Courthouse, Groesbeck, on August 20, 1986, at 5 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009.

The Lower Neches Valley Authority, Board of Directors, will meet at 7850 Eastex Freeway, Beaumont, on August 19, 1986, at 10:30 a.m. Information may be obtained from J. D. Nixon, P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011.

The Texas Municipal Power Agency, Board of Directors, met in the boardroom, Fifth Floor, RepublicBank Tower, 700 West Avenue A, Garland, on August 18, 1986, at 7:30 p.m. Information may be obtained from Wanda Callahan, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013.

The North Texas Municipal Water District, Board of Directors, will meet at 202 East Brown Street, Wylie, on August 28, 1986, at 4 p.m. Information may be obtained from Carl W. Riehn, Drawer C, Wylie, Texas 75098, (214) 442-5405.

The Palo Pinto Appraisal District, Board of Directors—Budget Hearing, and Board of Directors, will meet at the Palo Pinto County Courthouse, Palo Pinto, on August 20, 1986, at 1:30 p.m. and 3 p.m., respectively. Information may be obtained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-3651, ext. 223.

The Rusk County Appraisal District, Appraisal Review Board, will meet at 107 North Van Buren, Henderson, on August 26, 1986, at 2 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653, (214) 657-9697.

The San Antonio River Authority, Board of Directors, will meet at the Leonard H. Von Dohlen Conference Room of the swimming pool at Goliad State Historical Park, Goliad, on August 20, 1986, at 2 p.m. The Board of Trustees, Employment Retirement Trust Fund, will meet at the same location, on the same date, at 3:30 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, San Antonio, Texas 78204, (512) 227-1373.

The Swisher County Appraisal District, Board of Directors, will meet at 130 North Armstrong, Tulia, on August 21, 1986, at 8 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118.

TRD-8607917



Meetings Filed August 14

The Dallas Area Rapid Transit, Search Committee, met in emergency session at 601 Pacific Avenue, Dallas, on August 15, 1986, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Education Service Center Region III, Board of Directors, met for revised agenda at the Holiday Inn Restaurant, Houston Highway, Victoria, on August 18, 1986, at 11:30 a.m. Information may be obtained from Dr. Dennis Grizzle, 1905 Leary Lane, Victoria, Texas 77901, (512) 575-1471.

The Education Service Center Region X, Board of Directors, will meet at the Prestonwood Country Club, 15909 Preston Road, Dallas, on August 20, 1986, at 1:15 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley, Richardson, Texas 75083, (214) 231-6301.

The Jack County Appraisal District, Board of Directors, will meet at Los Creek Office Building, 216-D South Main, Jacksboro, on August 19, 1986, at 6 p.m. and 7 p.m. Information may be obtained from Doris G. Ray or Linda Williams, P.O. Box 850, Jacksboro, Texas 76056, (817) 567-6301.

The Trinity River Authority of Texas, Legal Committee, met for emergency revised agenda at 5300 South Collins, Arlington, on August 15, 1986, at 10:30 p.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.

TRD-8607944

In Addition

The *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.

State Banking Board Notice of Hearing

The hearing officer of the State Banking Board will conduct a hearing on Tuesday, September 23, 1986, at 9:00 a.m., at 2601 North Lamar Boulevard, Austin, on the charter application for Aubrey State Bank, Aubrey, Denton County.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Banking Department of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on August 12, 1986.

TRD-8607918 William F. Aldridge
Director of Corporate Activities
Banking Department of Texas

Filed: August 13, 1986

For further information, please call (512) 479-1200.

★ ★ ★

The hearing officer of the State Banking Board will conduct a hearing on Monday, September 15, 1986, at 9 a.m., at 2601 North Lamar Boulevard, Austin, on the change of domicile application for The Bank of Van Zandt, Canton.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Banking Department of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on August 8, 1986.

TRD-8607843 William F. Aldridge
Director of Corporate Activities
Banking Department of Texas

Filed: August 11, 1986

For further information, please call (512) 479-1200.

