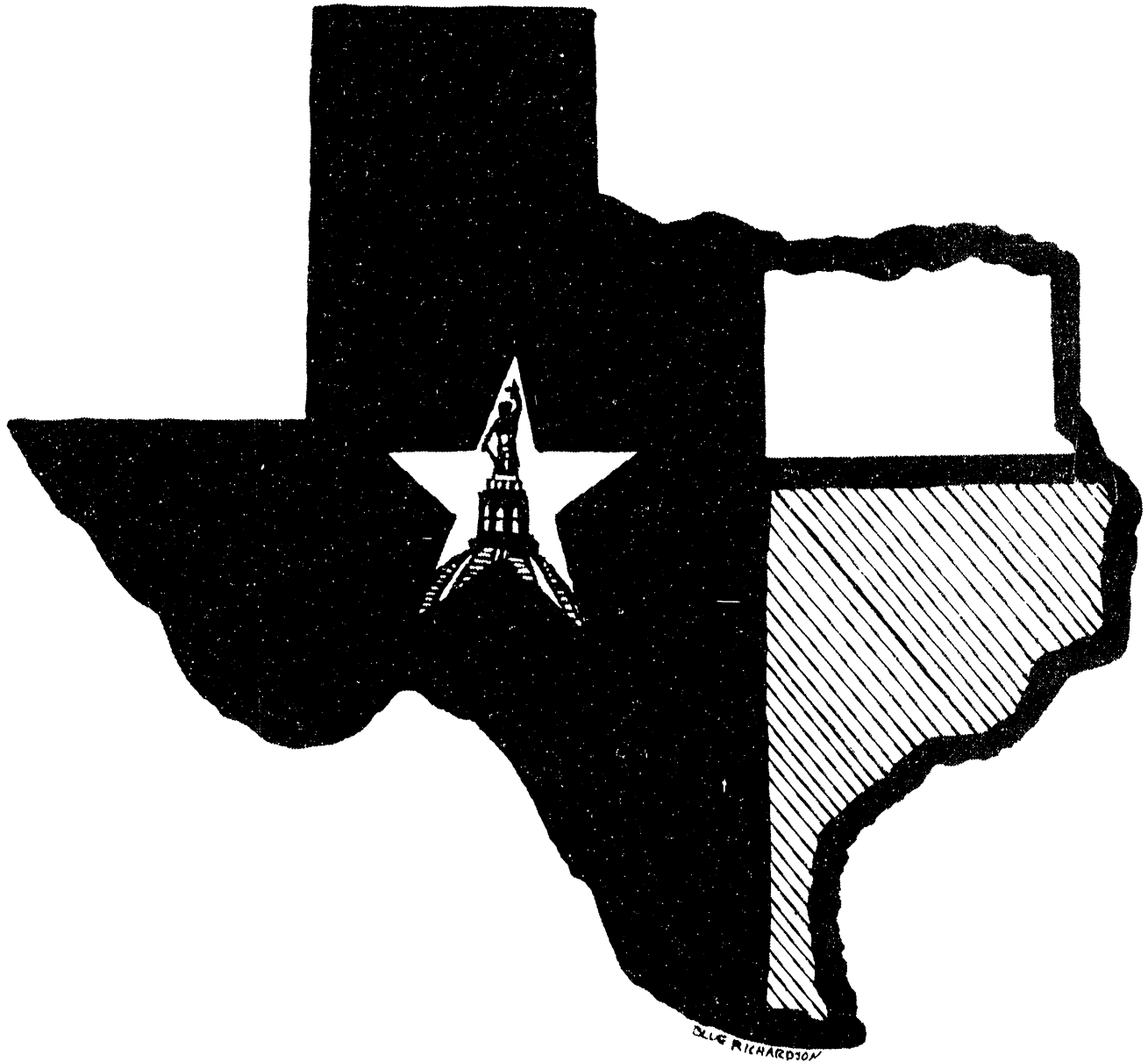


Texas Register

Volume 12, Number 68, September 11, 1987

Pages 3111-3189



Highlights

The **Texas Water Commission** adopts on an emergency basis new sections concerning the regulation of the business of water and sewer utilities. Effective date: September 2, 1987. **page 3120**

The **Texas State Board of Medical Examiners** proposes an amendment representing changes in fees which occurred as a result of the legislative

session. Earliest possible date of adoption: October 12, 1987. **page 3154**

The **Railroad Commission of Texas** adopts a new rule giving clearer definitions to terms used in the LP gas safety rules. Effective date: January 1, 1987. **page 3158**

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 1987 with the exception of January 6, September 1, December 1, and December 29 by the Office of the Secretary of State.

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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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: "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 TexReg 3."

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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

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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.

Cover illustration by Blue Richardson, Sam Houston High School, Arlington, as part of the *Texas Register* Student Art Contributions.

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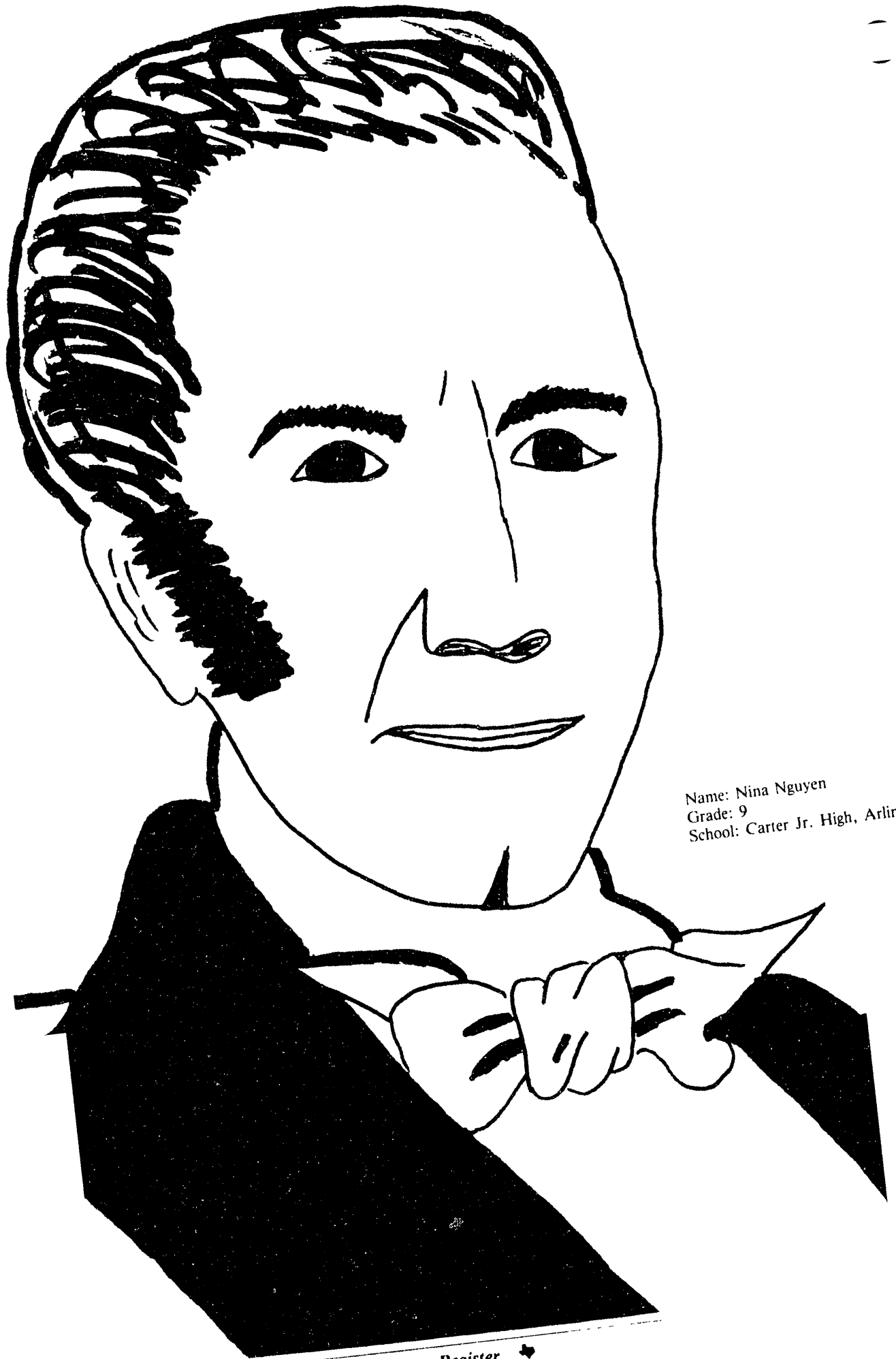
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Name: Nina Nguyen
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Attorney General

Description of attorney general submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes (Article 4399), and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Register*.

Requests for Opinion

RQ-1210. Request from John Hille, Acting Executive Director, Texas National Guard Armory Board, Austin, concerning construction of certain riders to the current appropriation for the National Guard Armory Board.

TRD-8707470



RQ-1211. Request from Murray Watson, Jr., Office of General Counsel, Texas State Technical Institute, Waco, concerning the eligibility of a former state employee to participate in a group insurance plan.

TRD-8707471



RQ-1212. Request from Joe Lucas, El Paso County Attorney, El Paso, concerning the authority of a local administrative public health board to adopt rules.

TRD-8707472



RQ-1213. Request from Colleen Jennings Batchelor, Office of General Counsel, Texas A&M University System, College Station, concerning whether reports of field performance records prepared with the research of a professor at a state university are excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

TRD-8707473



RQ-1214. Request from Barbra Walsh, Ward County Auditor, Monahans, concerning whether Attorney General Opinion MW-393 has been modified by the Indigent Health Care Act.

TRD-8707474



RQ-1215. Request from Lloyd Criss, Chairman, House Committee on Labor and Employment Relations, House of Representatives, Austin, concerning validity of a municipal payroll deduction program which effectively excludes an employees association from participation.

TRD-8707475

RQ-1216. Request from Clinton M. DeWolfe, O.D., Texas Optometry Board, Austin, concerning regulation of advertising by the Texas Optometry Board.

TRD-8707476



RQ-1217. Request from Bob Bullock, Comptroller of Public Accounts, Austin, concerning whether attorneys fees are in certain circumstances subject to sales tax.

TRD-8707477



Opinions

JM-770 (RQ-1081). Request from Joe L. Price, District Attorney, Groveton, concerning authority of a commissioners court to place restrictions upon payment of a constable's salary and office expenses.

Summary of Opinion. The Texas Constitution, Article XVI, §61, requires county commissioners courts to provide constables with compensation and to provide that compensation in the form of a reasonable salary. The commissioners court must also provide for the reasonable expenses incurred by constables in the performance of their duties. Commissioners courts may prescribe different salaries for the constables of different precincts if the circumstances in each precinct reasonably require different salaries and each salary is in itself reasonable. What constitutes a reasonable salary is a question of fact within the discretion of the commissioners court. The commissioners court may not, however, attempt to restrict or abolish a constable's office by fixing an extremely low salary or by refusing to provide reasonable expenses related to the performance of the constable's duties.

TRD-8707478



JM-771 (RQ-1133). Request from Stan Schlueter, Chairman, House Ways and Means Committee, Austin, concerning clarification of Attorney General Opinion JM-670 (1987).

Summary of Opinion. Approval of a majority of the board of trustees of the receiving school district is required for a detachment and annexation of territory made pursuant

to the Texas Education Code, §19.022. In the event that the transferring school district is governed by an elective board of nine members and is in a county having a population of 100,000 or more, any change in the boundaries of that district requires the approval of a majority of its board of trustees. Education Code §19.008.

TRD-8707479



JM-772 (RQ-1129). Request from Grant Jones, Chairman, Finance Committee, Texas State Senate, Austin, concerning authority of the governor to effect the disbursement of petroleum overcharge funds.

Summary of Opinion. The legislature, not the governor, has authority to allocate and appropriate oil overcharge funds distributed as a result of two lawsuits. Public Law 97-377, 96 Statutory 1830 (1982), §155, was not intended to increase the role of the governor in allocating and appropriating funds received under that section.

TRD-8707480



JM-773 (RQ-1035). Request from Joe Lucas, El Paso County Attorney, El Paso, concerning whether an independent school district is authorized to use an electronic funds transfer system for direct deposit of employee paychecks.

Summary of Opinion. An independent school district may use an electronic funds transfer system to pay its employees.

TRD-8707481



JM-774 (RQ-1097). Request from Garry Mauro, Commissioner, General Land Office, Austin, concerning whether the Veterans Land Board may impose a fee for delivery of a paid-in-full deed to a purchaser under the Veterans Land Program.

Summary of Opinion. The Veterans Land Board may not impose a fee for delivery of a paid-in-full deed authorized by the Natural Resources Code, §161.070, on purchasers of land whose contracts entitle them to delivery of the deed without payment of such a fee. A statute authorizing imposition of the fee in such cases would impair the obligation of

contract and thus violate the United States Constitution, Clause 1, Article I, §10.
TRD-8707482



JM-775 (RQ-1068). Request from Benjamin Euresti, Jr., Cameron County Attorney, Brownsville, concerning whether the assessor-collector of the Brownsville Irrigation and Drainage District is subject to the Property Taxation Professional Certification Act, Texas Civil Statutes, Article 7244b.

Summary of Opinion. The tax assessor-collector for an irrigation and drainage district that imposes taxes, not on an ad valorem basis, but on a benefit plan basis, need not register with the Board of Tax Professional Examiners, pursuant to Texas Civil Statutes, Article 7244b.
TRD-8707483



JM-776 (RQ-1153). Request from Tommy W. Wallace, Criminal District Attorney, Canton, concerning whether an individual whose spouse is a bail bondsman may be employed as an investigator for the office of criminal district attorney.

Summary of Opinion. An individual whose spouse operates a bail bond business may be appointed as an investigator for the office of criminal district attorney and perform the duties of such position without violating the prohibition against conflict of interest by a local public official.
TRD-8707484



JM-777 (RQ-1156). Request from Charles Chapman, Criminal District Attorney, San Marcos, concerning whether a loss of physical or mental faculties under Texas Civil Statutes, Article 76011-1, represents more than one distinct offense for purposes of a criminal complaint.

Summary of Opinion. Not having the normal use of mental or physical faculties by the reason of the introduction of alcohol while operating a motor vehicle in a public place is a single offense under Texas Civil Statutes, Article 67011-1, and can be pled in one count in the charging instrument.
TRD-8707485



JM-778 (RQ-1083). Request from A. J. Hartel, Liberty County Attorney, Liberty, concerning jurisdiction of a county court at law over suits for the collection of delinquent taxes.

Summary of Opinion. The County Court at Law in Liberty County has subject matter jurisdiction over matters involving delinquent tax foreclosures pursuant to Texas Civil Statutes, Article 1970-379, §2(a)(1), so long as the amount in controversy falls within the jurisdiction amount allowed by statute.
TRD-8707486



JM-779 (RQ-1117). Request from W. C. Kirkendall, District Attorney, 25th Judicial District, Seguin, concerning whether a district attorney is required to reimburse a county clerk for services rendered pursuant to a bond forfeiture proceeding.

Summary of Opinion. The county clerk is authorized by the Government Code, §51.318 to charge a fee for recording an abstract of a final judgment. The clerk may not collect the fee when a district attorney seeks to file an abstract of a final judgment from a bond forfeiture proceeding, Texas Civil Statutes, Article 3912e, §1.
TRD-8707487



JM-780 (RQ-1084). Request from Jerry Cobb, Criminal District Attorney, Denton, concerning the validity of a proposed municipal ordinance defining contemporary community standard for purposes of regulation of obscenity.

Summary of Opinion. A proposed municipal ordinance regulating obscenity that defines the community standard on a less than statewide basis and that determines, as a matter of law, issues that are questions of fact, is void as conflicting with state and federal law.
TRD-8707488



Open Records Decision

ORD-477 (RQ-1181). Request from W. O. Shultz, II, General Counsel, The University of Texas System, Austin; Ted J. Hajovsky, Jr., General Counsel, The Texas A&M University System, College Station; and Pat Campbell, General Counsel, Texas Tech University, Lubbock, concerning whether the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(14), prohibits a university from disclosing the names of students whose degrees have been rescinded or surrendered.

Summary of Decision. The Family Education Rights and Privacy Act, 20 United State Code, §1232g, applied through the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(14) and 14(e), prohibits a university from disclosing the identities of persons whose degrees have been rescinded by the university because of events that occurred while those persons were students. We do not address the issue of whether the identity of a student who has voluntarily surrendered his degree is protected from required disclosure, given the lack of an appropriate factual context.
TRD-8707489

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 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing

★ 31 TAC §65.45

The Texas Parks and Wildlife Commission adopts on an emergency basis an amendment to §65.45, concerning quail, open seasons, bag, and possession limits. The commission has found that an imminent peril to the public welfare requires the emergency amendment in order to properly manage the quail wildlife resources of the state.

The analysis of the August quail roadside surveys showed a significant increase in the quail populations in the major quail ranges in Texas. Seven of the 10 ecological regions in the state were above the 12-year median count. South Texas and Cross Timbers were at record highs and the Rolling Plains and Trans-Pecos regions report the second highest counts on record.

The quail bag limit will be 16 per day and 48 in possession.

The amendment is adopted on an emergency basis under the Texas Parks and Wildlife Code, Chapter 61, which provides the Texas Parks and Wildlife Commission with authority to provide wildlife resources regulations for this state.

§65.45. *Quail: Open Seasons, Bag, and Possession Limits.*

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

(d) In all counties of this state, the bag and possession limits are 16 quail per day and 48 in possession.

Issued in Austin, Texas, on September 2, 1987.

TRD-8707384

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Effective date: September 15, 1987

Expiration date: January 13, 1987

For further information, please call
(512) 389-4974.

Part IX. Texas Water Commission

Chapter 275. Special Procedures

Appeals of City Actions Relating to Water Pollution Control and Abatement Outside the Corporate Limits of the City

★ 31 TAC §§275.51-275.59

The Texas Water Commission adopts on an emergency basis new §§275.51-275.59, concerning appeals to the commission of city actions relating to water pollution control and abatement outside the corporate limits of a city. Such appeals are provided under the Texas Water Code, §26.177, as amended by Senate Bill 1191, 70th Legislature, 1987. The new sections give necessary procedural guidance for instituting and processing such appeals, and also impose filing fees for processing such appeals.

The commission finds that an urgent need exists to adopt these sections on an emergency basis in order that there be a mechanism in place to implement Senate Bill 1191, coincidental with its becoming law, effective September 1, 1987.

The new sections are adopted under the Texas Water Code, §§5.103, 5.105, and 26.177, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code, and to establish and approve policies of the commission. The Texas Water Code, §26.177, authorizes the commission to adopt and assess reasonable and necessary fees to cover the costs of administering the appeals of certain city actions.

§275.51. *General.* This subchapter applies to appeals to the commission from actions of a city relating to water pollution control and abatement outside the corporate limits of such city, initiated pursuant to the Texas Water Code, §26.177(c).

§275.52. *Petition by an Affected Person.* Any person affected by a city's ruling, order, decision, ordinance, program, resolution, or any other act relating to water pollution control and abatement outside the corporate limits of such city and adopted pursuant to the Texas Water Code, §26.177, or any other statutory authorization, may

appeal the city's action by filing a petition for review with the commission.

§275.53. *Issues on Appeal.* The issues on appeal are whether the action or program of the city is invalid, arbitrary, unreasonable, inefficient, or ineffective in its attempt to control water quality.

§275.54. *Prerequisites to Appeal.* The following are prerequisites to appeal under the Texas Water Code, §26.177(c).

(1) Filing of a petition. Any appeal to the commission of an action by a city relating to water pollution control and abatement outside the corporate limits of such city requires the filing of a petition for review with the commission within 60 days of the enactment of the ruling, order, decision, ordinance, program, resolution, or act of the city.

(2) Service of pleadings. A copy of the petition for review and all other pleadings shall be mailed by first class mail or delivered to the city whose action is being appealed. A certificate of service shall be furnished to the commission with the original pleading.

(3) Filing fee. Each petition for review which is intended to institute a proceeding before the commission shall be accompanied by a filing fee of \$100.

(4) Hearing. A time and place for hearing on the matter(s) in dispute shall be set and due notice of the hearing shall be issued by the commission as required by law.

§275.55. *Contents of Petition for Review.* The following information shall be provided when commission action is sought pursuant to the Texas Water Code, §26.177(c):

(1) the name of the party seeking commission action, with the original copy of the pleading signed by the petitioner or his authorized representative;

(2) the business phone number and address of the city whose action is being appealed, and the city's authorized representative, if any;

(3) a clear and concise statement that the petition for review is an appeal of a specific action of the municipality in question, as well as a concise description and date of the action;

(4) a copy of the applicable ruling, order, decision, ordinance, program, resolution, or other act of the city, if any;

(5) a list of the known persons and areas which might be affected if the petition is granted;

(6) a concise statement of the facts relied upon by the pleader;

(7) a prayer stating the type of relief, action, or order desired by the pleader; and

(8) any other matter required by statute.

§275.56. *Answer.* Not later than the 20th day after the date on which the city receives a copy of the petition for review, the city may submit to the commission an answer in defense of the action from which the appeal is taken.

§275.57. *Review by Commission.* The commission shall hear the appeal de novo and may, in its final order, affirm, overturn, or modify the action of the city from which the appeal was taken.

§275.58. *Consolidation.* The commission may consolidate any or all of the appeals, if any, which relate to the action in question of the city.

§275.59. *Appeal of Commission Order.* If an appeal is taken from a commission order, the commission order shall remain in effect for all purposes until final disposition is made by a court of competent jurisdiction.

Issued in Austin, Texas, on September 2, 1987.

TRD-8707419 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 3, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.



Chapter 291. Water Rates

The Texas Water Commission adopts on an emergency basis new §§291.1-291.14, 291.21-291.31, 291.41-291.44, 291.71-291.75, 291.81-291.89, 291.91-291.95, 291.101-291.118, 291.121-291.126, 281.131-291.136, and the repeal of §§291.1-291.7, 291.21-291.37, 291.41-291.44, 291.51-291.56, 291.61-291.62, 291.71-291.76, 291.81-291.88, 291.91-291.92, and 291.101-291.115, concerning the regulation of the business of water and sewer utilities to assure rates, fees, operations, and services that are just and reasonable to the consumers and to the utilities.

It is the position of the commission that the provision of adequate water supply service and sewage treatment service directly impacts the public health, safety, and welfare. Because there is a need to maintain regulatory standards which will assure rates, fees, operations, and services that are just and reasonable to consumers and utilities, and which will protect the public health, safety, and welfare, the commission finds that an

urgent need exists to adopt these new sections on an emergency basis in order to have a regulatory system in effect that implements the statutory revisions that are effective on September 1, 1987.

The new sections are adopted in response to House Bill 1459, 70th Legislature, 1987, which in pertinent part, amended the Texas Water Code, Chapter 13. The new sections establish the substantive regulations which reflect the policies of the Texas Water Commission, as established in House Bill 1459, regarding the assurance of water and sewer rates, fees, operations, and services which are just and reasonable. The new sections also outline the procedures for presentation of these matters to the commission for consideration and determination.

Subchapter A. General Provisions

★31 TAC §§291.1-291.7

The repeals are adopted on an emergency basis under the authority of the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties relating to the regulation and supervision of water and sewer utilities rates, operations and services.

§291.1. *Purpose and Scope of this Chapter.*

§291.2. *Severability Clause.*

§291.3. *Definitions of Terms.*

§291.4. *Cooperative Corporation Rebates.*

§291.5. *Filing of Documents.*

§291.6. *Agreements to be in Writing.*

§291.7. *Communications.*

Issued in Austin, Texas, on September 2, 1987.

TRD-8707420 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.



★31 TAC §§291.1-291.14

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, fees, operations, and services.

§291.1. *Purpose and Scope of this Chapter.* This chapter is intended to establish a comprehensive regulatory system to assure rates, operations, and services

which are just and reasonable to the consumer and the utilities, and to establish the rights and responsibilities of both the utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct, and determination of all water and sewer rate causes and proceedings before the Texas Water Commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

§291.2. *Severability Clause.* The adoption of this chapter will in no way preclude the commission from altering or amending it in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. Furthermore, this chapter will not relieve in any way a utility or customer from any of its duties under the laws of this state or the United States. If any provision of this chapter is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable. The commission may make exceptions to this chapter for good cause.

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

Affected person—Any utility affected by any action of the regulatory authority; any person or corporation, whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a utility with respect to any service performed by the utility or that desires to enter into competition.

Affiliated interest or affiliate—

(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) any person who is an officer

or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

Agency—Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions for higher education) which makes rules or determines contested cases.

Allocations—For all utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

Base rate—The portion of a consumer's utility bill which is attributable to a set level of expenses fixed during rate proceedings.

Code—The Texas Water Code.

Commission—The Texas Water Commission.

Class of service or customer class—A description of utility service provided to a customer which denotes such characteristics as nature of use or type of rate.

Corporation—Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Texas Water Code.

Customer—Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any utility.

Executive director—The executive director of the Texas Water Commission.

Facilities—All the plant and equipment of a utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any utility.

License—The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

Licensing—The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity or any other authorization granted by the Texas Water Commission pursuant to its authority under the Texas Water Code.

Member—A record owner of a fee simple title to a lot in an area served by a water supply or sewer service corporation. The term does not include a person or entity that holds an interest in a lot solely as security for the performance of an obligation, or that only builds on or develops the lot for sale to others.

Municipality—A city, existing, created, or organized under the general, home rule, or special laws of the state.

Municipally-owned utility—Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

Permanent installation—Any installation that is constructed or placed on and permanently affixed to a foundation, and which is, or will be, used or occupied on a permanent full-time basis. A manufactured home or prefabricated structure shall qualify as a permanent installation only if it is installed on a foundation system according to regulations of the Texas Department of Labor and Standards or is otherwise impractical to move and has the wheels, axles, and hitch or towing device removed, and if it is connected to a permanent water and sewer system.

Person—Any natural person, partnership, cooperative corporation, corporation, association, or public or private organization of any character other than an agency or municipality.

Premises—A tract of land or real estate including buildings and other appurtenances thereon.

Public utility—The definition of public utility is that definition given to the term "water and sewer utility" in this subchapter.

Purchased water—Raw or treated water purchased from a source outside the utility's system to meet system requirements.

Purchased sewage treatment—Sewage treatment purchased from a source outside the utility's system to meet system load requirements.

Rate—Includes every compensation,

tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any utility, or water or sewer service supplier, for any service, product, or commodity described in the Texas Water Code, §13.002(4), and any rules regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

Ratepayer—Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name residential utility service is carried.

Service—Any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by utilities or water or sewer service suppliers in the performance of their duties under the Texas Water Code to their customers, employees, other utilities and the public, as well as the interchange of facilities between two or more of the utilities or water or sewer service suppliers.

Tap fee—A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee may include the cost of physically tapping the main and installing meters, meter boxes, fittings and other materials, labor, setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings may be added. Other charges, such as extension fees or contributions in aid of construction (CIAC) are not to be included in a tap fee.

Tariff—The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.

Test year—The most recent 12 months for which operating data for a utility are available, and shall commence with a calendar quarter or a fiscal year quarter.

Utility—The definition of utility is that definition given to the term "water and sewer utility" in this subchapter.

Water and sewer utility—Any person, corporation, cooperative corporation, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transport-

tation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a city, town, or other political subdivision of this state or a water supply or sewer service corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

Water supply or sewer service corporation—Any nonprofit, member-owned, member controlled corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1933 (Texas Civil Statutes, Article 1434a).

§291.4. Cooperative Corporation Rebates. Nothing in this chapter prevents a cooperative corporation from returning to its members the whole or any part of the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

§291.5. Filing of Documents.

(a) Filing with commission. All documents relating to any proceeding pending or to be instituted before the commission shall be filed with the commission unless admitted as part of the record in a hearing. Unless otherwise provided in this chapter, an original and three copies shall be filed. Except as provided in §291.8 of this title (relating to Administrative Completeness) documents shall be deemed filed only when actually received, accompanied by the filing fee, if any, required by statute or commission rules.

(b) Where to file. All filings and other communications with the commission pursuant to this chapter shall be delivered to the Rates Section, Water Utilities Division, Texas Water Commission, 1700 North Congress Avenue, P.O. Box 13087, Austin, Texas 78711-3087.

§291.6. Signatories to Applications.

(a) All applications shall be signed as follows:

(1) for a corporation: by a principal executive officer of at least the level of vice-president or a duly authorized representative if such representative is responsible for the overall operation of the facility. A representative shall submit in writing proof of the authorization;

(2) for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) for a municipality, state, federal, or other public agency: by either a principal executive officer or a ranking official.

(b) Applications shall contain a certification stating that the person signing has personally examined and is familiar with the information submitted in the application and that the information is true, accurate, and complete.

§291.7. Filing Fees. Each application, petition, or complaint which is intended to

institute a proceeding before the commission shall be accompanied by the appropriate filing fee as required by the Texas Water Code, §5.235 and §13.4521, and costs of mailing notice, if any.

(1) A rate change application filed with the commission under the Texas Water Code, §13.187, must be accompanied by the appropriate filing fee as follows:

(A) fewer than 100 connections —\$50;

(B) 100-200 connections—\$100;

(C) 201-500 connections—\$200;

or

(D) more than 500 connections —\$500.

(2) An application for sale, assignment, or lease of a certificate of convenience and necessity under the Texas Water Code, §13.251, or notice of intent to sell, assign, lease, or rent a water or sewer system under the Texas Water Code, §13.301, must be accompanied by the appropriate fee as follows:

(A) fewer than 100 connections —\$50;

(B) 100-200 connections—\$100;

(C) 201-500 connections—\$200;

or

(D) more than 500 connections—\$500.

(3) The fees required in paragraphs (1) and (2) of this subsection are in lieu of the \$100 filing fee required by the Texas Water Code, §5.235, which should accompany all other applications, petitions, or complaints. A filing fee is not required for complaints filed under the Texas Water Code, §13.187(b).

§291.8. Administrative Completeness.

Notice of rate/tariff change, report of sale or merger, and sale, assignment of, or lease of a certificate and applications for certificates of convenience and necessity shall be reviewed by the staff for administrative completeness within 10 working days of receipt of the application. A notice or an application shall not be deemed to have been filed until a determination of administrative completeness is made. Upon determination that the notice or application is administratively complete, the executive director will notify the applicant by mail of that determination. If the executive director determines that material deficiencies exist in any pleadings, statement of intent, applications or other requests for commission action addressed by this chapter, the notice or application may be rejected and the effective date suspended until the deficiencies are corrected. In cases involving proposed rate changes, the effective date of the proposed change must be at least 30 days after the filing date of a complete notice with the commission or the date notice is delivered to each ratepayer, whichever is later.

§291.9. Agreements to be in Writing. No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any pro-

ceeding before the commission shall be enforced unless it shall have been reduced to writing and signed by the parties or representatives authorized by these sections to appear for them, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated into an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this chapter, unless precluded by law.

§291.10. Request for Public Hearing.

(a) A request for public hearing under this chapter must be made in writing and submitted by an affected person to the commission within the time period specified by the notice. The commission may extend the time allowed for submitting a request for public hearing.

(b) The written request shall contain the following information:

(1) the name, mailing address, and phone number of the person making the request;

(2) a brief description of the interest of the person making the request; and

(3) a brief description of how the application, if granted, would adversely affect such interest.

(c) An affected person is one who is determined by the commission to have an interest different from that of the general public that may be adversely affected by action taken on the application.

(d) If the commission determines the request for public hearing is in compliance with this section, or that a public hearing would serve the public interest, the commission shall conduct a public hearing.

(e) At least 20 days before the date set for the hearing, the commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The commission shall hold a hearing on the petition at the time and place stated in the order. On completion of the hearing, the commission shall render a written decision.

(g) If, after the preliminary investigation, the commission determines that no probable grounds exist for the complaint alleged in the petition, the commission shall dismiss the petition.

§291.11. Informal Proceedings.

(a) Any hearing involving a retail public water or sewer utility as defined in §291.101 of this title (relating to Definitions of Terms) may be conducted as an informal proceeding when in the judgment of the presiding officer the conduct of a hearing under informal procedures will:

(1) result in savings of time or costs to all parties;

(2) lead to a negotiated or agreed settlement of facts or issues in controversy; and

(3) not prejudice the rights of any party.

(b) If during an informal proceeding, all parties reach a negotiated or agreed settlement which in the judgment of the presiding officer settles all facts or issues in controversy, the proceeding shall not be a contested case under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and no proposal for decision nor detailed findings of fact and conclusions of law are required.

(c) If the parties do not reach a negotiated or agreed settlement of all facts and issues in controversy, the presiding officer may adjourn the informal proceeding and reconvene it as a contested case hearing under standard hearing procedures as otherwise provided for in this chapter.

§291.12. Burden of Proof. In any proceeding involving any proposed change of rates, the burden of proof shall be on the provider of water and sewer services to show that the proposed change, if proposed by the utility, or that the existing rate, is just and reasonable. In any other matters or proceedings, the burden of proof is on the moving party.

§291.13. Record of Proceeding; Right to Hearing. A record shall be kept of all proceedings before the regulatory authority, unless all parties waive the keeping of the record.

§291.14. Emergency Orders. The commission may issue emergency orders, with or without a hearing, to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act. If an order is issued without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.

Issued in Austin, Texas, on September 2, 1987.

TRD-8707421 J. D. Head
Director
Legal Division
Texas Water
Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.

Subchapter B. Jurisdiction and
Appeal, Pleading and Petition
Requirements

★31 TAC §§291.21-291.37

The repeals are adopted on an emergency basis under the authority of the Texas

Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.21. Complaint by any Affected Person.

§291.22. Jurisdiction over Affiliated Interests.

§291.23. Ratepayer Defined.

§291.24. Procedure for Surrender of Exclusive Original Jurisdiction of Municipalities.

§291.25. Reinstatement of Exclusive Original Jurisdiction of Municipalities.

§291.26. Jurisdiction over Nonprofit Water Supply Corporations.

§291.27. General Pleading Requirements.

§291.28. Contents of Pleadings to Seek Review of Rate Actions Pursuant to the Code, §13.187(g).

§291.29. Contents of Petitions for Review of Municipal Rate Actions Filed Pursuant to the Texas Water Code, §13.086(a), (b), or (e).

§291.30. Contents of Pleadings Seeking Review of Rates for Sales of Water under the Texas Water Code, §§11.036-11.041 and 12.013.

§291.31. Contents of Certificate of Convenience and Necessity Applications.

§291.32. Filing Fees.

§291.33. Service of Pleadings.

§291.34. Verification of Petitions of Appeal and Surrender or Rescission of Original Jurisdiction.

§291.35. Applications, Testimony, and Exhibits.

§291.36. Form and Filing of Tariffs.

§291.37. Appeal under the Texas Water Code, §13.086.

Issued in Austin, Texas, on September 2, 1987.

TRD-8707422 J. D. Head
Director
Legal Division
Texas Water
Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8089.

Subchapter B. Utility Rates, Rate
Making and Rate/Tariff
Changes

★31 §§291.21-291.31

These new sections are adopted on an emergency basis under the Texas Water

Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, fees, operations, and services.

§291.21. Form and Filing of Tariffs.

(a) Effective tariff. No utility shall directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its effective tariff filed with the commission.

(b) Requirements as to size, form, identification, and filing of tariffs.

(1) Every public utility shall file with the commission four copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a public utility. The tariff shall be on the form the commission prescribes.

(2) An approved tariff may not be changed or amended without commission approval. The utility shall file four copies of each revision. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(3) Each rate schedule must clearly state the territory, city, or county wherein said schedule is applicable.

(4) Tariff sheets are to be numbered consecutively. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(c) Composition of tariffs. The tariff shall contain sections setting forth:

- (1) a table of contents;
- (2) a list of the cities and counties, and subdivisions or systems, in which service is provided;
- (3) the certificate of convenience and necessity number under which service is provided;
- (4) the rate schedules;
- (5) the service rules and regulations, including forms of the service agreements, if any;
- (6) the extension policy; and
- (7) an approved water rationing plan.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the application number,

date of the order, a list of tariff sheets filed, and any other necessary information. All tariff sheets shall comply with all other rules in this chapter and shall include only changes ordered. The effective date and/or wording of the tariffs shall comply with the provisions of the order.

(e) Symbols for changes. Each proposed tariff sheet shall contain notations in the right-hand margin indicating each change made on these sheets. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision (the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision); (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. In addition to symbols for changes, each changed provision in the tariff shall clearly show the exact number of lines being changed.

(f) Availability of tariffs. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any of such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to reproduce such tariff for a requesting party.

(g) Rejection. Any tariff filed with the commission and found not to be in compliance with these sections shall be so marked and returned to the utility with a brief explanation of the reasons for rejection.

(h) Change by other regulatory authorities. Tariffs which are filed to reflect changes in rates or regulations set by other regulatory authorities shall include a copy of the order or ordinance authorizing the change.

(i) Purchased water or sewage treatment. A utility which purchases water or sewage treatment may include a provision in the rate schedule of its tariff for making adjustments in utility rates due to changes in costs of purchase water or sewage treatment. This provision must be approved by the commission to be effective.

(1) Purchased water or sewage treatment provisions must be included in the utility's approved tariff in order for a utility to make a tariff change using this procedure.

(2) Purchased water or sewage treatment provisions must explicitly state how the adjustment to the tariffed rates will be calculated.

(3) A water or sewer utility proposing a change in its tariff pursuant to this section shall notify its customers and the commission in writing of the proposed change prior to the effective date for im-

plementing the changed rates.

(4) Notice to the customers, which may be in the form of a billing insert, shall contain the effective date of the change, the present rates, the new rates, and the change in charges to the utility for purchased water or sewage treatment. The notice shall also include the following language: "This tariff change is being implemented in accordance with the utility's approved (purchased water) (purchased sewer) adjustment clause to recognize (increases) (decreases) in the cost of purchased (water) (sewage treatment). The costs of these charges to the utility's customers will not exceed the (increased) (decreased) cost of purchased (water) (sewage treatment)."

(5) Notice to the commission shall include a copy of the notice sent to the customers, proof that the cost of purchased water or sewage treatment has changed by the stated amount, and the calculations and assumptions used to determine the new rates.

(6) Purchased water or sewage treatment provisions may not apply to contracts or transactions between affiliated interests.

(j) Effective date. The effective date of a tariff change is the date of approval.

§291.22. Applicant's Notice of Intent To Change Rates.

(a) In order to change rates which are subject to the commission's original jurisdiction, the applicant shall give notice of the proposed rate change by mail or hand delivery to all affected utility customers. On this notice shall be printed in prominent lettering "Notice of Rate Change Request." The notice shall contain the following information:

(1) the effective date of the proposed rate change, the increase or decrease requested over test year revenues as adjusted for test year customer growth and annualization of test year rate increases, stated as a dollar amount and the classes of utility customers affected. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates; and

(2) the following language: "These rates will apply to service received after the effective date listed above. If, within 60 days of the effective date, the Texas Water Commission receives a complaint from any affected municipality, or from the lesser of 250 or 10% of the ratepayers, a hearing will be set to determine if the proposed rates are reasonable. Complaints should be mailed to the Rates Section, Water Utilities Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Unless complaints are received from the lesser of 250 or 10% of the ratepayers or the Texas Water Commission sets a hearing on its own motion, no hearing will be held. In the event that the application is set for hearing, the specific rates requested by the utility may be decreased or increased by order of the commission, but

in no case will the total amount of rate relief exceed the total amount included in this notice. If the commission orders a lower rate to be set, the utility may be ordered to refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest."

(b) Notices may be mailed separately, or may accompany customer billings, and shall be mailed to all customers no later than the date on which the utility files its rate filing package with the executive director.

(c) The applicant shall mail or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 30 days prior to the effective date of the proposed change. The commission may also require that notice be mailed or delivered to other affected persons or agencies.

(d) Proof of notice in the form of an affidavit stating that proper notice was mailed to customers and affected municipalities, and stating the dates of such mailing, shall be filed by the applicant as part of the notice of intent to change rates. Failure to comply with the notice requirements and proof of notice requirements will result in suspension of the rate change by the commission.

§291.23. Time Between Filings. A utility may not file a notice of intent to increase its rates more than once in a 12-month period.

§291.24. Jurisdiction Over Affiliated Interests. The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but in no way limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

§291.25. Rate Change Applications, Testimony, and Exhibits.

(a) A change in rates under Texas Water Code, §13.187 is initiated by the submission of a rate filing package which consists of a rate/tariff change application form, or such other forms as prescribed by the commission, a statement of intent to change rates, and a copy of the notice the applicant has provided to customers and other affected parties.

(b) A utility filing for a change in rates under the Texas Water Code, §13.187 shall be prepared to go forward at a hearing on the data which has been submitted under subsection (a) of this section and sustain the burden of proof of establishing that its proposed changes are just and reasonable.

(c) An original and three copies of the rate filing package shall be submitted and filed with the commission and in the event that the proposed rate change becomes the subject of a hearing, the commission may

require, in addition to copies of the rate filing package, prefiled testimony and exhibits in support of the rate change request.

(d) The book data included in the schedules and information prepared and submitted as part of the filing shall be reported in a separate column or columns. All adjustments to book amounts shall also be shown in a separate column or columns so that book amounts, adjustments thereto, and adjusted amounts will be clearly disclosed, and any separation and allocation between interstate and intrastate operations shall be fully disclosed and clearly explained.

(e) All intervenors or protestants shall file the specified number of copies of their prepared testimony, if required, and exhibits within the time period specified by the hearings examiner assigned to the application.

(f) If required to prefile testimony, the executive director shall prefile, except for good cause, the prepared testimony and exhibits of its witnesses eight days prior to the final hearing but shall not otherwise be required to present its case prior to that time, except upon the granting of motions for discovery.

(g) The items in the rate filing package may be modified on a showing of good cause.

§291.26. Request for a Review of a Rate Change Pursuant to the Texas Water Code, §13.187(b).

(a) Petitions for review of rate actions filed pursuant to the Texas Water Code, §13.187(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:

(1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action; and

(2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer (the petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer).

(b) Ratepayers may initiate a review of a rate change application by filing individual complaints rather than joint petitions. Each complaint should contain the information required in subsection (a) of this section.

(c) Regardless of whether a review is initiated under subsections (a) or (b) of this section, complaints must be received from a total of 250 or 10% of the affected ratepayers, whichever is less.

§291.27. Action on Notice of Rate Change Pursuant to the Texas Water Code, §13.187(b). The commission may conduct a public hearing on any application.

(1) If, within 60 days after the ef-

fective date of the rate change, the commission receives a complaint from any affected municipality, or from the lesser of 250 or 10% of the ratepayers of the utility over whose rates the commission has original jurisdiction, the commission shall set the matter for hearing. If after hearing, the commission finds the rates to be unreasonable or in violation of law, the commission shall determine the rates to be charged by the utility and shall fix the rates by order.

(2) If no hearing is requested, and the commission does not set a hearing, the utility's proposed tariff will be reviewed for compliance with the code and the provisions of this chapter. If the proposed tariff complies with the code and the provisions of this chapter, it shall be stamped approved and a copy returned to the utility.

(3) The executive director or commission may request additional information from any utility in the course of evaluating the rate/tariff change request, and the utility is required to provide that information within 20 days of receipt of the request, unless a different time is agreed to.

§291.28. Interim Rates.

(a) At any time during the pendency of a rate proceeding, the commission may fix interim rates to remain in effect until a final determination.

(b) The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate.

(c) The utility may be required to refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission.

§291.29. Escrow of Proceeds Received Under Rate Increase.

(a) During the pendency of its rate proceeding, a utility which has implemented rates pursuant to the Texas Water Code, §13.187, may be required to deposit all or part of the rate increase received or to be received into an escrow account with a financial institution approved by the commission.

(b) The utility shall file an original and three copies of a completed escrow agreement with the commission for review.

(c) For good cause shown, the commission may authorize the release of funds to the utility from the escrow account during the pendency of the proceeding.

§291.30. Cost of Service.

(a) Components of cost of service. Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital.

(b) Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the ratepayers shall be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted

for known and measurable changes will be considered.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:

(A) operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense shall not be allowed as an expense for cost of service except as provided in the Texas Water Code, §133.185(e));

(B) depreciation expense based on original cost and computed on a straight line basis over the useful life of the asset as approved by the commission;

(C) assessments and taxes other than income taxes;

(D) federal income taxes on a normalized basis (federal income taxes shall be computed according to the provisions of the Texas Water Code, §13.185(f), if applicable);

(E) the reasonable expenditures for ordinary advertising, contributions, and donations; and

(F) funds expended in support of membership in professional or trade associations provided such associations contribute toward the professionalism of their membership.

(2) Expenses not allowed. The following expenses shall not be allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including but not limited to, legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of water;

(G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A)-(F) of this paragraph;

(H) costs, including but not limited to, interest expense of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission; and

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties, and interest on overdue

taxes, criminal penalties or fines, and civil penalties or fines.

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) Rate of return. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

(B) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.

(C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. In each case, the commission shall consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt.

(ii) Equity capital. The cost of equity capital shall be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital shall be based upon a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(2) Invested capital; rate base. The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as follows:

(A) original cost, less accumulated depreciation, of utility plant used by and useful to the utility in providing service:

(i) original cost shall be the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor;

(ii) reserve for depreciation is

the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life of the asset. Depreciation shall be computed on a straight line basis over the expected useful life of the item or facility;

(iii) the original cost of plant, property, and equipment acquired from an affiliated interest shall not be included in invested capital except as provided in the Texas Water Code, §13.185(e);

(B) working capital allowance to be composed of, but not limited to, the following:

(i) reasonable inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service;

(ii) reasonable prepayments for operating expenses (prepayments to affiliated interests shall be subject to the standards set forth in the Texas Water Code, §13.185(e)); and

(iii) a reasonable allowance up to 1/8 of total annual operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments (operations and maintenance expense does not include depreciation, other taxes, or federal income taxes).

(3) Items Not Included in Rate Base. Unless otherwise determined by the commission, for good cause shown, the following items will not be included in determining the overall rate base.

(A) Miscellaneous items. Certain items which include, but are not limited to, the following:

(i) accumulated reserve for deferred federal income taxes;

(ii) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

(iii) contingency and/or property insurance reserves;

(iv) contributions in aid of construction; and

(v) other sources of cost-free capital, as determined by the commission.

(B) Construction work in progress. Under ordinary circumstances the rate base shall consist only of those items which are used and useful in providing service to the public. Under exceptional circumstances, the commission may include construction work in progress in rate base to the extent that the utility has proven that:

(i) the inclusion is necessary to the financial integrity of the utility; and

(ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress shall not be allowed for any portion of a major project which the utility has failed to prove was efficiently and prudently planned and managed.

§291.31. Rate Design.

(a) General. In fixing the rates of a

utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public, over and above its reasonable and necessary operating expenses, and preserve the financial integrity of the utility.

(b) Conservation. In order to promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage.

(c) Volume Charges. Charges for additional usage above the base bill shall be based on usage over and above any volume included in the base bill rounded up or down as appropriate to the nearest 1,000 gallons or 100 cubic feet, or the fractional portion of the usage.

Issued in Austin, Texas, on September 2, 1987.

TRD-8707423

J. D. Head
Director
Legal Division
Texas Water
Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.

Subchapter C. Notice

★ 31 TAC §§291.41-291.44

The repeals are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.41. Administrative Completeness.

§291.42. Applicant's Notice of Intent to Change Rates.

§291.43. Party Status.

§291.44. Contents of Notice for Rate Changes to be Undertaken Water Utilities with Fewer than 150 Customers, Pursuant to the Code, §13.187(g).

Issued in Austin, Texas, on September 2, 1987.

TRD-8707424

J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, fees, operations, and services.

§291.41. Appeal of Ratemaking Pursuant to the Texas Water Code, §13.043.

(a) An appeal under this section must be initiated within 60 days after the date of the final decision of the governing body by filing a petition for review with the commission and by serving copies on all parties to the original rate proceeding. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers eligible to appeal, unless the petition is filed under the Texas Water Code, §13.043 (a) or §13.043(f).

(b) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally-owned utility, but does include privately-owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and accompanied by the filing fee as required by the Texas Water Code, §5.235.

(c) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water or sewer utility rates to the commission:

(1) a nonprofit water supply or sanitary under Chapter 76, Acts of the 43rd Legislature, 1933 (Texas Civil Statutes, Article 1434a);

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality; and

(4) a district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, that provides water or sewer service to household users. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from taxpayers who reside inside those boundaries.

(d) A district or authority created under the Texas Constitution, Article III, §57, or Article XVI, §59, that receives water or sewer service from a utility, municipally-owned utility, or political subdivision of the state, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection is initiated by filing a petition supported by resolution of the board of directors of the petitioning district or authority and accompanied by the filing fee as required by the Texas Water Code, §5.235.

(e) The commission shall hear an ap-

peal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken

§291.42. Contents of Petition Seeking Review of Rates Pursuant to the Texas Water Code, §13.043(b).

(a) Petitions for review of rate actions filed pursuant to the Texas Water Code, §13.043(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:

(1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action;

(2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer. The petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer;

(3) the date of the decision being appealed;

(4) the basis of the request for review of rates; and

(5) any other information the commission may require.

(b) Ratepayers may initiate an appeal by filing individual complaints rather than joint petitions. Each complaint should contain the information required in subsection (a) of this section.

(c) Regardless of whether an appeal is initiated under subsections (a) or (b) of this section, complaints must be received from a total of 10,000 or 10% of the ratepayers, whichever is less.

(d) Each petition must be accompanied by the filing fee as required by the Texas Water Code, §5.235, except that no more than one filing fee will be required to appeal a specific ratemaking action.

§291.43. Refunds During Pendency of Appeal. A private utility which is appealing the action of the governing body of a municipality under the Texas Water Code, §13.043, shall not be required to make refunds of any over-collections during the pendency of the appeal.

§291.44. Contents of Pleadings Seeking Review of Rates for Sales of Water Under the Texas Water Code, §§11.036-11.041 and 12.013.

(a) Ratepayers seeking relief under the Texas Water Code, §11.041 and §12.013 should include in a written petition to the commission, the following information:

(1) petitioner's name;

(2) the name of the water supplier from which water supply service is received or sought;

(3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to

receive or use the water;

(4) that the petitioner is willing and able to pay a just and reasonable price for the water;

(5) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(6) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not just and reasonable or is discriminatory.

(b) Water suppliers seeking relief under the Texas Water Code, §11.041 and §12.013, should include in a written petition for relief to the commission, the following information:

(1) petitioner's name;

(2) the name of the ratepayers to whom water supply service is rendered;

(3) the specific section of the code under which petitioner seeks relief, with an explanation of why petitioner is entitled to the relief requested;

(4) that the petitioner is willing and able to supply water at a just and reasonable price; and

(5) that the price demanded by petitioner for the water is just and reasonable and is not discriminatory.

(c) If the petition for relief is accompanied by the deposit stipulated in the code, the executive director shall have a preliminary investigation of allegations contained in the petition made and determine whether or not there are probable grounds for the complaint alleged in the petition. The commission may require the petitioner to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission.

(d) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint alleged in the petition, the commission shall enter an order setting a time and place for a hearing on the petition.

Issued in Austin, Texas, on September 2, 1987.

TRD-8707425

J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 3, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.

Subchapter D. Evidence and Procedure

★ 31 TAC §§291.51-291.56

These repeals are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the authority to

adopt and enforce rules necessary to carry out its powers and duties relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.51. *General.*

§291.52. *Burden of Proof.*

§291.53. *Interim Rate Relief.*

§291.54. *Form and Filing of Bonds.*

§291.55. *Informal Proceedings.*

§291.56. *Consolidation.*

Issued in Austin, Texas, on September 2, 1987

TRD-8707426 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 3, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.



Subchapter E. *Ratemaking Components*

★31 TAC §§291.61, §291.62

The repeals are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.61. *Cost of Service.*

§291.62. *Rate Design.*

Issued in Austin, Texas, on September 2, 1987.

TRD-8707427 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.



Subchapter F. *Records and Reports*

★31 TAC §§291.71-291.76

The repeals are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.71. *General Reports.*

§291.72. *Financial Records and Reports—Uniform System of Accounts.*

§291.73. *Water and Sewer Utilities Annual Reports.*

§291.74. *Duplicate Information.*

§291.75. *Reports of Sale of Property and Mergers.*

§291.76. *Maintenance and Location of Records.*

Issued in Austin, Texas, on September 2, 1987.

TRD-8707428 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.



Subchapter D. *Records and Reports*

★31 TAC §§291.71-291.75

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, fees, operations, and services.

§291.71. *General Reports.*

(a) Who shall file. The recordkeeping, reporting, and filing requirements listed in this section shall apply to all water and sewer service providers operating in the State of Texas to the extent authorized by the Water Code, Chapter 13.

(b) Initial reporting. Periodic reporting shall commence with an initial filing, unless otherwise specified in this subchapter, such that the initial annual report shall reflect the transactions and condition of the utility for the most recent fiscal quarter ending on or prior to January 1, 1988. All initial reports shall, unless otherwise specified in this section, be filed within 90 days of this date or after issuance of commission instructions or forms.

(c) Report attestation. All reports submitted to the commission shall be attested to by an officer or manager of the utility under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the utility's operation.

(d) Due dates of reports. All reports must be received by the commission on or before the following due dates unless otherwise specified in this subchapter:

(1) annual reports: on or before April 1 of each year;

(2) special or additional reports: as may be prescribed by the commission.