★ ★ ★

Texas Department of Community Affairs

Announcement of Contract Awards

The Texas Department of Community Affairs announces that the units of local government listed as follows have each been selected as a contract recipient for planning/capacity building under the Texas Community Development program established pursuant to Texas Civil Statutes, Article 4413 (201), §4(A) for the second semi-competition of 1985.

The proposed amount of funding for each contract is indicated. A contract is not effective until executed by the unit of general local government and the executive director of the Texas Department of Community Affairs.

Dallas County—\$9,550; Bayside—\$17,250; Del Rio—\$15,000; Lytle—\$24,600; Big Spring—\$13,325; Goodlow—\$10,750; Domino—\$7,000; Starr County—\$10,000; Rhome—\$13,900; Melvin—\$15,250; Post—\$20,300; Montgomery County—\$19,200; Thrall—\$15,000; Dawson—\$16,100; Cleveland—\$9,300; Runge—\$12,700; Royse City—\$15,000; Columbus—\$22,400; Total amount—\$226,625.

Issued in Austin, Texas, on August 12, 1986.

TRD-8607904 Douglas C. Brown
General Counsel
Texas Department of Community Affairs

Filed: August 12, 1986

For further information, please call (512) 834-8080.

★ ★ ★

Texas Department of Corrections Request for Proposal

The Texas Department of Corrections (the department) invites interested persons, partnerships, joint ventures, or corporations to submit proposals regarding entering into a contract with the department to develop, construct, operate, and manage up to four 500-bed prerelease centers within the State of Texas (the facilities). The contracting party will be expected to provide for or arrange for the site selection, site acquisition, facility design, permitting, financing, and construction of all such facilities. Each facility will be approved by the department in complete detail.

Sealed proposals shall be submitted in writing to the department at or before 2 p.m., on September 26, 1986, addressed to Alfred D. Hughes, Chairman, Texas Department of Corrections, 515 Congress Avenue, Suite 1800, Austin, Texas 78701.

A copy of the request for proposal may be obtained by contacting J. A. Lynaugh, Deputy Director for Finance, Texas Department of Corrections, P.O. Box 99, Huntsville, Texas 77340, (409) 294-2101.

Upon review of all proposals submitted pursuant to this request for proposal, the department will select the best and most qualified party with whom to negotiate a final definitive contract. Such determination will be solely at the discretion of the department. Once submitted, the proposals may not be withdrawn or modified in any respect. It is anticipated that the department will notify such party of its selection by November 12, 1986. The department reserves the right to reject any or all proposals. The department assumes no responsibility for any costs by any entity submitting a response to this request for proposal, nor does submission of any proposal bind the department to select or enter into negotiations with any proposed contractor.

Issued in Huntsville, Texas, on August 6, 1986.

TRD-8007828

James L. Hall
Assistant General Counsel
Texas Department of Corrections

Filed: August 11, 1986

For further information, please call (409)294-2705.

★ ★ ★

Texas Department of Human Services Amended Contract Award

In the September 13, 1985, issue of the *Texas Register* (10 *TexReg* 3524) the Texas Department of Human Services (DHS) announced the award of a consultant contract to Sperry Corporation for computer support. This notice is to correct the ending date specified in the original notice of award, and to advise of the amount of funding for the second year of the contract.

The ending date of the contract is August 31, 1989. The amount allocated for the contract for fiscal year 1987 is \$538,514.

Issued in Austin, Texas, on August 13, 1986.

TRD-8007915

Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: August 13, 1986

For further information, please call (512) 450-3766.

★ ★ ★

Request for Proposal

Description of Services. The Texas Department of Human Services (TDHS) and the Texas Department of Mental Health and Mental Retardation (TDMHMR) are announcing the availability of funds for the establishment of a Texas ICF/MR (intermediate care facility for the mentally retarded) management training program. Major program objectives include: access to state-of-the-art expertise regarding client habilitation; ICF/MR standards compliance; effective staff management/training practices, increased knowledge of Medicaid (Title XIX) and state regulations related to cost accounting; and functions of the administrator and qualified mental retardation professional (QMRP) in an ICF/MR.