(e) Contents of report. The annual report shall be submitted on forms prescribed by the commission and shall disclose the following information:

(1) the rates that are subject to the original or appellate jurisdiction of the commission for any service, product, or commodity offered by the utility;

(2) rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished by the utility;

(3) all ownership and management relationships among the utility and other entities, including individuals;

(4) all transactions with affiliates including, but not limited to, payments for costs of any services, interest expense or for any property, right, or thing;

(5) all payments of compensation (other than salary or wages subject to the withholding of federal income tax) for legislative matters in Texas or for representation before the Texas Legislature or any governmental agency or body; and

(6) a verified or certified copy of the appropriate permit, issued by the conservation, reclamation, or subsidence district, for each utility which withdraws groundwater from conservation, reclamation, or subsidence districts.

(f) Gross receipts assessment reporting. All utilities subject to the requirements of the Texas Water Code, §§13.451-13.453, shall file a gross receipts assessment report with the state comptroller reflecting those gross receipts subject to the assessment stipulated in the code on a form prescribed by the state comptroller. These reports shall be required on an annual basis for those companies that have elected to remit their assessment annually and on a quarterly basis for those companies that have elected to remit their assessment quarterly. Such reports and assessments shall be remitted in accordance with the Texas Water Code, §§13.451-13.453.

(g) Information omitted from reports. The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be stated in the report.

(h) Special and additional reports. Each utility, including municipally owned utilities, shall report on forms prescribed by the commission special and additional information as requested which relates to the operation of the business of the utility.

(i) Report amendments. Corrections of reports resulting from new information or errors shall be filed on a form prescribed by the commission.

(j) Penalty for refusal to file on time. In addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not

timely filed.

§291.72. Financial Records and Reports—Uniform System of Accounts. Every public utility shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts as amended from time to time shall be adhered to at all times, unless provided otherwise by these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the commission.

(1) Classification. For the purposes of accounting and reporting to the commission, each public water and/or sewer utility shall be classified with respect to its annual operating revenues as follows.

(A) Class A—annual operating revenues exceeding \$750,000.

(B) Class B—annual operating revenues exceeding \$150,000 but not more than \$750,000.

(C) Class C—annual operating revenues not exceeding \$150,000.

(2) System of accounts. For the purpose of accounting and reporting to the commission, each public water and/or sewer utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:

(A) Class A—uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class A utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(B) Class B—uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class B utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(C) Class C—uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class C utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(3) Accounting period. Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.

§291.73. Water and Sewer Utilities Annual Reports. All water and sewer utilities shall submit an annual report to the commission on a form prescribed by the commission, or the same annual report as required of such utility by the United States Department of Agriculture, Farmers Home Administration.

§291.74. Duplicate Information. A utility shall not be required to file with the commission forms or reports which duplicate in-

formation already on file with the commission.

§291.75. Maintenance and Location of Records. Unless otherwise permitted by the commission, all records required by these sections or necessary for the administration thereof shall be kept within the State of Texas at a central location or at the main business office located within the area served. These records shall be available for examination by the commission or its authorized representative at all reasonable hours.

Issued in Austin, Texas, on September 2, 1987.

TRD-8707429 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.



Subchapter G. Customer Service and Protection

★ 31 TAC §§291.81-291.88

The repeals are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.81. Customer Relations.

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§291.88. Continuity of Service.

Issued in Austin, Texas, on September 2, 1987.

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Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
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Subchapter E. Customer Service and Protection

★ 31 TAC §§291.81-291.89

These new sections are adopted on an emergency basis under the Texas Water

Code §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, fees, operations, and services.

§291.81. Customer Relations.

(a) Information to customers.

(1) Upon request for service by an applicant or for transfer of service by a customer, the utility shall fully inform the customer of the cost of initiating or transferring service and shall furnish a copy of the rate schedule from its approved tariff. The utility shall clearly inform the applicant of which costs will be borne by the utility and which costs are the responsibility of the applicant. Where information about costs is estimated, the utility shall so inform the applicant.

(2) Each utility shall maintain a current set of maps showing the physical locations of its facilities. All facilities (production, transmission, distribution or collection lines, treatment plants, etc.) shall be labeled to indicate the size, design capacity, and any pertinent information which will accurately describe the utility's facilities. These maps, and such other maps as may be required by the commission, shall be kept by the utility in a central location and will be available for commission inspection during normal working hours.

(b) Customer complaints.

(1) Upon complaint to the utility by a customer or applicant for service either in person, at its office, by letter, or by telephone, the utility shall promptly make a suitable investigation and advise the complainant of the results thereof.

(2) In the event the complainant is dissatisfied with the utility's report, the utility must advise the complainant that he has recourse in the Texas Water Commission complaint process, and that such process can be initiated by contacting the Consumer Relations Coordinator, Water Utilities Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8157. The commission encourages all complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.

(3) Each utility shall make an initial response within 15 days of receipt of a complaint from the commission on behalf of a customer or applicant for service. The commission may require a utility to provide a written response to the complainant, to the commission, or both. Pending resolution of a complaint, the commission may require continuation or restoration of service.

(4) The utility is required to keep a record of all complaints which shows the name and address of the complainant, the date and nature of the complaint and the adjustment or disposition thereof for a period of two years subsequent to the final settlement of the complaint.

(5) The utility must maintain and note on the monthly billing a telephone

number (or numbers) which may be reached by a local call by customers of each of the systems it operates. At the utility's option, a toll-free telephone number or the equivalent may be provided.

§291.82. Resolution of Disputes. Any customer or applicant for service requesting the opportunity to dispute any action or termination of a utility under the customer service rules of the commission shall be given an opportunity for a review by the utility. If the utility is unable to provide a review immediately following the customer's request for such review, arrangements for the review shall be made for the earliest possible date. Service shall not be disconnected pending completion of the review. The commission may require continuation or restoration of service pending resolution of a complaint. If the customer chooses not to participate in such review or to make arrangements for such review to take place within five days after requesting it, the company may disconnect service, providing notice has been given in accordance with standard disconnect procedures.

§291.83. Refusal of Service.

(a) Compliance by applicant. An applicant for service must be in compliance with state and municipal regulations and approved rules and regulations of the utility governing the service applied for which are on file with the commission. A utility may decline to serve an applicant which fails to be in compliance or for the following reasons:

(1) if the applicant's installation or equipment is known to be inadequate or of such character that satisfactory service cannot be given;

(2) if the applicant is indebted to any utility for the same kind of service as that applied for. However, in the event the indebtedness of the applicant is in dispute, the applicant shall be served upon complying with the deposit requirement in §291.84 of this title (relating to Applicant and Customer Deposit); or

(3) for refusal to make a deposit if applicant is required to make a deposit under these sections.

(b) Applicant's recourse. In the event that the utility shall refuse to serve an applicant under the provisions of these sections, the utility must inform the applicant of the basis of its refusal and that the applicant may file a complaint with the commission thereon.

(c) Insufficient grounds for refusal to serve. The following shall not constitute sufficient cause for refusal of service to a present customer or applicant:

(1) delinquency in payment for service by a previous occupant of the premises to be served;

(2) failure to pay a bill to correct previous underbilling due to misapplication of rates more than six months prior to the date of application;

(3) violation of the utility's rules pertaining to operation of nonstandard equipment or unauthorized attachments which interferes with the service of others, unless the customer has first been notified and been afforded reasonable opportunity to comply with said rules;

(4) failure to pay a bill of another customer as guarantor thereof, unless the guarantee was made in writing to the utility as a condition precedent to service;

(5) failure to pay the bill of another customer at the same address except where the change of customer identity is made to avoid or evade payment of a utility bill; or

(6) failure to pay for the restoration of a tap removed by the utility at its option or as the result of tampering or delinquency in payment by a previous customer.

§291.84. Applicant and Customer Deposit.

(a) Deposit policy:

(1) Residential applicants. If a residential applicant does not establish credit to the satisfaction of the utility, the residential applicant can be required to pay a deposit that does not exceed \$50 for water service and \$50 for sewer service.

(2) Nonresidential applicants. If an applicant for nonresidential service does not establish credit to the satisfaction of the utility, the applicant may be required to make a deposit. The required deposit shall not exceed an amount equivalent to 1/6 of the estimated annual billings. If actual billings of a nonresidential customer are at least twice the amount of the estimated billings, a new deposit requirement may be calculated and an additional deposit may be required to be made within 15 days after the issuance of written notice.

(b) Applicants 65 years of age or older. No cash deposit may be required of applicants for permanent residential service who are 65 years of age or older if such applicant does not have an outstanding account balance with the utility or another water or sewer utility which accrued within the last two years

(c) Interests on deposits. Each utility shall pay a minimum interest on such deposits at an annual rate at least equal to a rate set each calendar year by the Public Utility Commission in accordance with the provisions of Texas Civil Statutes, Article 1440a. Payment of the interest to the customer shall be annually if requested by the customer, or at the time the deposit is returned or credited to the customer's account. Inquiries about the current interest rate may be directed to the Water Utilities Division of the Texas Water Commission.

(d) Landlords/tenants. In cases of landlord/tenant relationships, the utility may require each party to sign an agreement specifying who is responsible for bills and deposits.

(e) Reestablishment of credit or deposit. Every applicant who has previously been a customer of the utility and whose service has been discontinued for nonpay-

ment of bills, meter tampering, bypassing of meter, or failure to comply with applicable state and municipal regulations or regulations of the utility shall be required, before service is resumed, to pay all amounts due the utility or execute a deferred payment agreement, if offered, and pay a deposit, if requested. The burden shall be on the utility to prove the amount of utility service received but not paid for and the reasonableness of any charges for such unpaid service, as well as all other elements of any bill required to be paid as a condition of service restoration.

(f) Records of deposits.

(1) The utility shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit;

(C) each transaction concerning the deposit; and

(D) the amount of interest earned on customer deposit funds.

(2) The utility shall issue a receipt of deposit to each applicant from whom a deposit is received and shall provide means whereby a depositor may establish a claim if the receipt is lost.

(3) A record of each unclaimed deposit must be maintained for at least four years, during which time the utility shall make a reasonable effort to return the deposit.

(4) The utility shall maintain all funds received as customer deposits in a separate, federally insured, interest-bearing account, or accounts, and shall use such funds for no purpose other than application to unpaid bills guaranteed by such deposits, payment of interest to depositors, and refunds of deposits to depositors.

(g) Refund of deposit.

(1) If service is not connected, or after disconnection of service, the utility shall promptly and automatically refund the customer's deposit plus accrued interest or the balance, if any, in excess of the unpaid bills for service furnished. A transfer of service from one premise to another within the service area of the utility shall not be deemed a disconnection within the meaning of these sections, and no additional deposit may be demanded unless permitted by these sections.

(2) When the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive commercial or industrial billings without having service disconnected for nonpayment of bill and without having more than two occasions in which a bill was delinquent, and when the customer is not delinquent in the payment of the current bills, the utility shall promptly and automatically refund the deposit plus accrued interest to the customer in the form of cash or credit to a customer's bill, or void the guarantee. If the customer does not meet these refund criteria, the deposit and interest may be retained, until the customer meets

the refunding of a portion of the cost of the service from the utility.

§291.85. *Membership fee.*

(a) Definition of membership fee. The term "membership fee" means a fee assessed each water supply corporation service applicant which entitles the applicant to one connection to the water main of the water supply corporation. The amount of the fee is generally defined in the water supply corporation's bylaws and payment of the fee provides for issuance of an membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed pursuant to said bylaws. The membership fee does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of water service.

(b) Line extension and construction charges. Every utility shall file its extension policy with the commission as part of its tariff. The policy shall be consistent, non-discriminatory, and subject to the approval of the commission. No contribution in aid of construction may be required of any customer except as provided for in the extension policy.

(1) The fees for initiation of service charged by a water or sewer utility shall be in accordance with the following:

(A) The fee charged by a utility for connecting a customer's premises to the system (i.e., tap fee) shall be stated on the approved tariff and shall be set at the average of actual costs of materials and labor for such service connections.

(B) The fee charged for all service connections (i.e., taps) requiring meters larger than 1/4 inch shall be set at the actual cost of making the individual service connection. The customer shall be given an itemized statement of the costs.

(2) Utilities shall not charge disconnect fees, membership fees, application fees, service call fees, or any other fee or charge for a service or connection that is a normal utility service except as provided in the tariff of the utility.

(3) An applicant for service from a water supply or sewer service corporation may appeal to the commission a decision of the water supply or sewer service corporation affecting the amount to be paid to obtain service in addition to the regular membership or tap fees. If the applicant makes a deposit with the utility covering the disputed and undisputed amounts, the utility shall provide service to the applicant pending final disposition of the appeal. If the commission finds the amount charged to be unreasonable, it shall establish the fee to be paid. Any portion of a deposit found to be due the applicant shall be promptly repaid with interest thereon.

(c) Contributions in aid of construction. Contributions in aid of construction that are required through an approved extension policy shall not be required of individual residential customers for produc-

tion, storage, treatment, or transmission facilities, except that developers may be required to provide contributions in aid of construction in amounts to furnish the development with facilities to provide for reasonable local demand requirements and which are also compliant with Texas Department of Health minimum design criteria for facilities used in the production, transmission, pumping, or treatment of water or Texas Water Commission minimum design criteria for facilities used in the transmission, pumping, treatment, and disposal of sewage.

(d) Costs utilities shall bear.

Utilities shall be required to bear the cost of the first 200 feet of any water main or sewer collection line necessary to extend service to an individual residential customer. If the requirement is included in the utility's approved tariff, the customer may be charged the remaining costs of extending service to his property provided, however, that the customers may be required to pay only the cost equivalent to the cost of connecting to the nearest transmission or distribution line, whether or not that line has adequate capacity to serve that customer. The utility shall bear the full cost of any oversizing of water mains or sewer collection lines necessary to serve other customers in the immediate area.

The individual residential customer shall not be charged for any additional production, storage, or treatment facilities unless that customer places unique, nonstandard service demands upon the systems, in which case, the customer may be charged the full cost of extending service to and throughout their property including the cost of all necessary transmission and storage facilities necessary to meet the service demands anticipated to be created by that property. For purposes of this section, commercial, industrial, and wholesale customers shall be treated as developers.

(e) Response to request for service.

(1) Every public utility shall serve each qualified applicant for service within its certificated area as soon as is practical after accepting a completed application. A qualified applicant is an applicant who has met all of the utility's requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service. A request for service that does not require line extensions, construction, or new facilities shall be filled within 14 working days after a completed application has been accepted. If construction is required to fill the order and if it cannot be completed within 30 days, the utility shall provide a written explanation of the construction required and an expected date of service. Except for good cause shown, the failure to provide service within 30 days of the date a completed application was accepted from a qualified applicant shall constitute refusal to serve, and consideration may be given to revoking the certificate of convenience and necessity or to granting a

certificate to another utility to serve the applicant. The time requirements set forth herein are not applicable in the event that the utility is prevented from extending service by legal impediment.

(2) The cost of extension and any construction cost options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants shall be provided to the customer in writing upon assessment of the costs of necessary line work, but before construction begins.

§291.86. *Billing.*

(a) Due date. The due date of the bill for utility service shall not be less than 16 days after issuance. Payment for utility service is delinquent if the full payment, including late fees, is not received at the utility or at the utility's authorized payment agency by 5 p.m. on the due date. The postmark, if any, on the envelope of the bill, or the recorded date of mailing by the utility, if there is no postmark on the envelope, shall constitute proof of the date of issuance. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(b) Penalty on delinquent bills for retail service. A one-time penalty of \$1.00 or 5.0% (whichever is larger) may be made on delinquent bills. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be collected unless a record of the date of mailing is made at the time of the mailing and maintained at the principal office of the utility.

(c) Deferred payment plan. A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments that extend beyond the due date of the next bill. The utility shall offer, upon request, a deferred payment plan to any residential customer who has expressed an inability to pay all of his or her bill, if the customer's bill exceeds the average monthly bill for that customer for the previous twelve months by three times and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge which shall not exceed an annual rate of 10% simple interest and must be clearly stated on the deferred payment agreement.

(d) Rendering and form of bills.

(1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one

week before the next billing cycle may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters

(2) Information to be included on the bill. The customer's bill shall show all the following information, if applicable (and shall be arranged so as to allow the customer to readily compute his bill with a copy of the applicable rate schedule which shall be mailed on request to the customer):

(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;

(B) the number and kind of units metered;

(C) the applicable rate schedule title or code;

(D) the total amount due for water service and separately stated, the total amount due for sewer service;

(E) the due date of the bill;

(F) the date by which customers must pay the bill in order to avoid addition of a penalty;

(G) the total amount due as penalty for nonpayment within a designated period;

(H) a distinct marking to identify an estimated bill;

(I) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;

(J) the gallonage used in determining sewer usage; and

(K) the local telephone number or toll free number where the utility can be reached.

(e) Charges for sewage service. It is not a requirement for the utility to use meters to measure the quantity of sewage disposed by individual customers. When a sewer utility is operated in conjunction with a water utility which serves the same customers, the charge for sewage disposal service may be based on the consumption of water as registered on the customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates which will accurately reflect the cost of service to each class of customer.

(f) Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the services being purchased by the customer, or if the utility fails to bill the customer for such service, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment shall be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount which was underbilled. The backbilling shall

not exceed six months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §291.88 of this title (relating to Meters). If the underbilling is \$25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(g) Estimated bills. When there is good reason for doing so, a water or sewer utility may submit estimated bills provided that an actual meter reading is taken every two months.

(h) Prorated charges. When a bill is issued for a period of less than one month, charges will be computed as follows. For metered service, service shall be billed for the amount metered except the minimum charge will be the applicable minimum as shown in the utility's tariff. For flat-rate service, the charge shall be prorated on the basis of the proportionate part of the period during which service was rendered.

(i) Prorated charges due to utility services outages. In the event that utility service is interrupted or seriously impaired for more than 24 consecutive hours, the utility shall prorate the base charge to the customer to reflect this loss of service. The base charge to the customer shall be prorated on the basis of the proportionate part of the period during which service was interrupted.

(j) Disputed bills.

(1) A customer may advise a utility that a bill is in dispute in any reasonable manner such as by written notice, in person, or by a telephone call directed to the utility during normal business hours. A dispute must be registered with the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by these sections.

(2) Notwithstanding any other section of this chapter, the customer shall not be required to pay the disputed portion of a bill which exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer's average monthly usage at current rates shall be the average of the customer's gross utility service for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage shall be estimated on the basis of usage levels of similar customers and under similar conditions.

(3) Notwithstanding any other section of this chapter, a utility customer's service shall not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §291.87 of this title (re-

lating to Discontinuance of Service).

(k) Notification of alternative payment programs or payment assistance. Anytime a customer contacts a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall inform the customer of all available alternative payment and payment assistance programs available from the utility, such as deferred payment plans, as applicable, and of the eligibility requirements and procedure for applying for each.

(l) Adjusted bills due to meter tampering. There shall be a presumption of reasonableness of billing methodology by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any of the following methods of calculating such bills are used:

(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills shall be based on at least 12 consecutive months of comparable usage history of that customer, when available, or lesser history if the customer has not been served at that site for 12 months; this subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;

(2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected; or

(3) in cases of meter tampering, meter bypassing or other service diversion, where the amount of actual unmeted consumption can be calculated by industry recognized testing procedures, bills may be calculated for the consumption over the entire period of meter bypassing or other service diversion.

(m) Equipment damage charges. A utility may charge for all labor, material, equipment, and other costs necessary to repair or replace all equipment damaged due to meter tampering or bypassing, service diversion, or the discharge of wastes which the system cannot properly treat. The utility may charge for all costs necessary to correct service diversion or unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs unless such penalty has been expressly approved by the commission and filed in the utility's tariff.

§291.87. *Discontinuance of Service.*

(a) Disconnection for delinquent bills. A customer's utility service may be disconnected if a bill has not been paid or a deferred payment agreement entered in-

to within 26 days from the date of issuance of a bill and if proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least 10 days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The information included in the notice shall be provided in English and Spanish as necessary to adequately inform the customer. Attached to or on the face of the termination notice shall appear a statement notifying the customer that if they are in need of assistance with payment of their bill, they may be eligible for alternative payment programs, such as deferred payment plans, and to contact the local office of the utility for more information. If mailed, the cut-off day may not fall on a holiday or weekend, but will be on the next working day after the 10th day. Payment at a utility's authorized payment agency is considered payment to the utility. The company shall not issue late notices or disconnect notices to the customer earlier than the first day the bill becomes delinquent, so that a reasonable length of time is allowed to ascertain receipt of payment by mail or at the utility's authorized payment agency.

(b) Disconnection with notice. Utility service may be disconnected after proper notice for any of the following reasons:

(1) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement;

(2) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation; and

(3) failure to comply with deposit or guarantee arrangements where required by §291.84 of this title (relating to Applicant and Customer Deposit).

(c) Disconnection without notice. Utility service may be disconnected without notice where a known dangerous condition related to the type of service provided exists for as long as the condition exists or where service is connected without authority by a person who has not made application for service or who has reconnected service without authority following termination of service for nonpayment or in instances of tampering with the utility company's meter or equipment, bypassing the same, or other instances of diversion as defined in §291.88 of this title (relating to Meters). Where reasonable, given the nature of the hazardous condition, a written statement providing notice of disconnection and the reason therefor shall be posted at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected.

(d) Disconnection prohibited. Utili-

ty service may not be disconnected for any of the following reasons:

(1) delinquency in payment for utility service by a previous occupant of the premises;

(2) failure to pay for merchandise, or charges for nonutility service provided by the utility;

(3) failure to pay for a different type or class of utility service unless fee for such service is included on the same bill;

(4) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;

(5) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §291.88 of this title (relating to Meters); and

(6) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the utility is unable to read the meter due to circumstances beyond its control.

(e) Disconnection on holidays or weekends. Unless a dangerous condition related to the type of service provided exists, or unless the customer requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the utility are not available to the public for the purpose of making collections and reconnecting service.

(f) Disconnection due to utility abandonment. No public utility may abandon a customer or a certified service area without complying with the requirements of §291.114 (relating to Cessation of Operations by a Retail Public Utility) and approved by the commission.

(g) Disconnection for ill and disabled. No utility may discontinue service to a delinquent residential customer permanently residing in an individually metered dwelling unit when that customer establishes that discontinuance of service will result in some person residing at that residence becoming seriously ill or more seriously ill if service is discontinued. Each time a customer seeks to avoid termination of service under this section, the customer must have the attending physician (for purposes of this section, the term "physician" shall mean any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the utility within 16 days of issuance of the bill. A written statement must be received by the utility from the physician within 26 days of the issuance of the utility bill. The prohibition against service termination provided by this section shall last 63 days from the issuance of the utility bill or such lesser period as may be agreed upon by the utility and the customer or physician. The customer who makes such

request shall enter into a deferred payment plan.

(h) Reconnection of services. If service is discontinued for any reason under subsection (b)(1) of this section, reconnection of services must be established within 24 hours of the past due bill and any other outstanding charges being paid.

§291.88. Meters.

(a) Meter requirements.

(1) Use of meter. All water sold by a utility shall be charged for by meter measurements, except where otherwise provided for by the utility's approved tariff.

(2) Installation by utility. Unless otherwise authorized by the commission, each utility shall provide and install and shall continue to own and maintain all meters necessary for the measurement of water to its customers.

(3) Standard type. No utility shall furnish, set up, or put in use any meter which is not reliable and of a standard type which meets industry standards; provided, however, special meters not necessarily conforming to such standard types may be used for investigation or experimental purposes.

(b) Meter readings.

(1) Meter unit indication. In general, each meter shall indicate clearly the gallons of water or other units of service for which charge is made to the customer.

(2) Reading of meters. As a matter of general practice, service meters shall be read at monthly intervals, and as nearly as possible on the corresponding day of each meter reading period, but may be read at other than monthly intervals if the circumstances warrant.

(c) Meter tests on request of customer. Each utility shall, upon the request of a customer, and, if he so desires, in his presence or in that of his authorized representative, make without charge a test of the accuracy of the customer's meter. The test shall be made during the utility's normal working hours at a time convenient to the customer if he desires to observe the test. The test shall be made preferably on the customer's premises, but may, at the utility's discretion, be made at the utility's test laboratory. If the meter has been tested by the utility, or by an authorized agency, at the customer's request, and within a period of two years the customer requests a new test, the utility shall make the test, but if the meter is found to be within the accuracy standards established by the American Water Works Association, the utility may charge the customer a fee which reflects the cost to test the meter, but this charge shall in no event be more than \$15 for a residential customer. Following the completion of any requested test, the utility shall promptly advise the customer of the date of removal of the meter, the date of the test, the result of the test, and who made the test.

(d) Meters.

(1) Meter test facilities and equip-

ment

(A) The accuracy of a water meter shall be tested by comparing the actual amount of water passing through it with the amount indicated on the dial. The test shall be conducted in accordance with the standards for testing cold water meters as prescribed by the American Water Works Association.

(B) The utility shall provide the necessary standard facilities, instruments, and other equipment for testing its meters in compliance with these sections. Any utility may be exempted from this requirement by the commission provided that the satisfactory arrangements are made for testing its meters by another utility or commission approved agency equipped to test meters in compliance with these sections.

(2) Meter test measurement standards.

(A) Measuring devices for test of meters may consist of a calibrated tank for volumetric measurement or tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be accompanied by a certificate of accuracy from any standard laboratory as may be approved by the commission. If a weight standard is used, the scales shall be tested and calibrated periodically by such approved laboratory and a record maintained of the results of the test.

(B) Standards used for meter testing shall be of a capacity sufficient to insure accurate determination of accuracy and shall be subject to the approval of the commission.

(C) A standard meter may be provided and used by a utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated periodically to insure its accuracy within the limits required by these sections. In any event, such tests shall be made at least once every 120 days while the standard meter is in use, and a record of such tests shall be kept by the utility.

(3) Meter test prior to installation. No meter shall be placed in service unless its accuracy has been established. If any meter shall have been removed from service, it must be properly tested and adjusted before being placed in service again. No meter shall be placed in service if its accuracy falls outside the limits as specified by the American Water Works Association.

(e) Bill adjustment due to meter error. If any meter is found to be outside of the accuracy standards established by the American Water Works Association, proper correction shall be made of previous readings for the period of six months immediately preceding the removal of such meter from service for the test, or from the time the meter was in service since last tested, but not exceeding six months, as the meter shall have been shown to be in error by such test, and adjusted bills shall be rendered. No refund is required from the

utility except to the customer last served by the meter prior to the testing. If a meter is found not to register for any period, unless bypassed or tampered with, the utility shall make a charge for units used, but not metered, for a period not to exceed three months, based on amounts used under similar conditions during the period preceding or subsequent thereto, or during corresponding periods in previous years.

(f) Meter tampering. For purposes of these sections, meter tampering, bypass, or diversion shall be defined as tampering with a water or sewer utility company's meter or equipment, bypassing the same, or other instances of diversion, such as physically disorienting the meter, objects attached to the meter to divert service or to bypass, insertion of objects into the meter, and other electrical and mechanical means of tampering with, bypassing, or diverting utility service. The burden of proof of meter tampering, bypass, or diversion is on the utility. Photographic evidence must be accompanied by a sworn affidavit by the utility when any action regarding meter tampering as provided for in these sections is initiated. A court finding of meter tampering may be used instead of photographic or other evidence, if applicable.

§291.89. Continuity of Service.

(a) Service interruptions.

(1) Every public utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.

(2) Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

(b) Record of interruption. Except for momentary interruptions due to automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(c) Report to commission. The commission shall be notified in writing of interruptions in service affecting the entire system or any major division thereof lasting

more than four hours. The notice shall also state the cause of such interruptions and steps taken to prevent recurrence.

Issued in Austin, Texas, on September 2, 1987

TRD-8707431

J. D. Head
Director
Legal Division
Texas Water
Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.



Subchapter H. Quality of Service

★31 TAC §§291.91, §291.92

The repeals are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.91. *Water Utilities—Definitions of Terms.*

§291.92. *Sewer Utilities—Definitions of Terms.*

Issued in Austin, Texas, on September 2, 1987

TRD-8707432

J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.



Subchapter F. Quality of Service

★31 TAC §§291.91-291.95

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, fees, operations, and services.

§291.91. *Applicability.* Except where otherwise noted, this chapter applies to utility service provided by both water and sewer utilities as defined by §291.3 of this title (relating to Definitions of Terms).

§291.92. *Requirements by Others.* The application of commission rules shall not relieve the utility from abiding by the requirements of the laws and regulations of the state, local department of health, local ordinances, and all other regulatory agencies having jurisdiction over such matters.

§291.93. *Water Utilities*

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

(1) Main—A water pipe, owned, operated, and maintained by a utility, which is used for the purpose of transmission or distribution of water, but is not a water service pipe.

(2) Service pipe. A pipe connecting the main and the customer's place of consumption.

(3) Water rationing. Reduction of the amount of water which may be consumed by customers of the utility due to emergency conditions or drought.

(b) Sufficiency of service. Each utility shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses.

(1) The water system quantity and quality requirements of the Texas Department of Health shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water utilities for household usage. Additional capacity shall be provided to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock.

(2) In cases of extreme drought, periods of abnormally high usage, or extended reduction in ability to supply water due to equipment failure, it may be necessary to institute water rationing. Water rationing is not a legitimate alternative when water systems are deficient in meeting the minimum water system quantity requirements of the Texas Department of Health or reasonable local demand characteristics during normal use periods, or when the utility is not making all immediate and necessary efforts to repair or replace malfunctioning equipment.

(c) Quality of product. Each utility shall furnish water which has been approved by the Texas Department of Health.

(d) Service connections.

(1) Ownership of service pipe.

(A) The utility shall furnish and install for the purpose of connecting its distribution system to the customer's property, the service pipe from its main to the meter location. For all new installations, a utility-owned cut-off valve shall be provided on the utility side of the meter. Utilities without customer meters shall provide and maintain a cut-off valve at, or as near the property line as possible. This does not relieve the utility from the obligation to comply with §291.88 of this title (relating to Meters).

(B) The customer shall be responsible for furnishing and laying the necessary customer service pipe from the meter location to the place of consumption

and shall keep the customer service line in good repair. For utilities without customer meters, customer responsibility shall begin at the discharge side of the utility's cut-off valve.

(2) Location of service pipe. Prior approval of the utility shall be secured as to the proper location for connecting the customer's service pipe to the utility's facilities.

(3) Location of meters.

(A) Meters shall be readily accessible for maintenance and reading, and so far as practicable the location should be mutually acceptable to the customer and the utility. The meter shall be installed so as to be unaffected by climatic conditions and reasonably secure from damage.

(B) One meter is required for each residential, commercial, or industrial facility. An apartment building or a trailer or mobile home park may be considered to be a single commercial facility for the purpose of these sections.

§291.94. *Sewer Utilities*

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

(1) Customer service line—The pipe to convey sewage from the customer's premises to the property boundary connecting to the utility's service pipe.

(2) Main—A sewage pipe, owned, operated, or maintained by a sewer utility, used to transport sewage, and which is not a service pipe.

(3) Service pipe—A pipe from the customer's property boundary to the utility's main, and which receives sewage from the customer's service line.

(4) Sewage—Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

(b) Sufficiency of service. The utility's facilities for the collection, treatment, and disposal of sewage must be adequately sized to meet all normal demands for service and provide a reasonable reserve for emergencies.

(c) Sufficiency of treatment. Each utility shall maintain and operate a treatment facility of adequate size and properly equipped to treat sewage and discharge the effluent at the quality required by the laws and regulations of the State of Texas.

(d) Service connections.

(1) The utility shall furnish and install, for the purpose of connecting its collection system to the customer's service line, the service pipe from its main to the customer's property line.

(2) The customer shall be responsible for furnishing and laying the necessary customer service line from the property line to the residence and shall keep the customer service line in good repair.

(e) Service pipe maintenance.

(1) Utility maintenance. The utility shall maintain its collection system and appurtenances to minimize blockages.

(2) Customer maintenance. The customer service line and appurtenances shall be constructed in accordance with the laws and regulations of the State of Texas, local plumbing codes, or, in the absence of such local codes, the National Plumbing Code, or other standards as prescribed by the commission.

(3) It shall be the customer's responsibility to maintain the customer service line and appurtenances in good operating condition. If the utility can provide evidence of excessive infiltration or inflow into the customer's service line, the utility may, with the written approval of the executive director, require that the customer repair the line or eliminate the infiltration or inflow. If the customer fails to correct the problem within a reasonable time, the utility may disconnect the service after proper notice.

§291.95. *Standards of Construction*. In determining standard practice, the commission will be guided by the provisions of American Water Works Association, and such other codes and standards that are generally accepted by the industry, except as modified by this commission, the Texas Department of Health, or municipal regulations within their jurisdiction. Each utility shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other public utilities insofar as practical.

Issued in Austin, Texas, on September 2, 1987

TRD-8707433 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.



Subchapter I. Certificates of Convenience and Necessity

★ 31 TAC §§291.101-291.115

The repeals are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.101. *Definitions of Terms.*

§291.102. *Certificate Required.*

§291.103. *Exceptions for Extension of Service.*

§291.104. *Certificates for Existing Service Areas and Facilities.*

§291.105. *Certificates for New Service Areas and Facilities.*

§291.106. *Filing by Existing Public Utilities.*

§291.107. *Application Contents.*

§291.108. *Preliminary Order for Certificate.*

§291.109. *Notice and Hearing for Applications for Certificates of Convenience and Necessity.*

§291.110. *Revocation or Amendment of Certificate.*

§291.111. *Transferability of Certificates.*

§291.112. *Notice Requirements for Ceasing Operations or Transfers of Certificates.*

§291.113. *Exclusiveness of Certificates.*

§291.114. *Certification Forms.*

§291.115. *Contracts Valid and Enforceable.*

Issued in Austin, Texas, on September 2, 1987.

TRD-8707434

J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 2, 1987

Expiration date: December 31, 1987

For further information, please call

(512) 463-8087.



Subchapter G. Certificates of Convenience and Necessity

★ 31 TAC §§291.101-291.118

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, fees, operations, and services.

§291.101. *Definitions of Terms.* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Public utility—A water supply or sewer service corporation and any person, corporation, cooperative corporation or any combination of those persons or entities that meets the definition of a public utility under the Texas Water Code, §13.002(3).

Retail public utility—Any person, corporation, water supply, or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation operating, maintaining, or controlling in this state facilities for providing retail water and sewer utility service.

§291.102. *Certificate Required.* Unless otherwise specified, a public utility may not in any way render service directly or indirectly to the public without first having obtained from the commission a certificate that the present or future public convenience and necessity requires or will require that installation, operation, or extension. Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

§291.103. *Exceptions for Extension of Service.*

(a) A retail public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already served by it and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility;

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity; or

(3) operation, extension, or service in progress on September 1, 1975.

(b) Any extensions allowed by subsection (a) of this section shall be limited to devices for interconnection of existing facilities on devices used solely for transmitting public utility services from existing facilities to customers of retail utility service.

(c) Whenever an extension is made pursuant to subsection (a) of this section, the utility making the extension must inform the commission of the extension by submitting, within 14 days of the date service is commenced, a detailed map of the certificate area clearly showing the extension, accompanied by a detailed written explanation of the extension and work done to accomplish it.

§291.104. *Applicant.* It is the responsibility of the owner of the utility to submit an application for a certificate of convenience and necessity.

§291.105. *Certificates for New Service Areas and Facilities.* The commission may grant applications and issue certificates only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege.

(1) A certificate or certificate amendment is required for a change in ser-

vice area, and as a requisite to certification, the commission shall consider the adequacy of service currently provided to the requested area, the need for additional service in the requested area, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, the ability of the applicant to provide adequate service, environmental integrity, and the probable improvement in service or lowering of cost to consumers in that area.

(2) A certificate is not required for the following:

(A) a contiguous extension of those facilities described in the Texas Water Code, §13.243;

(B) the construction or upgrading of distribution facilities within the utility's service area.

(3) The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.

§291.106. *Contents of Certificate of Convenience and Necessity Applications.* Applications for certificates of convenience and necessity or for an amendment to a certificate shall contain an original and three copies of the following materials:

(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;

(2) a State Highway County Map, or equivalent, with a scale of one inch = two miles which clearly defines the proposed location of the applicant and each neighboring water or sewer utility within two miles of the applicant's present location. Service boundaries shall conform to verifiable landmarks such as roads, creeks, and railroads. Separate maps shall be filed for each county in which the utility operates;

(3) a facilities map with a scale of one inch = 2,000 feet, United States Geological Service 7½ minute series maps, subdivision plats, engineering planning maps or other maps of equivalent scale and accuracy. The map shall separately indicate the production facilities, transmission facilities, and distribution facilities as located within the area proposed. A color code may be used to distinguish the types of facilities indicated. The location of any such facility shall be described with such exactness that the facility can be located "on the ground" from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location;

(4) an original and three copies of any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or

license from the proper municipality or other public authority;

(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;

(6) a schedule for the ultimate construction of all proposed facilities, keyed to maps showing where such facilities will be located to provide service;

(7) source of funding for facilities; and

(8) any other information that the executive director may reasonably require.

§291.107. Notice for Applications for Certificates of Convenience and Necessity.

(a) If an application for issuance or amendment of a certificate of public convenience and necessity is filed, the applicant will prepare notice, as prescribed in the commission's application form, which will include the following:

(1) all information outlined in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §13;

(2) all information stipulated in the commission's instructions for completing an application for a certificate of convenience and necessity; and

(3) a statement that persons who wish to intervene or comment upon the action sought should contact the Rates Section, Water Utilities Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant for publication and mailing.

(1) The applicant shall mail the notice to cities and neighboring utilities providing the same utility service within two miles of the requested service area, and any city with an extra-territorial jurisdiction which overlaps the proposed service area.

(2) Within 14 days of the date of the notice, the applicant shall submit to the commission an affidavit specifying the persons to whom notice was provided and the date of that notice.

(c) The applicant shall publish the notice in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the notice is received from the commission. Proof of publication in the form of publisher's affidavit shall be submitted to the commission within 14 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

(d) The commission may require the applicant to deliver notice to other affected persons or agencies.

§291.108. Action on Applications.

(a) The commission may conduct a public hearing on any application.

(b) The commission may take action on an application at a regular meeting without holding a public hearing if 30 days after the required mailed or published notice has been issued (whichever occurs later), no hearing has been requested.

(c) If a hearing is requested, the commission shall fix a time and place for the hearing. Notice of the hearing shall be issued at least 10 days in advance of the hearing. Mailed notice shall be provided to all parties and any person requesting a hearing.

§291.109. Corrections to Certificates of Convenience and Necessity. The commission may make corrections to certificates, either by reissuing the certificate or by issuing an endorsement to the certificate, without the necessity of observing the formal application procedures prescribed in this chapter:

(1) to correct a clerical or typographical error;

(2) to describe more accurately the location of the certificated area; or

(3) to state more accurately or update any provision in a certificate without changing the substance of any such provision, including the updating of maps which have been incorporated by reference in a certificate.

§291.110. Report of Sale, Merger, or Consolidation.

(a) At least 60 days before the effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility and the proposed transferee shall notify the commission of the proposed transaction. The notification shall be on the form required by the commission.

(b) The commission shall investigate the transaction with or without public hearing, to determine whether the transfer will serve the public interest.

(c) Prior to the expiration of the 60 day notification period, the commission shall notify all known parties to the transaction of any facts or conditions which would have an adverse effect on a request to sell, assign, or lease a certificate of convenience and necessity or any right obtained under the certificate.

(1) The commission shall also notify all known parties if no adverse facts or conditions are discovered.

(2) A notification under this subsection does not prohibit the executive director from making an adverse recommendation or the commission from making an adverse decision in a subsequent proceeding under the Texas Water Code, §13.251.

(d) Any utility which sells, acquires, leases, rents, merges, or consolidates any water or sewer system required by law to possess a certificate of convenience and

necessity with the effective date of the transaction on or before October 31, 1987, shall report the transaction to the commission prior to the effective date of the transaction. The report shall be in a form prescribed by the commission. The Texas Water Code, §13.301(c), does not apply to reports filed under this subsection.

(e) A utility which has sold, acquired, leased, or rented any plant as an operating unit in this state for a total consideration in excess of \$100,000 or merged or consolidated with another utility operating in this state prior to September 1, 1987, shall report the transaction to the commission within 30 days of the effective date of the transaction, or within such other reasonable time as the commission may allow. The report shall be made in a form prescribed by the commission. The Texas Water Code, §13.301(c), does not apply to reports filed under this subsection.

§291.111. Transfer of Certificate of Convenience and Necessity.

(a) A certificate is issued in personam, continues in force until further order of the commission, and may be transferred only by the approval of the commission. Any attempted transfer is not effective for any purpose until actually approved by the commission.

(b) On or after the effective date of the transaction reported under §291.110 of this title (relating to Report of Sale, Merger or Consolidation), a utility may file an application to transfer the certificate of convenience and necessity on a form required by the commission.

(1) Mailed notice shall be given to customers of the transferee and transferor utilities and other affected parties and shall include the following:

(A) the name and business address of the transferor utility and any transferee utility;

(B) a description of the service area of the utilities involved;

(C) the anticipated effect of the transfer on the operation or the rates and services provided to customers; and

(D) a statement that persons who wish to intervene or comment upon the action sought should contact the Rates Section, Water Utilities Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(2) The commission may require the applicant to deliver notice to other affected persons or agencies.

(3) If no hearing is requested, the commission may approve the transfer by order at a regular meeting of the commission.

(4) If a hearing is requested, the commission shall fix a time and place for the hearing and notice thereof shall be issued. Mailed notice shall be issued to all parties and any person requesting a hearing.

(5) The commission may approve a

transfer if it determines that the transferee is capable of rendering adequate and continuous service to every consumer within the certified area, after considering the factors set forth in the Texas Water Code, §13.246(c). The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met. The commission shall also consider the prior compliance record of the transferee, if any.

(c) Upon the sale or transfer of any public utility or operating units thereof, the seller shall file with the commission, under oath, in addition to other information, a list showing the names and addresses of all customers served by such utility or unit who have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon. All such deposits shall be refunded to the customers or transferred to the new owner, with all accrued interest.

§291.112. Revocation or Amendment of Certificate.

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity if it finds that the certificate holder has never provided, is no longer providing service, or has failed to provide continuous and adequate service in the area, or part of the area covered by the certificate.

(b) If the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

§291.113. Requirement to Provide Continuous and Adequate Service. A utility which has been granted or is required by law to possess a certificate of convenience and necessity may not discontinue, reduce, or impair utility service except for:

- (1) nonpayment of charges;
- (2) non use; or
- (3) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.

§291.114. Cessation of Operations by a Retail Public Utility.

(a) Any utility desiring to discontinue, reduce, or impair utility service, except under the conditions listed in the Texas Water Code, §13.250(b), must file a petition with the commission which sets out:

- (1) the action proposed by the utility;
- (2) the proposed effective date of the actions;
- (3) a concise statement of the reasons for proposing the action; and
- (4) the area affected by the action, including maps as described by §291.106(2) and (3) of this title (relating to Contents of Certificate of Convenience and Necessity

Applications).

(b) The utility shall submit a proposed notice to be provided to customers of the utility and other affected parties which will include the following:

- (1) the name and business address of the utility which seeks to cease operations;
- (2) a description of the service area of the utility involved;
- (3) the anticipated effect of the cessation of operations on the rates and services provided to the customers; and
- (4) a statement that persons who wish to intervene or comment upon the action sought should contact the Rates Section, Water Utilities Division, Texas Water Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(c) After review by the commission, the applicant shall mail the notice to cities and neighboring utilities providing the same utility service within two miles of the petitioner's service area and any city whose extra-territorial jurisdiction (ETJ) overlaps the utility's service area, and to the customers of the utility proposing to cease operations.

(d) The utility shall publish notice once each week for two consecutive weeks in a newspaper of general circulation in the county of operation which shall include, in addition to the information specified in subsection (b) of this section:

- (1) the sale price of the utility;
- (2) the name and mailing address of the owner of the utility; and
- (3) the business telephone of the utility.

(e) The commission may require the applicant to deliver notice to other affected persons or agencies.

(f) If, 30 days after the required mailed or published notice has been issued (whichever occurs later), no hearing is requested, the commission may consider the application for final decision without further hearing.

(g) If a hearing is requested, the commission shall fix a time and place for the hearing and notice thereof shall be issued at least 10 days in advance of the hearing. Mailed notice shall be issued to any person requesting a hearing.

§291.115. Exclusiveness of Certificates. Any certificate granted under this subchapter shall not be construed to vest exclusive service or property rights in and to the area certificated. The commission may grant, upon finding that the public convenience and necessity requires additional certification to another utility or utilities, additional certification to any other utility or utilities to all or any part of the area previously certificated pursuant to this chapter.

§291.116. Contracts Valid and Enforceable. Contracts between retail public utilities designating areas to be served and

customers to be served by those utilities, when approved by the commission, are valid and enforceable and are incorporated into the certificates of public convenience and necessity.

§291.117. Emergency Orders. The commission may issue emergency orders, with or without a hearing, to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act. If an order is issued without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.

§291.118. Contents of Request for Commission Order Under the Texas Water Code, §13.252. If a retail public utility, in constructing or extending a line, plant, or system, interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the commission may issue an order prohibiting the construction, extension, or provision of service, or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for commission order shall include the following:

- (1) the name and business address of the utility making the request;
- (2) the name and business address of the utility which is to be the subject of the order;
- (3) a description of the alleged interference;
- (4) a map showing the service area of the requesting utility which clearly shows the location of the alleged interference;
- (5) copies of any other information or documentation which would support the position of the requesting utility;
- (6) the filing fee as prescribed by the Texas Water Code, §5.235; and
- (7) other information as the executive director may require.

Issued in Austin, Texas, on September 2, 1987

TRD-8707435

J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087.



Subchapter H. Utility Submetering

★31 TAC §§291.121-291.126

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, fees, operations, and services.

§291.121. *General Rules.*

(a) Purpose and scope.

(1) The provisions of this subchapter are intended to establish a comprehensive regulatory system to assure that the practices involving submetering and billing of dwelling units are just and reasonable to the tenant and the owner and to establish the rights and responsibilities of both the owner and tenant. The provisions of this subchapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status.

(2) For purposes of enforcement, both utilities and owners are subject to enforcement pursuant to the Texas Water Code, which may involve civil penalties of up to \$5,000 for each offense and criminal penalties for willful and knowing violations.

(b) Application. The provisions of this section subchapter shall apply to existing apartment houses or mobile home parks utilizing water, or wastewater submetering as of the effective date of this section as well as those apartment houses and mobile home parks which engage in utility submetering as defined by this section at any subsequent date.

(c) Severability clause. The adoption of this subchapter will in no way preclude the Texas Water Commission from altering or amending it in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. If any provision of this section subchapter is held invalid, such invalidity shall not affect other provisions or application of this subchapter which can be given effect without the invalid provision or application, and to this end, the provisions of this subchapter are declared to be severable. The provisions of this subchapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

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

Apartment house—A building or buildings containing more than five dwelling units, all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house shall include residential condomini-

niums, whether rented or owner occupied. Commission—The Texas Water Commission.

Dwelling unit—A room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities, or a mobile home in a mobile home park.

Hearing—Any proceeding based on an application, petition, complaint, or motion.

Master meter—A meter used to measure, for billing purposes, all water usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units therein.

Month or monthly—The period between any two consecutive meter readings by the utility, either actual or estimated, at approximately 30-day intervals.

Owner—For purposes of this subchapter any owner, operator, or manager of any apartment house or mobile home park engaged in water or wastewater utility submetering.

Utility metering—Individual apartment dwelling unit metering of water or wastewater utility service performed by a utility company.

Utility service—For purposes of this subchapter, utility service shall include water and wastewater service only.

Utility submetering—Individual dwelling unit metering of water or wastewater utility service performed by the owner.

§291.123. *Records and reports.*

(a) Either the owner or the owner's management company engaging or proposing to engage in utility submetering must register with the commission on or before March 1, 1988, or 30 days prior to commencing utility submetering, whichever occurs first, and provide the following information:

(1) business address and business telephone of the owner or owner's management company;

(2) date utility submetering began or is to begin;

(3) person to be contacted with regard to questions or complaints about submetering; and

(4) name and location of each apartment unit or mobile home park being submetered.

(b) The owner shall maintain and make available for inspection by the tenant the following records:

(1) the billing from the utility to the apartment owner for the current month and the 12 preceding months;

(2) the calculation of the average cost per billing unit, i.e., gallons for the current month and the 12 preceding months;

(3) all submeter readings and tenant billings for the current month and the 12 preceding months; and

(4) all submeter test results for the current month and the 12 preceding months.

(c) Records shall be made available at the resident manager's office during rea-

sonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at a time agreed upon by the apartment owner and tenant.

(d) All records shall be made available to the commission upon request.

§291.124. *Billing.*

(a) Rental agreement. All rental agreements between the owner and the tenants shall clearly state that the dwelling unit is submetered, that the bills will be issued on that basis, that water consumption or wastewater charges based on water consumption for all common areas and common facilities will be the responsibility of the owner and not of the tenant, and that any disputes relating to the computation of the tenant's bill and the accuracy of the submetering device will be between the tenant and the owner. Each owner shall provide a tenant, at the time the lease is signed, a copy of this section or a narrative summary approved by the commission to inform the tenant of his rights and the owner's responsibilities under this section.

(b) Rendering and form of bill.

(1) Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period. Bills shall be rendered as promptly as possible following the reading of the submeters. The submeters shall be read within three days of the scheduled reading date of the utility's master meter.

(2) The billing unit shall be that used by the utility in its billing to the owner such as gallon for water or wastewater submetering.

(3) The owner shall be responsible for determining that water consumption or sewer usage billed to any dwelling unit shall be only for that submetered and consumed within that unit.

(4) Submetered billings shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, submetered billing information must be separate and distinct from any other charges on the bill and conform to information required in paragraph (8) of this subsection. The submetered bill must clearly state "submetered water" or "submetered wastewater" as applicable.

(5) The bill shall reflect only submetered usage. Utility consumption for all common facilities will be the responsibility of the owner and not of the tenant. Allocation of central systems for air conditioning, heating, and hot water are not prohibited by these sections as set forth in Subchapter I of this title (relating to Non-Submetered Master Metered Utilities).

(6) The owner shall not impose any extra charges on the tenant over and above those charges which are billed by the utility to the owner. The bill may not include a deposit, late penalty, reconnect charge, or

any other charges unless otherwise provided for by these sections.

(A) A one time penalty not to exceed 5.0% may be made on delinquent accounts. If such penalty is applied, the bill shall indicate the amount due if paid by the due date and the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease which states the exact dollar or percentage amount of such late penalty.

(B) A reconnect fee may be applied if service to the tenant is disconnected for nonpayment of submetered bills in accordance with §291.125(a) of this title (relating to Discontinuance of Service). Such reconnect fee shall be calculated based on the average actual cost to the owner for the expenses associated with the reconnection, but under no circumstance shall exceed \$10. No reconnect charge may be applied unless agreed to by the tenant in a written lease which states the exact dollar amount of such reconnect charge.

(7) The tenant's submeter bills shall be calculated in the following manner. After the water or wastewater bill is received from the utility, the owner shall divide the net total charges for water or sewer consumption, plus applicable tax, by the total number of billing units to obtain an average cost per billing unit. This average billing unit cost shall then be multiplied by each tenant's consumption to obtain the charge to the tenant. The average cost per billing unit shall not include any penalties charged by the utility to the owner for disconnect, reconnect, late payment, or other similar service charges.

(8) The tenant's water or wastewater submeter bill shall show all of the following information:

(A) the date and reading of the submeter at the beginning and at the end of the period for which the bill is rendered;

(B) the number of billing units metered;

(C) the computed rate per billing unit;

(D) the total amount due for water or wastewater used;

(E) a clear and unambiguous statement that the bill is not from the utility, which shall be named in the statement;

(F) the name and address of the tenant to whom the bill is applicable;

(G) the name of the firm rendering the submetering bill and the name or title, address, and telephone number of the person or persons to be contacted in case of a billing dispute;

(H) the date by which the tenant must pay the bill; and

(I) the name, address, and telephone number of the party to whom payment is to be made.

(c) Due date. The due date of the bill shall not be less than seven days after issuance. A bill for submetered service is delinquent if not received by the party indicated on the bill by the due date. The postmark

date, if any, on the envelope of the bill or on the bill itself shall constitute proof of the date of issuance. An issuance date on the bill shall constitute proof of the date of issuance if there is no postmark on the envelope or bill. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(d) Disputed bills. In the event of a dispute between the tenant and the owner regarding any bill, the owner shall forthwith make such investigation as shall be required by the particular case, and report the results thereof to the tenant. The investigation and report shall be completed within 30 days from the date the tenant notified the owner of the dispute.

(e) Tenant access to records. The tenants of any dwelling unit whose water consumption or wastewater based on water consumption is submetered shall be allowed by the owner to review and copy the master billing for the current month's billing period and for the 12 preceding months, and all submeter readings of the entire apartment house or mobile home park for the current month and for the 12 preceding months.

(f) Estimated bills. Estimated bills shall not be rendered unless the meter has been tampered with or is out of order, and in such case the bill shall be distinctly marked as such.

(g) Overbilling and underbilling. If submetered billings are found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment shall be made for the entire period of the overcharges. If the tenant was undercharged, the owner may backbill the tenant for the amount which was underbilled for a period not to exceed six months. If the underbilling is \$25 or more, the owner shall offer to such tenant a deferred payment plan option, for the same length of time as that of the underbilling. Adjustments for usage by a previous tenant may not be backbilled to the current tenant.

§291.125. Discontinuance of Service.