Professionals or organizations interested in submitting proposals should be representative of both public and private residential service provisions and have extensive expertise regarding effective management and programmatic implementation in facilities serving persons who are mentally retarded. They should also exhibit up-to-date knowledge regarding all ICF/MR standards and regulations, and be able to exhibit, or provide access to, state-of-the-art expertise in both management and programmatic areas related to ICF/MR.

Contract amount and effective date. A maximum of \$80,000 will be awarded for this contract for the fiscal year September 1, 1986-August 31, 1987.

Contact person. Contact person is Ms. Darlene Kimbley, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, (512) 465-4639, or Ms. Connie Henderson, Texas Department of Human Services, P.O. Box 2960, mail code 543-W,

Austin, Texas 78769, (512) 450-3169. Questions concerning the Request for Proposals must be submitted in writing to TDMHMR by 5:00 p.m., September 15, 1986.

Selection criteria. An ICF/MR management training program oversight committee comprised of other state agencies, private organizations, and advocacy representatives involved in the ICF/MR program, will evaluate the proposals on the basis of: program design; accessibility to state-of-the-art expertise; organization; knowledge and experience related to ICF/MR programming; and cost effectiveness.

Closing date. The last day to receive proposals is 5 p.m., September 30, 1986.

Issued in Austin, Texas, on August 13, 1986.

TRD-8007916

Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: August 13, 1986

For further information, please call (512) 450-3766.

★ ★ ★



Board of Nurse Examiners Correction of Error

Adopted rules submitted by the Board of Nurse Examiners contained several errors as published in the August 8, 1986, issue of the *Texas Register* (11 *TexReg* 3549).

In §218.1 the third and the last sentences should read: "The full utilization of the services of a registered professional nurse may require him or her to delegate selected nursing tasks to unlicensed personnel. The following are guidelines to assist the registered professional nurse in delegating nursing tasks to unlicensed personnel."

In §218.2 the definition for delegation should read: "Authorizing an unlicensed person to provide nursing services; but it does not include situations in which an unlicensed person is directly assisting a registered professional nurse by carrying out nursing tasks in the presence of a registered professional nurse."

In the definition of unlicensed person, the last sentence should read: "The term includes, but is not limited to, nurses' aides, orderlies, assistants, attendants, technicians, home health aides, medication aides in nursing home, and other health aides."

Section 218.3(4) should read: "The registered professional nurse must make an assessment of the patient's nursing care needs prior to delegating the nursing task."

Section 218.4(1) should read: "The degree of supervision required shall be determined by the registered professional nurse after an evaluation of appropriate factors involved including, but not limited to, the following:"

Section 218.4(1)(C) and (D) should read: "the nature of the nursing task being delegated; and (D) the proximity and availability of the registered professional nurse to the unlicensed person when the nursing task will be performed."

**Texas State Board of Registration for
Professional Engineers
Board Approved Engineering Degrees
Rescinded**

During the July 16 and 17, 1986, regular quarterly meeting, the board rescinded the list of engineering degrees that had been previously approved in accordance with §131.91(a)(2). This in effect will permit only bachelor degrees in engineering which have been approved by the Accreditation Board of Engineering and Technology (ABET) or the Engineer's Council for Professional Development to meet the education requirements of registration under the Texas Engineering Practice Act, §12(a). Additionally, the board voted to consider as ABET/ECPD approved those engineering de-

grees that were conferred not more than two years before the published date of the actual ABET/ECPD approval.

Section 131.91(a)(3), concerning acceptance of the combination of certain nonengineering bachelor degrees in addition to ABET/ECPD approved advanced degrees to meet the educational requirements of §12(a), remains in effect as published.

Issued in Austin, Texas, on August 11, 1986.

TRD-8607890

Kenneth J. Bartosh, P.E.
Executive Director
Texas State Board of Registration for
Professional Engineers

Filed: August 12, 1986

For further information, please call (512) 440-7723.