(a) Disconnection for delinquent bills. Utility service may only be disconnected for nonpayment of utility bills. A tenant's utility service may be disconnected if a bill has not been paid within 12 days from the date of issuance and proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least five days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where a tenant can go during normal working hours to make arrangements for payment of the bill and for reconnection of service.

(b) Disconnection on holidays or weekends. Unless a dangerous condition exists which is related to the service provided, or unless the tenant requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day,

when personnel of the apartment house or mobile home park are not available for the purpose of making collections and reconnecting service.

§291.126. Submeters.

(a) Submeter requirements.

(1) Use of submeter. All water sold by an owner shall be charged for by meter measurements.

(2) Installation by owner. Unless otherwise authorized by the commission, each owner shall be responsible for providing, installing, and maintaining all submeters necessary for the measurement of water or wastewater to its tenants.

(b) Submeter records. Each owner shall keep the following records.

(1) Submeter equipment record. Each owner shall keep a record of all of its submeters, showing the tenant's address and date of the last test.

(2) Records of submeter tests. All submeter tests shall be properly referenced in the submeter record required by this section. The record of each test made shall show the identifying number of the submeter, the standard meter and other measuring devices used, the date and kind of test made, by whom made, the error (or percentage of accuracy), and sufficient data to permit verification of all calculations.

(c) Submeter readings. In general, each meter shall indicate clearly the gallons for which charge is made to the tenant.

(d) Submeter tests on request of tenant. Each owner shall, upon the request of a tenant, and if the tenant so desires, in the tenant's presence or in that of the tenant's authorized representative, make a test of the accuracy of the tenant's submeter. The test shall be made during reasonable business hours at a time convenient to the tenant desiring to observe the test. If the submeter tests within the accuracy standards set by the American Water Works Association (AWWA) for water or wastewater meters, a charge of up to \$15 may be charged the tenant for making the test. However, if the submeter has not been tested within a period of one year, or if the submeter's accuracy is not within the appropriate accuracy standards, no charge shall be made to the tenant for making the test. Following completion of any requested test, the owner shall promptly advise the tenant of the results of the test.

(e) Bill adjustment due to submeter error. If any submeter is found not to be within the accuracy standards in subsection (d) of this section, proper correction shall be made of previous readings. An adjusted bill shall be rendered in accordance with §291.124(g) of this title (relating to Billing). If a submeter is found not to register for any period, unless bypassed or tampered with, the owner may make a charge for units used, but not metered, for a period not to exceed one month based on amounts used under similar conditions during periods preceding or subsequent thereto, or during the cor-

responding period in previous years.

(f) Bill adjustment due to conversion. If, during the 90 day period preceding the installation of meters or submeters, an owner increases rental rates, and such increase is attributable to increased costs of utilities, then such owner shall immediately reduce the rental rate by the amount of such increase and shall refund all of such increase that has previously been collected within said 90 day period.

(g) Location of submeters. Submeters or cut-off valves in conjunction with the submeters, shall be installed in accordance with the standards set by the AWWA, and will be readily accessible for reading, testing, and inspection, where such activities will cause minimum interference and inconvenience to the tenant.

(h) Submeter testing facilities and equipment.

(1) Reference standards. Each owner shall provide or have access to suitable indicating instruments as reference standards for insuring the accuracy of shop and portable instruments used for testing billing submeters.

(2) Testing of reference standards. Reference standards of all kinds shall be submitted once each year or on a scheduled basis approved by the commission to a standardizing laboratory of recognized standing, for the purpose of testing and adjustment.

(3) Calibration of test equipment. All shop and portable instruments used for testing billing submeters shall be calibrated by comparing them with a reference standard at least every 120 days during the time such test instruments are being regularly used. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, giving the date when it was last certified and adjusted. Records of certifications and calibrations shall be kept on file in the office of the owner.

(i) Accuracy requirements for submeters. Submeters shall be adjusted as close as possible to the condition of zero error. The tolerances are specified only to allow for necessary variations.

(j) Submeter tests prior to installation. No submeter shall be placed in service unless its accuracy has been established. If any submeter is removed from actual service and replaced by another submeter for any purpose whatsoever, it shall be properly tested and adjusted before being placed in service again.

(k) Restriction. Unless otherwise provided by the commission, no dwelling unit may be submetered unless all dwelling units are submetered.

(l) Same type meters required. All submeters which are served by the same master meter shall be of the same type.

Issued in Austin, Texas, on September 2, 1987

TRD-8707436

J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
(512) 463-8087

Subchapter I. Nonsubmetered Master Meter Utilities

★ 31 TAC §§291.131-291.136

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, fees, operations, and services.

§291.131. Purpose and Scope.

(a) The provisions of this subchapter are intended to assure that billing systems involving nonsubmetered master metered utilities are just and reasonable.

(b) For purposes of enforcement, both utilities and apartment owners are subject to enforcement pursuant to the Texas Water Code, which may involve civil penalties of up to \$5,000 for each offense and criminal penalties for willful and knowing violations.

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

Apartment house—A building or buildings containing five or more dwelling units that are rented primarily for nontransient use, with rental paid by intervals of one week or longer.

Billing unit—Gallon for water or wastewater service.

Customer—The individual, firm, or corporation in whose name a master meter has been connected by the utility.

Dwelling unit—A room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

Nonsubmetered master metered utility service—Water utility service that is master metered for the apartment house but not submetered, and wastewater utility service based on master metered water utility service.

Owner—The legal titleholder of an apartment house and any individual, firm, or corporation that purports to be the landlord of tenants in the apartment house.

Tenant—A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

Utility—A public, private, or member-owned utility furnishing water, wastewater service to an apartment house served by a master meter.

§291.133. Records and Reports.

(a) Either the apartment owner or the owner's management company engaged in

or preparing to engage in billing for non-submetered master metered utility service must register with the commission by March 1, 1988, or 30 days prior to commencing non-submetered master metered billing and provide the following information:

(1) business address and business telephone of the owner or owner's management company;

(2) the date such billing is to begin;

(3) the name, address, and telephone of the person to be contacted regarding questions and complaints about service; and

(4) name and location of each non-submetered apartment unit.

(b) The apartment owner shall maintain and make available for inspection by the tenant during normal business hours:

(1) the billing from the utility to the apartment owner for the current month and the 12 preceding months; and

(2) the calculation of the average cost per billing unit (gallons) for the current month and the 12 preceding months which was used in assessing tenant utility billings. The average cost per billing unit shall be equal to the charges for the utility service plus applicable tax, less any penalties charged by the utility to the owner for disconnect, reconnect, late payment or other similar service charges, divided by the total number of billing units.

(c) All records shall be made available to the commission upon request.

(d) Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at a time agreed upon by the owner and the tenant.

§291.134. Calculation of Costs.

(a) Nonsubmetered master metered utility service costs shall be calculated based on metered billing units during the same billing period as that of the utility. The nonsubmetered master metered billing units shall be multiplied by the average cost per billing calculated according to §291.135(b) of this title (relating to Billing). Meters used shall conform to all applicable industry standards.

(b) The cost of nonsubmetered master metered utilities shall be the total charges for utility service to the apartment house less any penalties charged by the utility to the apartment owner for disconnect, reconnect, late payment, or other similar service charges.

§291.135. Billing.

(a) Rental agreement. All rental agreements between the apartment owner and the tenants shall provide a clear written description of the method of the allocation of nonsubmetered master metered utilities for the apartment house. The method of allocation may be changed only after 90 days notice of such change to the tenants. The rental agreement for each apartment unit shall contain a statement of the average

Effective date September 2, 1987
Expiration date December 31, 1987
For further information, please call
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★ 31 TAC §293.18

The new section is adopted on an emergency basis under House Bill 1328, 70th Legislature, 1987, which provides the Texas Water Commission with the authority to establish a fee for addition of sewage and drainage powers to a district; and 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.

§293.18. *Fees for Addition of Sewage and Drainage Powers.* All petitions for addition of sewage and drainage powers shall be accompanied by a \$700 nonrefundable fee plus the cost of required notice.

Issued in Austin, Texas, on September 2, 1987

TRD-8707467 J. D. Head
Director
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Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
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Issuance of Bonds

★ 31 TAC §293.43, §293.45

The amendments are adopted on an emergency basis under House Bill 1328, 70th Legislature, 1987, which provides the Texas Water Commission with the authority to establish fees for certain applications relating to water districts and for a percentage of bond proceeds; and 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.

§293.43. *Application Requirements.* For the approval of engineering projects and the issuance of bonds, a district shall submit:
(1)-(3) (No change.)
(4) a filing fee of \$500 [\$100] plus the cost of required notice;
(5)-(6) (No change.)

§293.45. *Action of the Commission and Bond Proceeds Fee.*

(a) The commission may by order dismiss an application for lack of prosecution or failure to comply with the regulations of the commission, allow the applicant to withdraw the application, or approve or deny the project and the issuance of bonds therefor. Upon issuing such an order, the

commission shall forward certified copies to the applicant and the attorney general of Texas. District compliance with any special condition in the order approving engineering project and issuance of bonds, as executed by the commission, is mandatory. The commission's approval of a bond issue prior to September 4, 1986, shall be valid until September 4, 1987, unless such approval is extended by order of the commission. The commission's approval of a bond issue after September 4, 1986, is valid for only one year after the date of the commission order approving the bond issue.

(b) **If the bonds are approved by the commission, the seller shall pay to the commission 0.25% of the principal amount of the bonds actually issued not later than the seventh business day after receipt of the bond proceeds. The fee shall be payable by certified check payable to the Texas Water Commission.**

Issued in Austin, Texas, on September 2, 1987.

TRD-8707468 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: September 2, 1987
Expiration date: December 31, 1987
For further information, please call
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Chapter 325. Certificates of Competency

★ 31 TAC §§325.1, 325.4, 325.6, 325.7, 325.9, 325.14

The Texas Water Commission adopts on an emergency basis amendments to §§325.1, 325.4, 325.6, 325.7, 325.9, and 325.14, concerning definitions; classes and qualifications of certificates for operators; renewal of operator certificates; certificates for wastewater treatment facility operations companies; reports, applications and renewals for wastewater treatment facility operations companies; and reciprocity, respectively.

The amendments implement House Bill 1329, 70th Legislature, 1987, which amended the Texas Water Code, §26.0301 and §26.0291(c). The Texas Water Code, §26.0301(e), requires the commission to set a fee for the issuance or renewal of a certificate of competency. The fees collected under this provision shall be deposited in the state treasury to the credit of the waste treatment facility inspection fund.

The amendment to §325.1 clarifies the definition of a wastewater treatment facility operations company so that companies which operate only one facility are included in the definition.

The amendment to §325.4 includes payment of the appropriate fee as a qualifica-

tion for receiving a certificate of competency. The fees are \$20 annually, and the entire fee for the certificate period must be paid prior to issuance or renewal, as detailed by new subsection (g). In subsection (b), the words "graduation equivalency diploma" are amended to read "general educational development diploma," to reflect the current term for the degree.

The amendment to §325.6 includes requirements that fees be paid when certificates are renewed, and that changes in address or employment be reported to the commission within 10 days of the change. A fee schedule is incorporated into this section that sets forth the fees for renewals of certificates

The amendment to §325.7 includes a fee schedule for issuance and renewal of wastewater treatment facility operations companies' certificates. The fees will cover a two-year period

The amendment to §325.9 requires operating companies to submit annual reports within one year and 30 days after issuance and renewal of their certificates.

The amendment to §325.14 includes payment of the appropriate fee as one of the prerequisites for recognizing an out-of-state certificate of competency.

The commission finds that an urgent need exists to adopt the amendments on an emergency basis in order to have the operator certification fees system in place by September 1, 1987, which is the effective date of House Bill 1329. The continued operation of the wastewater operator certification program is necessary to protect human health and the environment. The amendments were originally published in the *Texas Register* on August 7, 1987; they are being adopted on an emergency basis without substantive changes.

The amendments are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to promulgate rules necessary to carry out the commission's powers under the Texas Water Code, and the Texas Water Code, §26.0301, as amended, which requires the commission to set a fee for the issuance or renewal of a certificate of competency

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

Wastewater treatment facility operations company - Any business [person], company, corporation, firm, partnership, or other non-governmental entity that employs one or more wastewater treatment plant operators for the purpose of providing operations services, on a contractual basis, to one or more **than one wastewater treatment facility** [holders of permits].

monthly bill for the previous calendar year for that apartment unit.

(b) Rendering and form of bill.

(1) Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period.

(2) The allocation of non-submetered master metered utilities costs to tenants shall be based on one or a combination of the following methods:

(A) the total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house and all heated and/or air conditioned common areas. This percentage shall be stated in the rental agreement for each dwelling unit; or

(B) the individually metered or submetered utility usage of the dwelling unit as a percentage of the sum of the individually metered or submetered usage of all dwelling units.

(3) Methods to allocate non-submetered master metered utilities to tenants, other than the method outlined in this section, must be approved by the commission.

(4) Billings to the tenant shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, utility billing information must be separate and distinct from any other charges on the bill. The bill may not include a deposit, late penalty, reconnect charge, or any other charges unless otherwise provided for by these sections.

(A) A one time penalty not to exceed 5.0% may be made on delinquent accounts. If such penalty is applied, the bill shall indicate the amount due if paid by the due date and the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease which states the exact dollar or percentage amount of such late penalty.

(B) A reconnect fee may be applied if service to the tenant is disconnected for nonpayment of submetered bills in accordance with §291.136(a) of this title (relating to Discontinuance of Service). Such reconnect fee shall be calculated based on the average actual cost to the landlord for the expenses associated with the reconnection, but under no circumstance shall exceed \$10. No reconnect charge may be applied unless agreed to by the tenant in a written lease which states the exact dollar amount of such reconnect charge.

(5) An apartment house owner may not impose additional charges on a tenant in excess of the actual charges imposed on the owner for utility consumption by the apartment house.

(c) Due date. The due date of the bill shall not be less than seven days after issuance. A bill for service is delinquent if not received by the party indicated on the bill by the due date. The postmark date, if any, on the envelope of the bill or on the bill itself

shall constitute proof of the date of issuance if there is no postmark on the envelope or bill. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(d) Overbilling and underbilling. If billings are found to be in error, the apartment owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment shall be made for the entire period of the overcharges. If the tenant was undercharged, the apartment owner may backbill the tenant for the amount which was underbilled for a period not to exceed six months. If the underbilling is \$25 or more, the apartment owner shall offer to such tenant a deferred payment plan option, for the same length of time as that of the underbilling. Adjustments for usage by a previous tenant may not be backbilled to the current tenant.

§291.136. *Discontinuance of Service.*

(a) Disconnection for delinquent bills. Utility service may only be disconnected for nonpayment of utility bills. A tenant's utility service may be disconnected if a bill has not been paid within 12 days from the date of issuance and proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least five days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where a tenant can go during normal working hours to make arrangements for payment of the bill and for reconnection of service.

(b) Disconnection on holidays or weekends. Unless a dangerous condition related to the service provided exists, or unless the tenant requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day when personnel of the apartment house are not available for the purpose of making collections and reconnecting service.

(c) Disputed bills and complaints. In the event of a dispute between the tenant and the apartment owner regarding any bill, the apartment owner shall immediately make such investigation as shall be required by the particular case, and report the results thereof to the tenant. The investigation and report shall be completed within 30 days from the date the tenant notified the apartment owner of the dispute. If the tenant is dissatisfied with the results of the investigation, the apartment owner shall inform the tenant of the Texas Water Commission complaint process, giving the tenant the address and telephone number of the commission's consumer relation's coordinator.

Issued in Austin, Texas, on September 2, 1987

TRD-8707437 J. D. Head
Director
Legal Division
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Effective date: September 3, 1987
Expiration date: December 31, 1987
For further information, please call
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Chapter 293. Water Districts

The Texas Water Commission adopts on an emergency basis amendments to §§293.12, 293.17, 293.43, and 293.45, and new 293.18, concerning fees and deposits, conversion of districts into municipal utility districts, application requirements, action of the commission and bond proceeds fee, and fees for addition of sewage and drainage powers. The application fees established by these sections replace the existing application fee structure. The bond proceeds fee is a new fee authorized by House Bill 1328

The commission finds that an urgent need exists to adopt the amendments and new section on an emergency basis to avoid undue delay in implementing the terms of House Bill 1328, 70th Legislature, 1987, effective September 1, 1987, which relates to certain fees charged for water district supervision by the Texas Water Commission

Creation of Water Districts

★ 31 TAC §293.12, §293.17

The amendments are adopted on an emergency basis under House Bill 1328, 70th Legislature, 1987, which provides the Texas Water Commission with the authority to establish fees for certain applications relating to water districts and for a percentage of bond proceeds; and 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

§293.12. *Fees and Deposits. All applications for the creation of a water district shall be accompanied by a nonrefundable \$700 application [fees include a \$100 filing] fee plus the cost of required notice [applicable to all districts] [A \$250 deposit is required for creations of special utility districts and stormwater control districts. A \$600 deposit fee is required for the creation of all other types of districts.]*

§293.17. *Conversion of Districts Into Municipal Utility Districts*

(a) (No change)

(b) The application shall be accompanied by the following

(1) (No change)

(2) a \$700 [a \$100] filing fee [and \$600 deposit fee].

(3)-(5) (No change)

Issued in Austin, Texas, on September 2, 1987

TRD-8707438 J. D. Head
Director
Legal Division
Texas Water Commission

§325.4. *Classes and Qualifications of Certificates for Operators.*

(a) The certificates of competency for wastewater treatment plant operators shall be Class A, Class B, Class C, and Class D. The qualification requirements for each class

of certificate shall include a minimum level of formal education, a minimum level of training, a period of experience as a treatment plant operator, [and] a grade of 70% or higher on a written examination for that certificate class, **and the payment of the ap-**

plicable fee. If the applicant fails to pass an examination for the certificate class, the applicant must wait a minimum of three months before retaking the examination.

(b) The qualification requirements for each class of certificate are as follows:

<u>CERTIFICATE</u>	<u>EDUCATION</u>		<u>YEARS EXPERIENCE*</u>		<u>HOURS TRAINING</u>
Class A	Masters College Degree; or Bachelors College Degree; or High School Graduate or equivalent.**	and	4	plus	160
		and	5	plus	160
		and	8	plus	160
Class B	Bachelors College Degree; or High School Graduate or equivalent.	and	1	plus	100
		and	5	plus	100
Class C	High School Graduate or equivalent.	and	2	plus	60
Class D	High School Graduate or equivalent; or less than High School Graduate or equivalent.	and	0	plus	20
		and	0	plus	40

* Experience must be actual wastewater treatment facility experience and not experience which is non-operational in nature.

** General Educational Development [Graduation Equivalency] Diploma (GED)

(c)-(f) (No change.)

(g) In addition to meeting the requirements of subsection (b) of this section, a fee must be paid before a certificate is issued. The fee need not be paid until any applicable educational or training requirements are met. Fees are \$20 annually and the fee for the entire term of the certificate must be paid prior to issuance. A two-year certificate requires a fee of \$40, a three-year certificate requires a fee of \$60, a five-year certificate requires a fee of \$100, and an eight-year certificate requires a fee of \$160.

§325.6. *Renewal of Operator Certificates.*

(a) Unless revoked under §325.11 of this title (relating to Revocation or Suspension of Certificate), or replaced by a higher class of certificate, certificates may be renewed by payment of the applicable fee and either by taking and passing a renewal ex-

amination, or by receiving a specified number of hours of approved additional training.

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

(d) Holders of a certificate of competency must notify the executive director of any change in address or employment within 10 days from the date the change occurs.

(e) Fees for renewal of certificates must be paid prior to renewal of the certificate, but need not be paid before any applicable educational requirements are met. Fees are \$20 annually and the fee for the entire term of the certificate must be paid prior to renewal. A two-year certificate requires a fee of \$40, a three-year certificate requires a fee of \$60, a five-year certificate requires a fee of \$100, and an eight-year certificate requires a fee of \$160.

§325.7. *Certificates for Wastewater Treatment Facility Operations Companies.* Every wastewater treatment facility

operations company must hold a valid certificate of competency issued under the director of the commission. After January 1, 1987, no wastewater treatment facility operations company may operate a wastewater treatment facility without a certificate of competency. Any operator employed by a wastewater treatment facility operations company must hold a valid certificate of competency issued pursuant to this chapter. Upon revocation or suspension of a certificate under §325.11 of this title (relating to Revocation or Suspension of Certificate), the wastewater treatment facility operations company shall no longer operate or assist in operation of any wastewater treatment plant, unless specifically authorized to do so by the commission, or unless the certificate has been reinstated. **Prior to issuance or renewal of an operations company's certificate, a fee shall be paid as follows based on the number of facilities served:**

<u>Number of Facilities Served</u>	<u>Fee*</u>
less than 5	\$ 75
5 - 9	\$150
10 - 19	\$250
20 or more	\$400

*Fees will cover the two-year period of the certificate.

§325.9 *Reports, Applications, and Renewals for Wastewater Treatment Facility Operations Companies.*

(a) All wastewater treatment facility operations companies must submit a report to the executive director **within one year and 30 days after issuance or renewal of their certificate** [by February 1 of each year], listing every wastewater treatment facility operated by the company during the preceding calendar year as well as the present year. The report will include, as a minimum, the name and location of the treatment facility, the permittee's name and address, the commission permit number for the facility, and the dates that the facility was operated by the company during the reporting year (e.g., January 1-December 31). The report must also include, as a minimum, a roster of all certified operators employed by the operations company listing the employees' names, home addresses, classes of certificates and certificate numbers, at which treatment facilities (by commission permit number) each employee works or has worked, and which employees are head operators or supervisors and for which treatment facilities (by commission permit number). The executive director may specify additional information to be included in the report.

(b) (No change.)

§325.14. *Reciprocity.* The executive director may issue certificates of competency for the commission without requiring the examination specified in §325.4 of this title (relating to Classes and Qualifications of Certificates for Operators) to applicants who hold a valid certificate of competency lawfully issued by any other authorized state, country, or territory **upon payment of the applicable fee** provided that the requirements for that other certificate are equal to, or more stringent than the requirements of this chapter, and provided that the other state, country, or territory recognizes and honors the commission's certificates of competency.

Issued in Austin, Texas, on September 2, 1987

TRD 8707439 J D Head
Director
Legal Division
Texas Water Commission

Effective date September 3, 1987
Expiration date January 1, 1987
For further information, please call
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Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste
Subchapter J. Hazardous Waste Generation, Facility, and Disposal Fees System

★ 31 TAC §§335.321, 335.323-335.325, 335.328, 335.329, 335.332.

The Texas Water Commission adopts on an emergency basis amendments to §§335.321, 335.323-335.325, 335.328, 335.329, and 335.332, relating to purpose, hazardous waste generation fee assessment, facility fee assessment, and disposal fee assessment, records and reports, and Appendices I and II. 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. Senate Bill 1446, 70th Legislature, 1987, amends the Solid Waste Disposal Act and authorizes changes in the hazardous waste fee program to enable the commission to generate increased revenue sufficient to fund the state's hazardous waste regulatory program.

The hazardous waste generation and facility fees fund and the hazardous waste disposal fee fund are authorized to receive revenue collected under this program. The amendments clarify the specific uses to which revenue in these funds is authorized. The commission is authorized to increase the maximum annual generation fee from \$5,000 to \$15,000 and establish a schedule for assessment by rule. Some generators of small quantities of waste are exempted from fee assessments, as are certain types of wastes which are treated to be non-hazardous and pose minimal risk of release. An exemption from generation fee assessment may apply to some hazardous waste fuel blenders. The maximum facility fee is increased from \$20,000 per year to \$25,000. Special fee categories for some facilities have been eliminated. The criteria for determination of facility fee liability has been clarified to include all hazardous waste facilities regardless of whether prior notification of activity has been provided to the commission, and regardless of whether such activity has been authorized under the Solid Waste Disposal Act. The definition of facilities and activities subject to disposal fee assessment is clarified to more clearly indicate which land disposal facilities are required to pay disposal fees and comply with disposal reporting requirements. The commission is authorized to establish a due date administratively for each annual assessment of generation and facility fees. The commission establishes a fee per dry weight ton of hazardous waste to be \$10 per dry-weight ton. Reporting requirements relating to dry weight determination and land disposal quantity are amended to require only a quarterly report of on-site land disposal activity rather than monthly reports. The commission has determined that quarterly reports satisfy the requirements of the commis-

sion for land disposal information and fee assessments, and will reduce the workload demands of both the agency and those facilities complying with the reporting provisions.

The commission finds that an urgent need exists to adopt the amendments on an emergency basis in order to have this revised hazardous waste fee system in place on the effective date of the amendments to the Solid Waste Disposal Act passed by Senate Bill 1446, 70th Legislature, 1987, which therefore allows enhanced enforcement of the provisions of the Texas Solid Waste Disposal Act and the rules of the Texas Water Commission regarding the regulation of hazardous waste, the protection of the quality of the water resources of the state, and the remediation of hazardous waste sites which pose a threat to human health and the environment, under the provisions of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the federal Superfund Amendments and Reauthorization Act of 1986, and the Texas Solid Waste Disposal Act, as amended by Senate Bill 1446, 70th Legislature, 1987.

The amendments are adopted on an emergency basis 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 Water Code and other laws of this state, and to establish and approve all general policy of the commission; and under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which provides the commission with the authority 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.

§335.321. *Purpose.*

(a) It is the purpose of this subchapter

to establish a hazardous waste generation, facility, and disposal fees system. Under this program an annual fee is imposed on each hazardous waste generator and facility which either holds a hazardous waste permit or operates hazardous waste management units subject to permit authorization [operator of a hazardous waste facility]. In addition, a quarterly fee shall be imposed on each dry weight ton of hazardous waste deposited [disposed] in a land disposal facility.

(b) Hazardous waste generation and facility fees will be deposited in a hazardous waste generation and facility fees fund for the purpose of regulation of hazardous waste, including payment to other state agencies for services provided under contract relating to enforcement of the Texas Solid Waste Disposal Act [supplementing other funds appropriated by the legislature to pay for administration of the state hazardous waste management program. Distribution of these funds to other state agencies may be made for the purposes set out in Texas Solid Waste Disposal Act, §3].

(c) All disposal fees will be deposited in a hazardous waste disposal fee fund for the purpose of the following:

(1) necessary and appropriate removal and remedial action at sites at which hazardous waste or hazardous waste substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action [supplementing the disposal facility response fund under the Texas Water Code, Chapter 26, Subchapter H].

(2) [For] necessary and appropriate maintenance of removal and remedial actions [action] for the expected life of those actions if funds from a liable party have been collected and deposited in the fund for that purpose or [at sites at which hazardous waste has been disposed] if funds from a liable party, independent third party, or the federal

government are not sufficient for the maintenance [remedial action], and

(3) expenses related to complying with the [If additional funds are needed to match] federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 United States Code §9601 et seq.), the federal Superfund Amendments and Reauthorization Act of 1986, and the Solid Waste Disposal Act, Texas Civil Statutes, §8(g) and §13 [funds for remedial action].

§335.323. Hazardous Waste Generation Fee Assessment.

(a) An annual hazardous waste generation fee is hereby assessed each generator which generates or possesses hazardous waste or whose act first causes a hazardous waste to become subject to regulation under Subchapter B of this chapter on or after September 1, 1985. These fees shall be deposited in the hazardous waste generation and facility fee fund. The amount assessed each generator is determined by the annual hazardous waste generation rate calculated during the previous calendar year [and is based upon total volume generated]. A generator who produces less than 100 kilograms of hazardous waste per month is not subject to the assessment of a generation fee. The 100 kilograms shall be measured as the total of all hazardous wastes generated by a facility in any calendar month.

(b) Hazardous wastes subject to the provisions of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) and precluded from the quantity determinations of such section shall be considered for the purposes of this subchapter in the total volume of hazardous waste generated and subject to fee assessment. [Fees are assessed according to the following schedule:

[(1) Generation of hazardous waste equal to 1,200 kilograms but less than 12,000 kilograms per year—\$50,

[(2) Generation of hazardous waste equal to 1,200 kilograms but less than 120,000 kilograms per year—\$500,

[(3) Generation of hazardous waste equal to 120,000 kilograms but less than 12,000,000 kilograms per year—\$2,500;

[(4) Generation of hazardous waste equal to less than 12,000,000 kilograms per year—\$5,000.]

(c) Hazardous wastes which are designated as hazardous solely because they exhibit the characteristic of corrosivity as defined in 49 Code of Federal Regulations §261.22 and are neutralized on site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §345.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) are exempt from the assessment of hazardous waste generation fees. This exemption from fee assessment in no way limits a generator's obligation to report such waste generation or waste management activity under any applicable provision of this chapter.

(d) A facility which blends hazardous wastes to formulate fuels to be burned for energy recovery is not subject to the assessment of generation fees for that portion of a hazardous waste fuel which is derived from wastes received from off-site sources and which is otherwise subject to the assessment of generation fees at the original point of generation or shipment. This exemption from fee assessment applies only to wastes burned for energy recovery which are regulated under subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities). This exemption does not apply to wastes generated on site which may be blended to form a hazardous waste fuel and in no way limits a generator's obligation to report such waste generation, management, or transportation activity under any applicable provision of this chapter.

(e) Hazardous waste generation fees are to be assessed according to the following schedule:

Volume of Waste Reported (kg)	Fee
Less than 10,000	\$50
10,000 - 24,999	500
25,000 - 49,999	2,500
50,000 - 99,999	5,000
100,000 - 249,999	25,000
250,000 - 499,999	50,000
500,000 - 999,999	250,000
1,000,000 - 9,999,999	500,000
10,000,000 - 49,999,999	2,500,000
50,000,000 - 99,999,999	5,000,000
100,000,000 or more	25,000,000

§335.324. *Facility Fee Assessment.*

(a) An annual facility fee is hereby assessed on each permittee who holds one or more hazardous waste permits and each facility operating a hazardous waste management unit subject to permit authorization [applicant who has submitted a permit application pursuant to §335.2(c) of this title (relating to Permit Required) or §335.43(b) of this title (relating to Permit Required) and is operating under interim status pending permit issuance]. These fees shall be deposited in the hazardous waste generation and facility fees fund. The fee for each year is assessed on each facility for which a permit or the requirement to comply with permit authorization [interim status] is in effect during any part of the fiscal year.

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

(d) The annual facility fee assessed is the cumulative total of fees for all hazardous waste management units at the facility which are authorized by permit or subject to authorization on September 1, 1985, and September 1 of each year thereafter. The minimum fee for each facility shall be \$2,500. [, unless the facility never receives more than 1,000 kilograms of hazardous waste per month;] The maximum fee for each facility shall be \$25,000 [\$20,000. The fee for a facility which never receives more than 1,000 kilograms per month shall be

\$500. This \$500 fee shall apply only to those facilities which receive hazardous waste from off-site and does not apply to the management of waste generated on-site.] For facilities which require postclosure care permits as described in paragraph (8) of this subsection, the fee for a closed unit shall apply. Fees shall be assessed as follows.

(1)-(6) (No change.)

(7) Other units—\$2,500 for each incinerator, thermal processing unit, and processing unit (other than those listed in paragraphs (1)-(6) of this subsection) used for waste reduction, recycling, and hazard reduction. A facility fee assessment is applicable only to a unit required to comply with [authorized under] interim status or permitting requirements.

(8) (No change.)

(e) (No change.)

§335.325. *Disposal Fee Assessment.*

(a) A quarterly disposal fee for each dry weight ton of hazardous waste deposited in a land disposal unit [disposed] on or after September 1, 1987 [June 1, 1986], is hereby assessed upon the operator of a hazardous waste land disposal facility for deposit in the hazardous waste disposal fee fund. The [minimum] fee assessed shall be \$10 [\$8.00] per dry weight ton, except the fee assessed for land disposal of primary metals high volume, low hazard waste shall be assessed at a rate of 25% of the fee. The executive director

may, at his discretion, adjust or waive the disposal fee assessment in those instances where the temporary deposition of hazardous waste in a land disposal unit is a necessary and appropriate procedure, under an approved closure plan. The adjustment or waiver of disposal fees under this subsection is applicable only to the temporary deposition of waste which is deemed by the executive director to be necessary to accomplish the final closure of a land disposal unit by removal of all hazardous wastes and hazardous waste constituents.

(b) (c) (No change.)

§335.328. *Fees Payment.*

(a) Hazardous waste generation and facility fees are payable each year for all hazardous waste generators, permittees, facilities, and applicants. Fees must be paid by check, certified check, or money order payable to "Texas Water Commission [, Fund 549]." Annual facility fees are payable by permittees, facilities, and applicants regardless of whether the facility is in actual operation. All annual generation facility fees shall be due by a date to be established by the Texas Water Commission [October 1st].

(b) Quarterly disposal fees are payable for each operator of a land disposal facility. Fees must be paid by check, certified check, or money order to "Texas Water Commission [, Fund 550]" and shall be due in accordance with the following schedule.

Fiscal Quarter

September 1 - November 30
 December 1 - February 28
 March 1 - May 31
 June 1 - August 31

Date Due

February 1
 May 1
 August 1
 November 1

§335.329. *Records and Reports*

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

(c) Operators of hazardous waste on-site land disposal facilities shall.

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

(3) Submit a quarterly [monthly] on-site land disposal summary on forms furnished or approved by the executive director containing such information for each

quarter of the fiscal year [the month] as specified in paragraph (1) of this subsection to the Texas Water Commission on or before the dates indicated in the schedule following this paragraph. [25th day of each month for disposal activity originating during the previous month]. An operator must keep a copy of each summary for a period of at least three years from the due date of the

summary. An operator required to comply with this subsection shall continue to prepare and submit quarterly [monthly] summaries, regardless of whether any disposal was made during a particular quarter [month], by preparing and submitting a [monthly] summary indicating that no disposal was made during that quarter [month].

Fiscal Year Quarter

Report Due Date

1st: September 1 - November 30	December 25
2nd: December 1 - February 28	March 25
3rd: March 1 - May 31	June 25
4th: June 1 - August 31	September 25

(d) (No change.)

§335.332. *Appendices I and II.* The following appendices will be used for the purposes of this subchapter

APPENDIX I
DRY WEIGHT DETERMINATION FOR SOLIDS
BASED HAZARDOUS WASTE

The dry weight determination provisions of §335.326 of this title (relating to Dry Weight Determination) specify that the generator must determine the dry weight of each hazardous waste stream. This appendix outlines the method to be used by the generator.

1. Collect a representative sample by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.
2. An aliquot of about 100 grams or more shall be weighed in a tared evaporating dish, casserole or similar container. Record tare weight as "A": and container plus sample as "B".
3. This sample shall be evaporated at 73° to 75°C for two hours. Cool and weigh the sample plus container and record weight as "C".
4. Evaporate sample again in a drying oven at 103° to 105°C per "Standard Methods", 15th Edition, Method 209A. Cool and weigh sample plus container and record weight as "D".

All work should be done with all laboratory precautions necessary, including use of fume hoods and absence of ignition sources as appropriate.

$$\begin{aligned} \text{Weight of Water} &= \text{C-D} \\ \text{Weight of Water Free Waste} &= (\text{B-A}) - (\text{C-D}) \\ &= \text{Weight of original sample} \\ &\quad \text{minus weight of water} \\ \\ \text{Dry Weight Ratio} &= \frac{(\text{B-A}) - (\text{C-D})}{(\text{B-A})} \\ &= \frac{\text{Weight of water free waste}}{\text{Weight of original sample}} \end{aligned}$$

APPENDIX II
DRY WEIGHT DETERMINATION FOR OIL
AND ORGANIC BASED HAZARDOUS WASTE

The dry weight determination provisions of §335.326 of this title (Dry Weight Determination) specify that the generator must determine the dry weight of each hazardous waste stream. This appendix outlines the method to be used by the generator.

1. Collect a representative sample by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.
2. An aliquot of about 25 grams or more shall be weighed to the nearest 0.1 mg in a tared evaporating dish or beaker. Record tare weight as "A" and container plus sample as "B".
3. Dilute sample with 100 ml of hexane. Filter sample through a crucible with a glass fiber filter (Whatman grade 934AH and 984H; Gelman Type A/E; millipore type AP40; or equivalent. Available in diameters of 2.2 cm to 4.7 cm.). Rinse evaporating dish or beaker with two 20 ml portions of hexane and filter through the crucible. Discard the solids and filter and save the filtrate.

4. Weigh approximately 25 grams of predried, anhydrous magnesium sulfate ($MgSO_4$) in a 400 ml beaker to the nearest 0.1 mg. Record the weight of the beaker and $MgSO_4$ as "C". Add the filtrate from Step 3 and stir for a few minutes with a glass rod. (Caution: Heat may be generated upon addition of filtrate.) Carefully decant the liquid portion in the beaker. [Record the weight of the beaker and $MgSO_4$ as "C".]

5. Dry the beaker at $73^\circ - 75^\circ C$ for one hour. Cool and weigh the beaker and record the weight as "D".

All work shall be done with all laboratory precautions necessary, including use of fume hoods and absence of ignition sources as appropriate.

$$\begin{aligned}
 \text{Weight of Water} &= D-C \\
 \text{Weight of Water Free Waste} &= (B-A) - (D-C) \\
 &= \text{Weight of original sample} \\
 &\quad \text{minus [-] weight of water} \\
 \text{Dry Weight Ratio} &= \frac{(B-A) - (D-C)}{(B-A)} \\
 &= \frac{\text{Weight of water free waste}}{\text{Weight of original sample}}
 \end{aligned}$$

Issued in Austin, Texas, on September 2, 1987

TRD-8707440

J. D. Head
Director
Legal Division
Texas Water Commission

Effective date September 3, 1987

Expiration date January 1, 1988

For further information, please call

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter W. Amusement Machine Regulation

★ 34 TAC §3.601

The Office of the Comptroller of Public Accounts adopts on an emergency basis new §3.601, concerning definitions. The new section establishes the definitions the comptroller will use in administering the Coin-Operated Services Law.

The new section is adopted on an emergency basis to clarify terms used in the Coin-Operated Services Law. The new section is needed on an emergency basis to implement the administration of House Bill 524, 70th Legislature, 1987, which provide that the administration of amusement machine regulation and taxation is the responsibility of the comptroller of public accounts, effective September 1, 1987.

The new section is adopted on an emergency basis under Texas Civil Stat-

utes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Articles 8801-8817.

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

Applicant or licensee—Each partner of a partnership; each trustee of a trust; each receiver of a receivership; each shareholder owning not less than 25% of the outstanding shares; any individual applicant or licensee; each officer, director, and member of any association or other entity not specified and where applicable the business entity itself.

Issue a license—A license issued on an applicant's original application or a license issued on an application for renewal.

License—A general business license, import license, or repair license issued by the comptroller.

Machine or amusement machine—In the rules published by the comptroller relating to the Coin-Operated Services Law, all machines which vend music, skill, or pleasure. The term "machine," as used in these sections, does not include service machines or machines which dispense a product. Coin-operated machines which dispense a product that require skill or pleasure to activate the dispensing of a product constitutes a machine played for skill or pleasure. A machine is subject to tax if it is coin-operated for music, skill, or pleasure, capable of independent operation and independent viewing in an independent cabinet with separate activating coin mechanisms, whether displayed separately or in series, and regardless of any central electrical, mechanical, or manual component, shall be con-

sidered separate machines in regard to occupation tax requirements. A machine which is no longer functional, and has been permanently taken out of service, will not be considered to be a coin-operated machine operated for music, skill, or pleasure. A machine only temporarily taken out of service is a machine subject to the annual occupation tax. A machine permanently taken out of service means a machine which is no longer functional of independent operation and will be used only for parts. No longer functional means that it is no longer financially practical to operate the machine.

Machines designed exclusively for children—Machines which can only be used for skill or pleasure by a child under 12 years of age.

Owner—Any person, individual, firm, company, association, or corporation owning any coin-operated machines in this state.

Owner of a registration certificate—An owner who possesses a valid registration certificate issued by the comptroller.

Permit—The decal issued by the comptroller to an owner of a coin-operated machine evidencing the payment of the occupation tax.

Person—Any natural person, association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

Video game—An electronic mechanism played for skill or pleasure by means of images on a screen. Each cabinet which holds a game for skill or pleasure by means of images on a screen constitutes an independent operation subject to the occupation tax. If there are two or more screens within the same cabinet, the machine must be considered to be a single mechanism by the man-

manufacturer to qualify as a single amusement machine.

Issued in Austin, Texas, on September 3, 1987

TRD-8707458

Bob Bullock
Comptroller of Public
Accounts

Effective date: September 3, 1987
Expiration date: January 1, 1988
For further information, please call
(512) 463-4004



★ 34 TAC §3.602

The Office of the Comptroller of Public Accounts adopts on an emergency basis new §3.602, concerning license and registration certificate renewal and occupation tax permit renewal due dates. The new section establishes the due dates that will be used for the combined application for renewal of licenses and occupation tax permits as well as the combined application for renewal of registration certificates and occupation tax permits. The new section also adopts prorations for quarterly occupation tax permits. The new section prohibits the prorating of license and registration certificate fees.

The new section is adopted on an emergency basis to clarify due dates used in the Coin-Operated Services Law. The new section is needed on an emergency basis to implement the administration of House Bill 524, 70th Legislature, 1987, which provides that the administration of amusement machine regulation and taxation is the responsibility of the comptroller of public accounts, effective September 1, 1987. The new section eliminates duplicate paper work of processing fees for the license and registration certificate renewals separately from the occupation tax permit renewals.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-operated Services Law, Texas Civil Statutes, Articles 8801-8817.

§3.602. License and Registration Certificate Renewal and Occupation Tax Permit Renewal Due Dates.

(a) Annual general business, import and/or repair license renewals, and annual occupation tax.

(1) License renewal and annual occupation tax applications are due November 30. License renewal applications will not be processed unless the annual occupation tax application is completed and the tax due, as well as the license fee, is remitted by the due date of November 30. License renewal and annual occupation tax applications filed after the due date may result in a lapsed license. If a license lapses, a business may not

operate amusement machines during the lapsed period. A person who operates amusement machines with a lapsed license is guilty of a Class B misdemeanor.

(2) An applicant who properly completes and remits all fees and taxes with his application by the due date may operate amusement machines without a license lapse, unless the applicant is notified by the comptroller prior to the license expiration date of a problem with the license renewal.

(b) Annual registration certificate renewals and annual occupation tax reports.

(1) Registration certificate renewal and annual occupation tax applications are due November 30. Registration certificate renewal applications will not be processed unless the annual occupation tax application is completed and the tax due, as well as the registration fee, is remitted by the due date of November 30. Registration certificate renewals and annual occupation tax applications filed after the due date may result in a lapsed registration certificate. If a registration certificate lapses, a business may not operate amusement machines during the lapsed period. A person who operates amusement machines with a lapsed registration certificate is guilty of a Class B misdemeanor.

(2) An applicant who properly completes and remits all fees with his application by the due date may operate amusement machines without a license lapse, unless the applicant is notified by the comptroller prior to the registration certificate expiration date of a problem with the registration certificate renewal.

(c) Quarterly occupation tax.

(1) Each amusement machine is subject to the occupation tax at the first moment in time a person owns, controls, possesses, exhibits, displays, or permits a machine to be exhibited or displayed in this state with the exception of annual renewals. The occupation tax for annual renewals for each machine a person owns, controls, possesses, exhibits, displays, or permits a machine to be exhibited or displayed in this state is due November 30 of each year.

(2) The following rate schedule will be applicable to machines purchased or obtained to own, control, possess, exhibit, display, or purchased or obtained to permit a machine to be exhibited or displayed in this state during any quarter of the calendar year:

TAX RATE SCHEDULE— ALL COIN-OPERATED MACHINES FOR MUSIC, SKILL, OR PLEASURE

1st Quarter—January 1 to December 31—\$30;

2nd Quarter—April 1 to December 31—\$22.50;

3rd Quarter—July 1 to December 31—\$15;

4th Quarter—October 1 to December 31—\$7.50.

(3) License and registration certificate fees may not be prorated quarterly,

and the annual license or registration fee must be submitted with an application.

Issued in Austin, Texas, on September 3, 1987

TRD-8707459

Bob Bullock
Comptroller of Public
Accounts

Effective date: September 3, 1987
Expiration date: January 1, 1988
For further information, please call
(512) 463-4004.



★ 34 TAC §3.603

The Office of the Comptroller of Public Accounts adopts on an emergency basis new §3.603, concerning denials; suspensions; revocations; violations; hearings. The new section provides clarification of notice requirements for hearings conducted by the comptroller and provides that the comptroller's rules of practice and procedure will be used in conducting a hearing. The new section also provides for a court reporter and the associated expense allocation when conducting a hearing.

The new section is adopted on an emergency basis to clarify the administrative procedure for violations of the Coin-Operated Services Law. The new section is needed on an emergency basis to implement the administration of House Bill 524, 70th Legislature, 1987, which provide that the administration of amusement machine regulation and taxation is the responsibility of the comptroller of public accounts, effective September 1, 1987.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Articles 8801-8817

§3.603. Denials; Suspensions; Revocations, Violations; Hearings.

(a) If the comptroller determines that an applicant is not eligible for a license or registration certificate, either for a first time applicant or renewal applicant, or that grounds exist which would justify revocation of an existing license, or that grounds exist for other sanctions, the comptroller will notify the applicant in writing of the violation or that the application has been denied and will state the reasons for the violation or denial. The applicant may make a written request for a hearing within 10 days of the date of the notice.

(b) The hearing will be conducted in accordance with the relevant portions of §§1.1-1.42 of this title (relating to The Practice and Procedure). The burden of proof is upon the applicant to establish by a preponderance of the evidence its eligibility for a license.

(c) Proceedings to impose sanctions, suspend, revoke, or deny a license will be initiated by the comptroller by serving a notice requiring the licensee to show cause at a hearing why its license or authorization should not be suspended, revoked, denied, or have other sanctions imposed. Ten days notice shall be given:

(1) after an original license application has been refused;

(2) before the application for a renewal of a license may be refused;

(3) before the comptroller may file a recommendation of revocation, denial, or other sanctions with the attorney general; or

(4) before the comptroller may revoke a license or impose other sanctions allowed for by the Coin-Operated Services Law.

(d) The notice will be served personally by the comptroller or an authorized representative upon an applicant or licensee, or sent by United States certified mail addressed to the applicant or licensee at their last known address. In the event that notice cannot be effected by either of these methods after due diligence, notice will be effective by publishing notice of the hearing in a newspaper of general circulation in the area in which the licensee conducts their business activities.

(e) The notice will state the alleged violation or violations which constitutes grounds for a denial, suspension, revocation, or other sanctions. The notice will include the recommendation to the attorney general, if any, and the proposed final action of the comptroller.

(f) After a notice of suspension or revocation has been served, the licensee or registration certificate holder will have an opportunity for a hearing upon the question of renewal of a license or registration certificate if it would expire within a lapsed period. If a hearing is requested, it will be held within 20 days from the date the comptroller receives the request. If the licensee or registration certificate holder does not request a hearing on renewal within 10 days after the date of the notice of suspension or revocation, the hearing is waived and a final order will be issued.

(g) Any order refusing an application or renewal application, or revocation of a license or registration certificate shall state the reasons for refusal or revocation, and a copy of the order shall be delivered immediately to the applicant, licensee, or registration certificate holder.

(h) An order recommending cancellation or suspension of a registration certificate or license, or any other sanction, shall state the reasons for the cancellation, suspension, or other sanction. A copy of the order shall be delivered immediately to the licensee or registration certificate holder.

(i) A court reporter shall be present at every hearing involving an applicant, licensee, or registration certificate holder. The cost of transcribing the hearing by the re-

porter shall be assessed against the applicant, licensee, or registration certificate holder following the hearing. Should the comptroller determine a transcript of the hearing is required, the cost of the original transcript shall be assessed to the applicant, licensee, or registration certificate holder. They may purchase a copy of the transcript for their own use directly from the court reporter. Should the comptroller determine a transcript is not required, the applicant, licensee, or registration certificate holder may purchase a copy of the transcript for their own use directly from the court reporter. If they purchase a copy of the transcript, they shall provide, at their own cost, the original transcript to the comptroller.

Issued in Austin, Texas, on September 3, 1987.

TRD-8707460 Bob Bullock
Comptroller of Public
Accounts

Effective date: September 3, 1987
Expiration date: January 1, 1988
For further information, please call
(512) 463-4004.



★ 34 TAC §3.604

The Office of the Comptroller of Public Accounts adopts on an emergency basis new §3.604, concerning licenses and registration certificates. The new section clarifies requirements for obtaining a license and clarifies requirements for obtaining a registration certificate under the Coin-Operated Services Law.

The new section is adopted on an emergency basis to clarify license and registration certificate requirements under the Coin-Operated Services Law. The new section is needed on an emergency basis to implement the administration of House Bill, 524, 70th Legislature, 1987, which provides that the administration of amusement machine regulation and taxation is the responsibility of the comptroller of public accounts, effective September 1, 1987.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Articles 8801-8817.

§3.604. *Licenses and Registration Certificates.*

(a) Annual general business, import and/or repair license fees, and registration certificate fees. Annual license and registration certificate fees are payable in advance and cannot be prorated quarterly.

(b) Refund of license or registration certificate fees. A license or registration certificate fee is not refundable after a license has been issued. In the event a license is not

issued, the comptroller will retain \$25 to cover administrative costs and refund the balance.

(c) Age requirement for issuance of a license. No natural person shall be issued a license by the comptroller for the operation of coin-operated machines unless at the time the license is issued the applicant is above the age of 18 years.

(d) Information requirement for issuance of a license or registration certificate. An applicant for a license or registration certificate must complete all information asked for in the comptroller's application before a license or registration certificate will be issued or renewed.

(e) Registration certificate notification requirement. A registration certificate holder must notify the comptroller in writing each time the location of a machine is changed within 10 days of the change.

(f) Occasional sale exemption for registration certificate holder. A registration certificate holder may make one or two sales of coin-operated machines during any 12-month period by a person who does not hold himself out as engaging (or who does not habitually engage) in the business of selling coin-operated machines without losing the licensing exemption. Before the third sale of a coin-operated machine in a 12-month period by a person not previously in the business of selling, leasing, or renting coin-operated machines, a general business or import license must be obtained. The transfer of title or possession of more than one machine in a single transaction will constitute one sale.

Issued in Austin, Texas, on September 3, 1987.

TRD-8707461 Bob Bullock
Comptroller of Public
Accounts

Effective date: September 3, 1987
Expiration date: January 1, 1988
For further information, please call
(512) 463-4004



★ 34 TAC §3.605

The Office of the Comptroller of Public Accounts adopts on an emergency basis new §3.605, concerning persons who repair, maintain, or service amusement machines. The new section clarifies who may qualify to repair machines under a repair license.

The new section is adopted on an emergency basis to clarify who may qualify to repair machines under a repair license under the Coin-Operated Services Law. The new section is needed on an emergency basis to implement the administration of House Bill 524, 70th Legislature, 1987, which provides that the administration of amusement machine regulation and taxation is the responsibility of the comptroller of public accounts, effective September 1, 1987.

The new section is needed on an emergency basis to implement the administration of House Bill 524, 70th Legislature, 1987, which provides that the administration of amusement machine regulation and taxation is the responsibility of the comptroller of public accounts, effective September 1, 1987.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 8870(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Article 8801-8817.

§3.608. *Gross Receipts Regulations.*

(a) Distribution of gross receipts from amusement machines. The term "gross receipts from an amusement machine" is defined to be the total sum of money derived from the operation of a coin-operated machine which vends music, skill, or pleasure. No licensee shall enter into a contract or offer to contract with a bailee or lessee (location operator) of an amusement machine to compensate the bailee or lessee in excess of 50% of the gross receipts from an amusement machine, except that a licensee may refund a bailee or lessee of an amusement machine all money accepted by an amusement machine due to its malfunction. Before any money may be refunded under this exception, the name, address, and telephone number of the person who deposited money in the malfunctioning machine together with the sum of money deposited by him must be supplied to the licensee.

(b) Collection records of distribution of gross receipts from an amusement machine. Complete and separate records showing the distribution of the gross receipts for each location that an amusement machine is operated shall be made on each and every occasion the licensee or one of his employees collects money from the cash box of an amusement machine placed in operation. These records showing the distribution of the gross receipts for each location that an amusement machine is operated shall be kept by a licensee at their designated address. These records shall be kept by the licensee for a period of two years.

(c) Entry to cash boxes of amusement machines. No licensee shall allow the bailee or lessee of an amusement machine to open or gain entry in any manner to the cash box except a coin-operated machine equipped with an income meter that totals or computes

the sum of money deposited in the machine in dollars and cents. All keys to the cash box of a coin-operated machine other than a machine expressly exempt by this section shall at all times remain in the possession of the licensee or his employees.

Issued in Austin, Texas, on September 3, 1987

TRD-8707465 Bob Bullock
Comptroller of Public
Accounts

Effective date: September 3, 1987
Expiration date: January 1, 1988
For further information, please call
(512) 463-4004



★ 34 TAC §3.609

The Office of the Comptroller of Public Accounts adopts on an emergency basis new §3.609, concerning exemptions. The new section clarifies exemptions under the Coin-Operated Services Law.

The new section is needed on an emergency basis to implement the administration of House Bill 524, 70th Legislature, 1987, which provides that the administration of amusement machine regulation and taxation is the responsibility of the comptroller of public accounts, effective September 1, 1987.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Article 8801-8817.

§3.609. *Exemptions.*

(a) No license, registration certificate, or tax is required for the following:

(1) machines operated exclusively by religious, charitable, educational, or benevolent organizations. No part of the net earnings may inure to the benefit of any private shareholder or individual. A music, skill, or pleasure coin-operated machine must be for the corporation's or association's exclusive use and in the furtherance of the purpose for which it is established;

(2) an individual who owns a music, skills, or pleasure coin-operated machine for personal use and amusement in their private residence; or

(3) any person subject to regulation by the Railroad Commission of Texas to

transport or store a coin-operated machine not owned by that person in the due course of business.

(b) A person who owns or exhibits coin-operated machines is exempt from the licensing and record keeping requirements imposed by the Coin-Operated Services Law if:

(1) they operate or exhibit their machines exclusively on premises occupied by them, and in connection with their business;

(2) they own no machine subject to the occupation tax located on the business premises of another person; and

(3) they have no financial interest, direct or indirect, in the coin-operated music, skill, or pleasure machine industry, except for the interest they own in their machines used exclusively on premises occupied by them.

(c) Machines which are exhibited by a nonlicensed owner exempt under subsection (b) of this section must be registered with the comptroller. The owner shall obtain a registration certificate each year and must be renewed by November 30 of each year. The registration certificate shall show the name and address of the location of each machine and shall certify that the machine has a valid tax permit affixed to it. The owner shall obtain his registration certificate by filing sworn application.

(d) Each time the location of a machine is changed, the owner of the registration certificate shall notify the comptroller of the change by filing an amendment to the registration certificate within 10 days of the change.

(e) The fee for registration of machines affected by subsection (b) of this section is \$75 for the business entity in which the owner's machines are exhibited. The fee shall be paid to the comptroller by cashier's check or money order.

Issued in Austin, Texas, on September 3, 1987.

TRD-8707466 Bob Bullock
Comptroller of Public
Accounts

Effective date: September 3, 1987
Expiration date: January 1, 1988
For further information, please call
(512) 463-4004.



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 22. EXAMINING BOARDS Part IX. Texas State Board of Medical Examiners Chapter 175. Schedule of Fees ★ 22 TAC §175.1

The Texas State Board of Medical Examiners proposes an amendment to §175.1, concerning fees. The amendment represents changes which occurred as a result of the legislative session. Also included are the legislative changes from the temporary fee increase assessed physicians and a number of other professions.

Florence Allen, business manager, and Jean Davis, Texas Register liaison, have 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 Davis 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. Only physicians who are licensed by Texas, or seeking licensure here, are affected. The anticipated economic cost to individuals who are required to comply with the section as proposed will be a cost above present fees in 1988 and 1989 of \$118 for annual registration, \$110 each for licensure by examination, licensure by reciprocity, and reinstatement after cancellation for cause, and \$25 each for supervision of acupuncturist and supervision of physician assistant. In 1990-1992 there will be an annual increase of \$8 for annual registration, \$10 each for licensure by examination, licensure by reciprocity, and reinstatement after cancellation for cause, and \$25 each for supervision of an acupuncturist and supervision of physician assistant

Comments may be submitted to Jean Davis, PO Box 13562, Austin, Texas 78711. A public hearing will probably be held the latter part of October during the board's meeting. More information can be ob-

tained in late September.

The amendment is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with the Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of the Act.

§175.1. Fees. The board shall charge the following fees:

- (1) Annual registration—**\$202** [§84];
- (2) (No change.)
- (3) Licensure by examination (includes one FLEX and jurisprudence examination fee)—**\$610** [§500];
- (4) Licensure by reciprocity (includes one jurisprudence examination fee)—**\$610** [§500];
- (5)-(8) (No change.)
- (9) Reinstatement after cancellation for cause—**\$260** [§150];
- (10) [Reinstatement after nonpayment—] Late registration penalty up to and including one year—**\$100**;
- (11) [Reinstatement for nonpayment—] Late registration penalty after one year—**\$200**;
- (12)-(13) (No change.)
- (14) Supervision of an acupuncturist—**\$25**;
- (15) Supervision of a physician assistant—**\$25**.

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

Issued in Austin, Texas, on September 3, 1987
TRD-8707536 G V Brindley, Jr., M D
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption
October 12, 1987
For further information please call
(512) 452-1078

TITLE 34. PUBLIC FINANCE Part I. Comptroller of Public Accounts Chapter 3. Tax Administration Subchapter O. State Sales and Use Tax ★ 34 TAC §3.340

The Comptroller of Public Accounts proposes an amendment to §3.340, concerning multistate tax credits. The amendment is necessary to correct the state tax rate which was increased in the special legislative session. In addition, the order of crediting sales tax paid to another state against use tax due to Texas is changed to bring this section in line with the Local Sales and Use Tax Act, §12; the County Sales and Use Tax Act, §31; and the Metropolitan Transit Authority Act, §11B(h).

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 negligible increase in state revenue. There will be a corresponding negligible decrease in sales tax revenue to cities, counties, and MTA's. There will be no significant revenue impact on small businesses as a result of enforcing or administering the section.

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 that of bringing the application of the multistate tax credit in line with provisions of the Tax Code. 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 Mona Ezell Shoemate, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Texas Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.



§3.340 *Multistate Tax Credits (Texas Tax Code §151.303 and §151.001)*

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

(1) (No change.)

(2) Sales tax— A tax imposed on the transfer for a consideration of title[, ownership,] or possession of taxable items. See Texas Tax Code, §151.005.

(3) (No change.)

(b) Credits:

(1) (No change.)

(2) The credit shall be applied first against the amount of any use tax due the **metropolitan transit authority or city transit department** [state]. [Any remaining]

Credit shall then be applied against **county** [MIA] use tax due, if any, and then against the amount of any city use tax due. **Finally, any remaining credit shall be applied against use tax due the state.** [Example: John Doe purchases a taxable item in another state. He takes possession of the item there and pays a 6.0% sales tax to that state. The item is brought directly into the City of Houston for use there. The 6.0% sales tax paid to the other state is credited against the 4.125% Texas use tax and 1.0% Houston MIA use tax and liquidates those liabilities. The remaining credit of .835% is applied against the local tax of 1.0% and the taxpayer owes the additional .125% use tax, which remained after credit was exhausted, to the City of Houston.]

(3)-(6) (No change.)

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

Issued in Austin, Texas, on September 3, 1987

TRD-8707500

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption
October 12, 1987

For further information, please call
(512) 463-4004.



Name: Tony Allen
Grade: 7
School: Carter Jr. High, Arlington

Withdrawn

Rules An agency may withdraw proposed action or the remaining effectiveness of emergency action on a rule by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn within six months after the date of publication in the *Register*, it will automatically be withdrawn by the *Texas Register* office and a notice of the withdrawal will appear in the *Register*.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas Chapter 9. Liquefied Petroleum Gas Division Subchapter B. Basic Rules

★ 16 TAC §9.65

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption proposed new §9.65, concerning basic rules. The text of the proposed new section appeared in the March 3, 1987, issue of the *Texas Register* (12 TexReg 705). The effective date of this withdrawal is January 1, 1988.

Issued in Austin, Texas, on September 3, 1987

TRD-8707546 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Filed September 3, 1987
For further information, please call
(512) 463-7149



Subchapter F. Division IV

★ 16 TAC §9.162

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption the proposed repeal of §9.162, concerning Division IV. The text of the proposed repeal appeared in the March 3, 1987, issue of the *Texas Register* (12 TexReg 716). The effective date of this

withdrawal is September 3, 1987.

Issued in Austin, Texas, on September 3, 1987.

TRD-8707570 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Filed September 3, 1987
For further information, please call
(512) 463-7149

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption proposed new §9.162, concerning Division IV. The text of the proposed new section appeared in the March 3, 1987, issue of the *Texas Register* (12 TexReg 716). The effective date of this withdrawal is September 3, 1987.

Issued in Austin, Texas, on September 3, 1987

TRD-8707571 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Filed September 3, 1987
For further information, please call
(512) 463-7149



Subchapter M. Division XI

★ 16 TAC §9.303

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption a proposed amendment, concerning Division XI. The text of the proposed amendment appeared in the March 3, 1987, issue of the *Texas Register* (12 TexReg 721). The effective date of this withdrawal is January 1, 1988.

Issued in Austin, Texas, on September 3, 1987.

TRD-8707567 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Filed September 3, 1987
For further information, please call
(512) 463-7149



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health Chapter 289. Occupational Health and Radiation Control Texas Regulations for Control of Radiation

★ 25 TAC §289.125

The Texas Department of Health has withdrawn the emergency effectiveness an amendment to §289.125, concerning Texas regulations for control of radiation. The text of the emergency amendment appeared in the June 16, 1987, issue of the *Texas Register* (12 TexReg 1930). The effective date of this withdrawal is September 4, 1987.

Issued in Austin, Texas, on September 4, 1987.

TRD-8707535 Dan LaFleur
Liaison Officer
Texas Department of
Health

Filed September 4, 1987
For further information, please call
(512) 458-7236



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 16. ECONOMIC REGULATION

Part I. Railroad

Commission of Texas

Chapter 9. Liquefied

Petroleum Gas Division

Subchapter A. General

Applicability and Requirements

★ 16 TAC §9.2

The Railroad Commission of Texas adopts new §9.2, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 699). The new section is necessary to define terms used in the LP-gas safety rules. The commission adopts the new section to more clearly define terms used in the LP-gas safety rules.

Comments concurring with the proposed section were filed by Texas LP Gas Association. No comments were filed in opposition to the new section.

Comments proposing changes to the definitions were filed by Eddins-Walcher Company and A-B Gas Company. Eddins-Walcher suggested a change in the definition of the term "public building." The commission did not accept the change because, as proposed, the definition would be overly broad and not within the jurisdiction of the commission LP-gas safety jurisdiction. A-B Gas Company proposed changes to various definitions. The commission did not accept the changes because many of the definitions, as published, are statutorily defined. The commission did change the definition of the term "public building" for clarification.

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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

Appliance—Any apparatus of fixture that uses or consumes LP-gas furnished or

supplied by an LP-gas system to which it is connected or attached.

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

ASME container—Any LP-gas container manufactured to the specifications of the American Society of Mechanical Engineers, Division 1, Section VIII, in effect at the time of fabrication.

Automatic dispenser—A dispensing device to which access is controlled by a key, a card, or a code locking system, without which the dispenser cannot be operated.

Certified—Authorized to perform LP-gas related work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

Commission—The Railroad Commission of Texas.

Container—Any receptacle designed for the transportation or storage of LP-gas, or any receptacle designed for the purpose of receiving injections of LP-gas for use or consumption by or through an LP-gas system.

Dispensing system—That combination of valves, meters, hoses, piping, electrical connections, and/or fuel connections at a stationary installation used to distribute LP-gas to portable DOT containers or DOT/ASME mobile or motor fuel containers.

Division—The Liquefied Petroleum Gas Division of the commission.

DOT container—Any LP-gas container manufactured to the specifications of the United States Department of Transportation and/or the United States Interstate Commerce Commission, regardless of whether those standards are still in effect or whether those agencies assert jurisdiction over a particular container.

Employee—Any individual who renders or performs any services or labor for compensation and includes individuals hired on a part-time or temporary basis or on a full-time or permanent basis, including an owner-employee.

Licensee—A person, partnership, corporation, joint ventureship, or other business entity which has applied for and been granted an LP-gas license by the commission.

Liquefied petroleum gas, LPG, or LP-gas—Any material that is composed pre-

dominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

LP-gas system—All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

Material handling equipment—Includes, but is not limited to, pumps, meters, filling connections, compressors, emergency shut-off valves, and bulkheads. Material handling equipment does not include any automatic dispenser or manual dispenser (i.e. pipe riser).

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

Person—An individual, partnership, corporation, joint ventureship, or licensee.

Property line—That intangible boundary which designates the point at which one property interest ends and another begins.

Public building—Any building where the public conducts business on the premises which includes all commercial installations. A final determination as to what constitutes a public building will be made by the director.

Repair to container—The correction of damage or deterioration to an LP-gas container, or the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400°F.

Representative—The person designated by a license applicant or licensee as the principal person in authority who is responsible for actively supervising the licensee's LP-gas activities.

Subframing—The attachment of supporting structural members to the pads of a container, but does not include welding directly to or on the container.

Transfer system—All piping, fittings, valves, and equipment utilized in dispensing LP-gas between containers.

Transport—Any bobtail or semitrailer equipped with one or more containers.

Transport system—Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

Water capacity—The amount of water, in pounds or gallons, at 60°F (15.6°C) required to fill a container liquid full of water.

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 31, 1987

TRD-8707538 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date January 1, 1988
Proposal publication date March 3, 1987
For further information, please call
(512) 463-7149



★ 16 TAC §9.28

The Railroad Commission of Texas adopts new §9.28, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 700). The new section provides guidelines by which the public can request a public hearing to voice their safety concerns prior to placing LP-gas installations of 10,000 gallons or more, aggregate capacity, into service.

Comments were filed regarding adoption of the new section. The Texas LP Gas Association suggested modification to the approval process in §9.28(g). The commission agreed that the approval process needed to be clarified and, based on the comments, modified the new section. The changes clarify the difference in tentative approval and final approval. A-B Gas Company requested additional changes in §9.28(g). The commission did not accept these comments because the suggested changes would not ensure safety compliance during the hearing process.

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public

§9.28. Public Hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Commission orders. Following a public hearing, if the commission finds that the proposed installation is in accordance with the LP-gas safety rules, the statutes of the State of Texas, and that the installation does not constitute a danger to the public health, safety, and welfare, an order shall be issued granting interim approval. Any grant of interim approval will include a provision that such approval may be suspended or revoked if a physical inspection of the installation is not conducted by the division prior to the introduction of LP-gas or if a physical inspection of the installation indicates that it is not installed in accordance with the LP-gas safety rules, or the statutes of the State of Texas, or that the installation constitutes a danger to the public health, safety, and welfare. Following the physical inspection of the installation by the division, if the installation is found to be in accordance with the plans and specifications approved by interim order, and is in compliance with the LP-gas safety rules, the statutes of the State of Texas, and the installation does not constitute a danger to the public health, safety, and welfare, then the commission shall issue an order granting final approval. If no objection is filed to the proposed installation, final approval may be granted by the division director upon a similar finding and with a similar provision.

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 31, 1987.

TRD-8707539 Walter Earl Lillie
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Effective date January 1, 1988
Proposal publication date March 3, 1987
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(512) 463-7149



★ 16 TAC §9.29

The Railroad Commission of Texas adopts new §9.29, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 701). The new section requires filings to be made for LP-gas installations which occur at all public buildings

No comments were filed either in opposition or in favor of the new section. Comments were filed by Texas LP Gas Association and A-B Gas Company suggesting modifications to the filing requirements. These comments were not accepted by the commission because of the necessity to ensure that cylinders are inspected by the LP-Gas Division before they are placed in service. As a result of the comments, the commission did change §9.29(a) to clarify that at a school, convalescent home, or hospital, no LP-gas can be introduced in a container without final approval by the division. In addition, this subsection states that no LP-gas container can be placed into service without final approval

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public

§9.29. Filings Required for LP-Gas Installations.

(a) Prior to the installation of any LP-gas container at a school, convalescent home, hospital, LP-gas cylinder filling/motor fuel service station, or any LP-gas container installation which would result in an aggregate water capacity of 10,000 gallons or more, plans and specifications for the LP-gas container and/or piping system must be submitted on LPG Form 500 to the LP-Gas Division for tentative approval. Any alterations or additions (except maintenance and repairs) will necessitate resubmission of plans and specifications for approval. No LP-gas shall be introduced into any LP-gas container at a school, convalescent home, or hospital which has not been granted final approval by the division. No LP-gas container may be placed into LP-gas service until final approval has been granted by the division. Final approval will follow a physical inspection of the completed installation which indicates that the installation is found to be in compliance with all applicable LP-gas safety rules.

(b) Within 10 days of the completion of the installation of any LP-gas container having an aggregate water capacity under 10,000 gallons at a public building which includes all commercial installations, an LPG Form 501, Completion Report, must be submitted to the LP-Gas Division. No LP-gas shall be introduced into any LP-gas container which is not installed in accordance

with the statutes of the State of Texas, or with the rules of the Railroad Commission of Texas in effect at the time of installation.

(c) A manufacturer's data report must be submitted when requested by the division.

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

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 31, 1987

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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
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Subchapter B. Basic Rules

★ 16 TAC §9.48

The Railroad Commission of Texas adopts an amendment to §9.48, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 701). The amendment provides for procedures for transferring liquids

No comments were filed either in opposition or in favor of the amendment. Comments were filed by the Texas LP Gas Association and A-B Gas Company suggesting deletion of the term "truck and trailer" in §9.48(d). Based on the comments, the commission has deleted the language to make the method of filling containers applicable to all containers

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public

§9.48. Transfer of Liquid.

(a) Liquid may be transferred from one tank to another by means of any of the following methods: pumping, pressure differential, or gravity.

(b) Pumps, where used, shall be of an approved type and may be either truck-mounted or stationary.

(c) Where pressure differential is used to transfer liquid, such differential shall be obtained only with liquefied petroleum gas.

(d) Containers shall be filled by weight, by meter, or by an approved liquid level gauging device.

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 31, 1987

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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
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★ 16 TAC §9.50

The Railroad Commission of Texas adopts new §9.50, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 702). The new section provides the minimum design working pressure required for all American Society of Mechanical Engineers (ASME) and Department of Transportation (DOT) containers constructed after January 1, 1988

No comments were filed in opposition to or in favor of the proposed section. The effective date of this section has been changed to January 1, 1988, and is reflected in the new section

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public

§9.50. Minimum Design Working Pressure. All ASME containers constructed after January 1, 1988, for use in the State of Texas shall have a minimum design working pressure of not less than 250 psig. All DOT containers constructed after January 1, 1988, for use in the State of Texas shall have a minimum design working pressure of not less than 240 psig.

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 31, 1987

TRD-8707542 Walter Earl Lile
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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
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★ 16 IAC §9.62

The Railroad Commission of Texas adopts new §9.62, with no changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 703). The new section provides for the removal from LP-gas service of any unsafe container, system, appliance, or equipment whenever there is an immediate danger to the public health, safety, and welfare.

The Texas LP Gas Association filed comments in favor of the new section. A-B Gas Company was opposed to the new section because of the overlap with the Texas Natural Resources Code, §113.235. The commission did not agree with the comments because the section clarifies the extent of the statutory authority.

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987.

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Effective date: January 1, 1988
Proposed publication date: March 3, 1987
For further information, please call
(512) 463-7149.



★ 16 IAC §9.63

The Railroad Commission of Texas adopts new §9.63, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 703).

The new section provides uniform fencing and/or guardrail standards for all types of LP-gas installations of 4,000 aggregate water capacity and above.

There were no comments filed either in opposition to or in favor of the new section. The Texas LP Gas Association and A-B Gas Company filed comments suggesting modifications to the new section. The commission agrees that the exemption paragraph should be renumbered and did so for final adoption. A-B Gas Company made additional comments which the commission did not adopt because the proposed modifications would not enhance the safety considerations imposed by this section. As a result of the comments, the commission also clarified

the necessity of locking devices in the absence of fencing. The commission also agreed that the section should be flexible for material used for the vertical supports and horizontal guardrails.

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

§9.63. Uniform Protection Standards.

(a) All LP-gas transfer systems and storage containers shall be protected from tampering and damage and shall be maintained in good condition at all times and in accordance with one of the three standards set forth in this subsection. Cylinders in storage referred to in §9.272 of this title (relating to Cylinder Storage) and §9.303 of this title (relating to Cylinder Storage), however, shall be protected in accordance with paragraph (1) of this subsection.

(1) Fencing.

(A) Fencing material shall be chain link type with wire no smaller than 12½ American wire gauge in size.

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

(C) All uprights, braces, and/or cornerposts of the fence shall be composed of noncombustible material if located within 25 feet of the enclosed LP-gas transfer system or LP-gas container.

(D) All fenced enclosures shall have at least one gate suitable for entrance and egress. All gates shall be locked whenever the area enclosed is unattended.

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

(F) Fencing which is located more than 25 feet from any point of an LP-gas transfer system or container is designated as perimeter fencing. If an LP-gas transfer system or container is located inside perimeter fencing and is subject to vehicular traffic, it shall be protected against damage by the use of guardrails and guard posts, installed according to the specifications set forth in paragraph (2) of this subsection.

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

(2) Guardrails.

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

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

(C) Horizontal guardrailing shall be secured between the vertical guard posts. It shall be no less than three-inch schedule 40 steel pipe, or material with equal or greater strength. The railing shall be welded or bolted to the guard posts.

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

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

(F) Guardrail protection shall extend at least 24 inches beyond any part of the LP-gas transfer system or container which is exposed to vehicular traffic.

(G) The operating end of the container (including all material handling equipment and the entire dispensing system) must be protected from damage by vehicular traffic.

(H) Each LP-gas storage installation of 4,000 gallons aggregate water capacity or more which is not protected by continuous fencing, pursuant to this chapter, shall have posted the following warning, printed in letters not less than four inches high: "Warning—Flammable Gas," printed in red letters; "No Trespassing," printed in black letters; and "No Smoking," printed in red letters. The background for such lettering shall be white or aluminum. All warning signs shall be readily visible to any person approaching such an installation. This applies to Division II (commercial), Divisions III, IX, XI, and XII.

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

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

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

(B) LP-gas systems and containers which service vapor systems, where the aggregate storage capacity of the installation is less than 4,000 gallons, and where the transfer system is not subject to vehicular traffic;

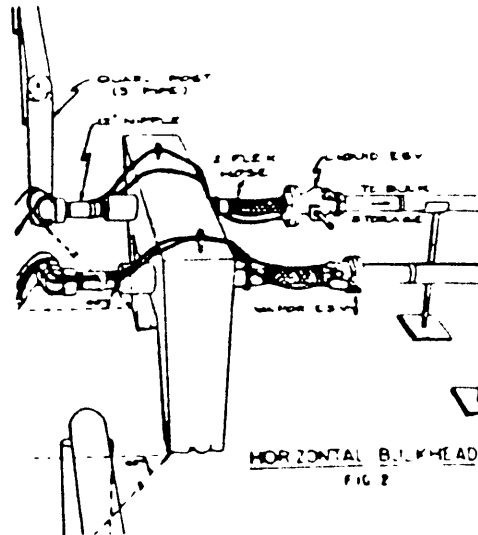
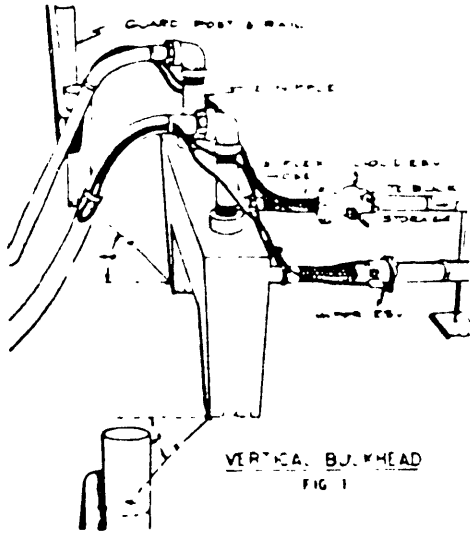
(C) LP-gas piping which contains no valves and which complies with the provisions of §9.218 of this title (relating to Exterior Piping); and

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

(b) The provisions of this section notwithstanding, the director of the division may require an installation to be protected in accordance with subsection (a) of this section when evidence exists that because of exceptional circumstances added safeguards are

needed to adequately protect the health, safety, and welfare of the general public. If a person owning or operating such an installation disagrees with the determination of the director made under this subsection, then that person may request a public hearing on

the matter. However, until a decision is issued, subsequent to a hearing on the matter, the subject installation shall either be protected in the manner prescribed by the director, or it shall be closed with all product withdrawn from it.



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 31 1987
 TRD-8707544
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Effective date January 1 1988
 Proposal publication date March 3 1987
 For further information, please call
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★ 16 TAC §9.64

The Railroad Commission of Texas adopts new §9.64, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 704)

The new section provides uniform safety requirements pertaining to location of sources of ignition, procedures for fuel dispensing operations, and closed container valve requirements.

There were no comments filed either in opposition to or in favor of the new section. There were comments filed by the

Texas LP Gas Association and A-B Gas Company suggesting modifications. The Texas LP-Gas Association suggested deletion of the term "LP-gas system" in §9.64(a) and clarification of applicability of this subsection. The commission agreed and as a result of the comments, made changes to clarify when certain sources of ignition had to be extinguished on, as related to the filling connection on the container. A-B Gas Company suggested modifications in §9.64(a) and (b), regarding distances and safety requirements for sources of ignition and combustible materials. The commission disagreed with the comments because of the greater potential for safety risks if the proposed changes were adopted.

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

§9.64. *Uniform Safety Requirements.*

(a) Open flames and other sources of ignition. No sources of ignition may be located within the vicinity of an LP-gas container or an LP-gas transfer system in ac-

cordance with the distances set forth in Figure 1 of this section, while LP-gas is being transferred, including the time of connection and disconnection, and for a reasonable late period of time after the transfer has been completed. Potential sources of ignition include, but are not limited to, all smoking materials, open flames, pilot lights, non-explosive proof lights, and electrical installation not constructed in accordance with the National Electrical Code (NEC) for Class 1, Group D: Hazardous Locations. This shall not be construed to prohibit the operation of a transport engine which is required for the transfer of LP-gas. Vaporizers, tank heater burners, and pilots shall be extinguished during transfer operations, but need not be extinguished where located in accordance with the distances set forth in Figure 1 of this section, as they relate to the filling connection on the container.

(b) Combustible materials. The vicinity of a stationary LP-gas container, transfer, handling, or dispensing equipment shall be kept clear of all types of combustible materials which includes, but is not limited to, trash, weeds, and wood in accordance with the distances set forth in Figure 1 of this section. Note: This applies only to Division II (commercial), Divisions III, IX, and XI.

Aggregate Water Capacity of LP-gas Containers	Required Distance
0 - 500 gallons	10 feet
501 - 2000 gallons	15 feet
2001 gallons and over	25 feet

FIGURE 1

(c) Transfer or dispensing of fuel. During the transfer or dispensing of LP-gas which includes the time period from connection to disconnection, at least one person shall remain in the immediate vicinity of the transfer or dispensing equipment in a position to monitor the flow of fuel and to control the transfer or dispensing equipment.

(d) Use of chock blocks. Each LP-gas transport shall carry no fewer than two chock blocks designed to effectively prevent the rolling of the transport. These blocks shall be used any time the transport is parked and during the transfer of fuel regardless of the level of the surrounding terrain.

(e) Storage of LP-gas next to flammable liquids. Suitable means shall be taken by diking, diversion curbs, and grading to prevent the accumulation of flammable liquids such as gasoline, diesel, etc., under LP-gas containers. The minimum separation between LP-gas containers and flammable liquid tanks shall be 20 feet, and the minimum separation between a container and the center line to the dike shall be 10 feet. Note: This applies to aboveground LP-gas containers as described in Division II (commercial), III, IX, and XI.

(f) Valves in closed position. Except in vaporizers and vapor systems, all vapor and liquid container shutoff valves shall be kept in the fully closed position when the LP-gas installation is unattended. All valves on any transport shall be kept in the fully closed position except during the transfer of fuel to or from the transport.

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 31, 1987.

TRD-8707545
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Effective date January 1, 1988
Proposal publication date March 3, 1987
For further information, please call
(512) 463-7149



★ 16 TAC §9.66

The Railroad Commission of Texas adopts new §9.66, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 706). The new section provides the maximum capacity of LP-gas storage containers.

The Texas LP Gas Association commented in favor of adoption of the new section. No comments were filed in opposition to the new section.

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987

TRD-8707547
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Texas

Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
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★ 16 TAC §9.67

The Railroad Commission of Texas adopts new §9.67, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 706). The new section provides for the installation of bulkheads and emergency shutoff valves at LP-gas installations of 4,000 gallons or more, aggregate capacity.

Comments in favor of adoption of the new section were filed by Texas LP Gas Association. A-B Gas Company opposed the new section and suggested that the new section belonged in Division III. The commission disagrees because these requirements should be applicable to all installations to promote LP-gas safety. The commission also modified the effective date of the section to January 1, 1988.

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987

TRD-8707548
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Texas

Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
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★ 16 IAC §9.69

The Railroad Commission of Texas adopts new §9.69, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 707). The new section provides for grounding of above-ground LP-gas installations and minimum distance requirements for LP-gas containers for electrical installations

No comments were filed in opposition to or in favor of the new section. A-B Gas Company filed comments suggesting modification of the distance requirements to make them uniform for all sizes of containers. The commission disagrees because the distance requirements should be consistent with the minimum distance requirements for safety.

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987.

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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
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★ 16 TAC §9.70

The Railroad Commission of Texas adopts new §9.70, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 708).

The new section provides for uniform maintenance standards and minimum distance requirements between LP-gas containers and transmission lines.

The Texas LP Gas Association filed comments in favor of adoption of the new section. No comments were received in opposition to the proposed section.

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987.

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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
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Subchapter C. Division I

★ 16 TAC §9.71

The Railroad Commission of Texas adopts an amendment to §9.71, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 708). The amendment provides for the construction, testing, inspection, and minimum working pressure of DOT containers.

The Texas LP Gas Association filed comments in favor of adoption of the amendment. The association also suggested modification of the title of the section to conform with the amendment to the section. As a result of the comment, the commission revised the title of the section. No comments were filed against adoption of the amendment.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

§9.71. *Construction and Original Test of Cylinders.* All Division I containers for use with LP-gas shall be manufactured, tested, and inspected in accordance with the Department of Transportation regulations and specifications.

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 31, 1987.

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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
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★ 16 TAC §9.72

The Railroad Commission of Texas adopts an amendment to §9.72, without changes to the proposed text published in the March

3, 1987, issue of the *Texas Register* (12 TexReg 708). The amendment provides for required markings on DOT containers.

No comments were filed against adoption of the amendment. The Texas LP Gas Association filed comments concurring with the proposed amendment.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987.

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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
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★ 16 TAC §9.77

The Railroad Commission of Texas adopts an amendment to §9.77, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 709). The amendment provides for filling procedures for DOT containers.

Comments were filed in favor of adoption of the amendment by the Texas LP Gas Association. No comments were filed against adoption of the amendment. A-B Gas Company filed comments proposing revisions in §9.77(b) regarding typographical errors. The corrections were made by the commission.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

§9.77. *Filling of Department of Transportation Containers.*

(a) DOT containers of 100 pounds LP-gas capacity or less shall be filled by weight only.

(b) DOT containers of 101 pounds LP-gas capacity or more may be filled by either a fixed liquid level gauge or by weighing.

(c) Fixed tube devices, where permitted, shall be so arranged that the maximum liquid level to which the container may be

filled is not in excess of the maximum permitted under the filling density table in §9.47 of this title (relating to Filling Density) based on an initial liquid temperature not in excess of 40°F.

(d) Forty-two percent of the water capacity in pounds equals total weight of L.P.

gas which can be put into a cylinder.

(1) The formula for filling L.P. gas containers by weight under this section is as follows:

(A) The propane capacity in pounds is determined by multiplying the total water capacity in pounds by .42

(B) Add the tare weight of a cylinder to the liquid weight of the product plus the weight of the hose and nozzle. The total weight of these three is the proper scale setting.

(2) The following chart is the list of typical filling limits for propane.

LIST OF TYPICAL FILLING LIMITS FOR
PROPANE, SPECIFIC GRAVITY AT
60° OF 0.504 - 0.510.

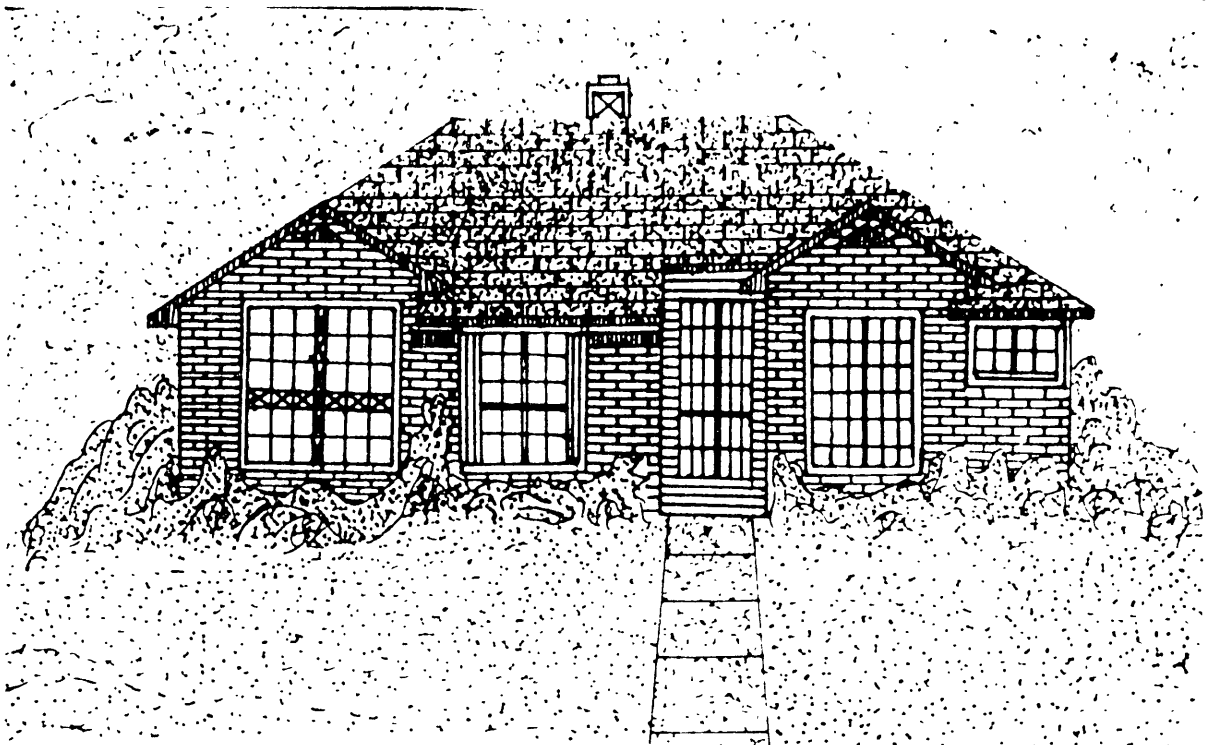
CONTAINER CAPACITY IN POUNDS

<u>WATER</u>	<u>PROPANE</u>	<u>WATER</u>	<u>PROPANE</u>
12	5	80	33.5
15	6	96	40
24	10	104	43.5
26	11	120	50
48	20	144	60
60	25	239	100
67	28	427	179
69	29	715	300
72	30	1100	462

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 31, 1987.
TRD 8707553
Walter Earl Linn
Special Counsel
Railroad Commission of
Texas

Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
(512) 463-7149



Name: Tuan Nguyen
Grade: 9
School: Carter Jr. High, Arlington

Subchapter D, Division II

★ 16 TAC §9.102

The Railroad Commission of Texas adopts an amendment to §9.102, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 Tex-Reg 710). The amendment provides for the installation of underground containers.

Comments in favor of adoption of the amendment were filed by the Texas LP Gas Association. No comments were filed opposing adoption of the amendment.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987

TRD-8707554

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 1, 1988

Proposal publication date: March 3, 1987

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



★ 16 TAC §9.107

The Railroad Commission of Texas adopts an amendment to §9.107, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 711). The amendment provides protection of tanks and tank accessories.

Comments were filed in favor of adoption of the amendment by Texas LP Gas Association. No comments were filed against adoption of the amendment.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987

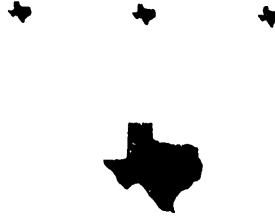
TRD-8707555

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 1, 1988

Proposal publication date: March 3, 1987

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



Subchapter E, Division III

★ 16 TAC §9.135

The Railroad Commission of Texas adopts an amendment to §9.135, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 Tex-Reg 714). The amendment provides requirements for bulkheads and emergency shut-off valves.

No comments were filed in opposition or in favor of adoption of the amendment. Comments were filed by the Texas LP-Gas Association and A-B Gas Company stating that the amendment conflicted with §9.67. The commission agrees and, as a result, deleted language in subsection (b) to alleviate any conflict.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

§9.135. *Bulkheads and Emergency Shutoff Valves.*

(a) (No change.)

(b) Bulkheads, piping, and hoses shall be protected in accordance with §9.63 of this title (relating to Uniform Protection Standards).

(c) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 31, 1987

TRD-8707556

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 1, 1988

Proposal publication date: March 3, 1987

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

Subchapter F, Division IV

★ 16 TAC §9.147

The Railroad Commission of Texas adopts an amendment to §9.147, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 Tex-Reg 715). The amendment provides procedures for transferring liquid to cargo tanks.

No comments were filed in opposition to or in favor of adoption of the amendment. Comments were filed by the Texas LP Gas Association and A B Gas Company suggesting that this section be deleted because it is identical to §9.48. The commission agrees in part, and, as a result, has deleted subsections (a)-(c).

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

§9.147. *Transfer of Liquids.* Truck and trailer containers shall be loaded by weight, by meter, or any approved liquid leveling gauging device.

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 31, 1987

TRD-8707557

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Railroad Commission of
Texas

Effective date: January 1, 1988

Proposal publication date: March 3, 1987

For further information, please call
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★ 16 TAC §9.164

The Railroad Commission of Texas adopts an amendment to §9.164, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 716). The amendment provides for the parking of LP-gas transports.

No comments were filed against adoption of the amendment. Comments were filed by the Texas LP Gas Association concurring with the proposed amendments.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987

TRD-870758 Walter Earl Little
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Texas

Effective date: January 1, 1988
Proposal publication date: March 3, 1987
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Subchapter G, Division V

★ 16 TAC §9.190

The Railroad Commission of Texas adopts an amendment to §9.190 without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 716). The amendment provides for the filling of motor and mobile fuel containers.

The amendment is adopted by the Texas LP Gas Association in favor of adoption of the amendment. Comments against adoption of the amendment were filed by A B Gas Company stating that the section should be deleted if the commission disagrees because LP requirements of the section apply only to Division 7 installations.

The amendment is adopted under the Texas Natural Resources Code §113.051, which provides the Railroad Commission of Texas with the authority, to promulgate rules and standards to be used in the LP gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987

TRD-870758 Walter Earl Little
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Railroad Commission of
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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
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Subchapter H, Division VI

★ 16 TAC §9.203

The Railroad Commission of Texas adopts an amendment to §9.203 without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 717). The amendment provides for minimum distance requirements be-

tween direct gas-fired vaporizers and buildings, property lines, or rights-of-way.

No comments were received against adoption of the amendment. Comments were filed in favor of adoption of the amendment by the Texas LP Gas Association.

The amendment is adopted under the Texas Natural Resources Code §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987

TRD-8707560 Walter Earl Little
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Railroad Commission of
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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
(512) 463-7149



★ 16 TAC §9.204

The Railroad Commission of Texas adopts an amendment to §9.204 without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 717). The amendment provides minimum distance requirements between direct gas-fired heaters and buildings, property lines, or rights-of-way.

No comments were filed against adoption of the amendment. Comments in favor of adoption of the amendment were filed by the Texas LP Gas Association.

The amendment is adopted under the Texas Natural Resources Code §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987

TRD-8707561 Walter Earl Little
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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
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Subchapter K, Division IX

★ 16 TAC §9.266

The Railroad Commission of Texas adopts an amendment to §9.266, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 718). The amendment provides for protection of service station and bottle filling installations.

No comments were filed against or in favor of adoption of the amendment. Comments were filed by the Texas LP Gas Association suggesting deletion of redundant language in the remaining subsection. The commission agrees and, as a result, deleted language concerning filing an application with the commission for an exception to the fencing requirements since it would not be necessary to go through the procedure of filing an application.

The amendment is adopted under the Texas Natural Resources Code §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

§9.266 - *Protection of Storage Containers and Fittings* - An exception to the fencing requirements may be granted for complete fuel contained and securely housed LP gas service station or bottle filling units. Such units shall have been specifically approved for this use by the railroad commission in accordance with plans and specifications covering the design, fabrication, assembly, and method of mounting. Such units shall be locked when not in use.

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 31, 1987

TRD-8707562 Walter Earl Little
Special Counsel
Railroad Commission of
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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
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★ 16 TAC §9.272

The Railroad Commission of Texas adopts an amendment to §9.272, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 719). The amendment provides for the protection of cylinders in storage.

No comments were filed against adoption of the amendment. Comments were filed in favor of adoption of the amendment by

the Texas LP Gas Association. Comments were filed by A-B Gas Company suggesting additional wording in subsection (a). The commission did not accept the language since it would increase the safety risks for flammable units.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987.

TRD-8707563 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
(512) 463-7149



★ 16 TAC §9.275

The Railroad Commission of Texas adopts an amendment to §9.275, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 720). The amendment provides for LP-gas fueling procedures.

No comments were filed against adoption of the amendment. Comments were filed by the Texas LP Gas Association in favor of adoption of the amendment.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987.

TRD-8707564 Walter Earl Lillie
Special Counsel
Railroad Commission of
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Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
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Subchapter L, Division X

★ 16 TAC §9.290

The Railroad Commission of Texas adopts an amendment to §9.290, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 720). The amendment requires liquid level gauging device requirements.

No comments were filed against adoption of the amendment. Comments were filed by the Texas LP Gas Association in favor of adoption of the amendment. Comments were filed by A-B Gas Company suggesting additional changes to incorporate the requirements contained in this section into §9.48. The commission determined that it would not be appropriate at this time to incorporate the two sections.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987.

TRD-8707565 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
(512) 463-7149



Subchapter M, Division XI

★ 16 TAC §9.302

The Railroad Commission of Texas adopts an amendment to §9.302, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 721). The amendment provides for the protection of fuel storage containers.

No comments were filed against adoption of the amendment. Comments were filed by the Texas LP Gas Association in favor of adoption of the amendment.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987.

TRD-8707566 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
(512) 463-7149



Subchapter N, Division XII

★ 16 TAC §9.340

The Railroad Commission of Texas adopts an amendment to §9.340, without changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 722). The amendment provides for minimum distance requirements for automatic dispensers.

No comments were filed against adoption of the amendment. Comments were filed by the Texas LP Gas Association in favor of adoption of the amendment.

The amendment is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

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 31, 1987.

TRD-8707568 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 1, 1988
Proposal publication date: March 3, 1987
For further information, please call
(512) 463-7149



★ 16 TAC §9.395

The Railroad Commission of Texas adopts new §9.395, with changes to the proposed text published in the March 3, 1987, issue of the *Texas Register* (12 TexReg 722). The new section provides for distances to be maintained between manual dispensers and buildings, property lines, easements, or rights-of-way.

No comments were filed against or in favor of adoption of section. Comments were filed by the Texas LP Gas Association suggesting clarification of the section, to make it applicable to manual dispensers and pipe risers associated with manual dispensers. The commission

agrees, and, as a result, clarifies this section.

The new section is adopted under the Texas Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote, or tend to promote, the health, safety, and welfare of the general public.

§9.395 *Distance of Manual Dispensers.* Manual dispensers and pipe risers associated with manual dispensers shall be located no closer than 15 feet from the nearest building, property line, easement, or right-of-way.

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 31, 1987

TRD-8707569 Walter Earl Lille
Special Counsel
Railroad Commission of
Texas

Effective date January 1, 1988
Proposal publication date March 3, 1987
For further information, please call
(512) 463 7149



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 101. General Rules

★31 TAC §101.24

The Texas Air Control Board (TACB) adopts the repeal of §101.24, without changes to the proposed text published in the June 9, 1987, issue of the *Texas Register* (12 TexReg 1862). The repeal removes material made extraneous by the addition of a new section. In concurrent action, the TACB adopts a new §101.24.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(C)(1), requires categorization of comments as being for or against a proposal. A commenter who suggests any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

One commenter, Bell Helicopter-Telectron (Bell) commented against the proposed repeal. There were no commenters in favor of the repeal.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and of the hearing

transcript are available for inspection at the TACB central office, 6330 US Highway 290 East, Austin, Texas.

Bell commented that basing fees on SIC code, production, or plant employment does not meet the criteria of the TCAA, §3.29(b). Bell explained that many of its employees perform administrative or research tasks rather than production activities. Bell recommends continuing the current emissions-based fee system.

Many industries have complained about the emissions-based system because of the difficulty of performing a yearly emissions inventory. Additionally, basing fees solely upon emissions is not an accurate reflection of agency costs and the factors involved in inspection and enforcement activities. The staff believes that organizing the fees by SIC code, establishing capacity rate tiers for each code, and considering emissions, compliance history, and inspection frequency and difficulty is a more equitable and meaningful method of fee collection. With regard to the number of employees at a facility, companies may request that the TACB review such situations to ascertain the number of employees in production-related, rather than administration-related or research-related, activities.

The repeal is proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act, and to amend any rule or regulation the TACB makes.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 2, 1987

TRD-8707441 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date September 24, 1987
Proposal publication date June 9, 1987
For further information, please call
(512) 451-5711, ext. 354



The Texas Air Control Board (TACB) adopts new §101.24, concerning inspection fees, with changes to the proposed text published in the June 9, 1987, issue of the *Texas Register* (12 TexReg 1862). The new section replaces old §101.24, which is repealed in concurrent action.

The revised fee system in new §101.24 is based on the standard industrial classification (SIC) code with emphasis on compliance history, emissions, inspection frequency, and difficulty of inspection for any particular classification. The fee for each industrial category is intended to be commensurate with agency resource

costs usually incurred for that category. The system includes more categories of industry inspected by the TACB and incorporates the inspection fee schedule into §101.24(a), by reference.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal, while a commenter who agreed with the proposal in its entirety is classified as being for the proposal.

Fourteen commenters testified concerning adoption of the new section. Those commenting against the proposal were Galveston County Health District; Brandt Mannchen, Midcon Corporation (Midcon); Corpus Christi Petrochemical Company (CCPC); Brown, Maroney, Rose, Barber, and Dye (Brown, Maroney); Bell Helicopter-Telectron; El Paso Natural Gas Company (El Paso); Cabot Corporation (Cabot); Sierra Club; Champlin Refining; and Texas Mid-Continent Oil and Gas Association (TMOGA). Those commenting in favor of the proposal were Cities Service Oil and Gas Corporation, Texas Chemical Council, and TU Electric.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and the hearing transcript are available for inspection at the TACB central office, 6330 United States Highway 290 East, Austin.

Four commenters (Midcon, El Paso, TMOGA, and Cabot) requested that grandfathered facilities and those facilities that are nonpermitted, non-regulated, and have received no notices of violations (NOVs) in the past five years be exempted from paying fees. El Paso maintained that the Texas Clean Air Act (TCAA) provides for an exemption of grandfathered facilities from the inspection fee requirement, and cited §3.27 of the TCAA. El Paso further asserted that facilities grandfathered by §3.27 are not subject to inspection performed pursuant to other sections of the TCAA.

Section 3.27 applied strictly to the initial 1971 implementation of the TACB permit program. It allowed those facilities already in operation in 1971 to be exempted from the permitting process. The TACB has never restricted its inspection and enforcement activities to only those facilities which have TACB permits.

Under the proposed fee system, the staff expanded the base of accounts which will be assessed a fee. By doing so and by considering factors other than emissions in establishing the inspection fee, the staff attempted to make the fees more representative of the costs the agency incurs in its inspection and enforcement activities. The revised fee schedule does not include all facilities inspected by the TACB. The number of accounts to be as-

sessed fees was established by weighing the advantages of broadening the base to include more of the types of facilities receiving inspections against the disadvantage of increased administrative cost. In establishing priorities for inclusion in the fee schedule, the staff excluded industry types which are small in size, generally have low emissions, and require few inspection and enforcement resources. Those which are more resource-intensive, regardless of their permitting, regulatory, or NOV status, have been included in the system. All facilities within the state having air emissions are at least regulated to the extent of being subject to the TCAA and §101.4 of this title (relating to Nuisance). All industry types included have a history of inspections occurring in the last three years. Therefore, the staff recommends no change to the section language.

Three commenters (CCPC, Brown Maroney, and Champlin Refining) expressed concern about certain facilities having multiple TACB account numbers and having to pay a separate fee for each. They argued that separate portions of a single facility should be allowed to consolidated account numbers in cases where the numbers were assigned for TACB administrative convenience.

They further requested that this information should be added to this preamble.

Contrary to the commenter's statements, account numbers have not been set by the TACB primarily for administrative convenience. Rather, they reflect the judgement of the regional staff familiar with facility operations and geography. It is not the intent of the TACB to allow significant inequities to exist within the categories identified as subject to specified fee levels. Therefore, it will continue to be the TACB policy that, if a company requests consolidation of account numbers at a single facility, and a review by the TACB's staff concurs with this request, the numbers will be consolidated and fees assigned accordingly. The staff does not believe it necessary to add a discussion of this policy to the preamble or to the section.

Three commenters (CCPC, Brown Maroney, and Champlin Refining) requested clarification regarding the applicability of fee requirements for facilities under common ownership which are not located on a single piece of land. CCPC described their ethylene plant and barge facilities in Nueces County which are approximately five miles apart stating that the two properties are made contiguous, however, by pipeline easements connecting the manufacturing operations with the shipping and receiving operations. Both facilities are under common management. Champlin Refining described a similar situation. All three commenters asked for a definition of contiguous properties.

The language in the section describes cases where contiguous properties would have to pay separate fees if they contain separate operations, are managed independently, or are carried on TACB records under separate account numbers. The issue of account numbers was addressed in the previous section of this analysis which notes that the regional staff considers facility operations and geography as they affect agency inspection activities in assigning account numbers. It has not been the staff's intent to imply that any means of connection between multiple facilities would enable those facilities to be carried as a single account. CCPC's assertion that facilities five miles apart are made contiguous by pipeline easements points out the need to clarify the intent of the section language. Using CCPC's argument, in extreme cases a production field in West Texas linked by pipeline to a refinery on the Gulf Coast could be considered contiguous. Thus it becomes obvious that there must be a means of limiting operations that are subject to combination under one account number. Physical separation or discontinuity has and will continue to be the TACB's primary basis of assigning separate account numbers. As in the case of multiple account numbers, any company may request that situations related to contiguous properties be reviewed by the TACB.

Brown, Maroney suggested that, if fee revenues are insufficient, the TACB should consider incorporating additional facilities within the fee schedule instead of increasing the fees for those already being assessed. The Sierra Club also felt that the number of accounts covered by inspection fees should be increased, but its concern seemed to be more related to whether accounts not covered by fees were inspected.

The proposed fee schedule was devised to comply with the cost recovery requirements stipulated by the legislature without an increase in TACB staff. At this time, the administrative costs of adding more accounts to the fee schedule would be prohibitive. Omission from the fee schedule does not preclude inspections. The TACB will continue to inspect accounts not included in the fee schedule. This practice can be sustained at the previous level without additional staff resources.

Brown, Maroney further commented that the fees for certain SIC categories (3211, 3274, 3331, and 1321) exceed the actual cost incurred by the agency for those categories.

The fees in the proposed schedule represent all facilities in each industrial category, rather than individual companies. The staff reviewed the average number of violations, average number of facilities, average number of inspections, and average total emissions for each SIC

code in the TACB data base. In addition, the proposed fees do not recover only inspection costs, but also a portion of the cost of enforcement activities. Although in some cases fees would increase under the proposed system, the staff believes that this is a more accurate reflection of agency inspection and enforcement costs related to each industry type. Where appropriate, the agency has also included size breakdowns within industry type.

In the case of SIC code 3211 (Flat Glass), TACB records indicate an average of 1,043 tons per year of emissions from these types of facilities. They are inspected an average of 1.24 times per year. Under the current fee system, based solely on emissions, PPG industries paid \$11,300. The staff contends that, in the case of large facilities such as PPG, given the information outlined above, the proposed \$9,400 is not excessive.

In the case of SIC code 3274 (Lime), all of the factors used to determine the proposed fees—average number of violations, facilities, inspections, and emissions—were high. Industries in this SIC code average 1.44 violations per year, 14.5 emission points, 3.33 inspections per year, and 1,165 tons per year of emissions. The staff contends that the proposed fees for this SIC code are commensurate with agency resources expended on them.

In the case of SIC code 3331 (Primary Copper Refining), while emissions are fairly low for these types of facilities, other factors, particularly the average number of facilities or emissions sources, are high. They average 18.5 emissions sources, which, in the case of ASARCO's Amarillo Copper Refinery, have resulted in six separate permit applications. In addition to the production process outlined in Brown, Maroney's comments, such plants also process impurities from the bottoms of the acid tanks with resulting sulfuric acid, selenium, and sulfur dioxide emissions. TACB staff has monitored high opacity levels at both of the copper refineries operating in Texas. All of these factors are reflected in the proposed fees for this SIC code, which the staff contends is a fair representation of agency resources expended on these types of facilities.

In the case of SIC code 1321 (Natural Gas Liquids Processing), factors including average number of facilities and average emissions are high. Large sources in this category paid fees of \$14,500 under the current, emissions-based system. Therefore, the staff contends that the high fee of \$4,600 is not excessive for such facilities. Brown, Maroney also asserts that these facilities would pay more than 10% of the total amount collected under the proposed system. This would occur only if all of the accounts on record each paid the highest fee. There are 151 accounts on record for this SIC code. The large number of companies in this category

would account for the proportion of total fees collected—not the amount of the fee itself.

El Paso expressed concern that assessing fees of grandfathered facilities could lead to over-collection of funds.

Grandfathered facilities were included in calculating the total amount of revenue which would be collected by the proposed fee system. Accordingly, any over-collection would be caused by the uncertainties of moving to a new system rather than failure to account for grandfathered facilities.

The Sierra Club suggested that the maximum proposed fee of \$10,000 was too low and should be retained at \$15,000 as in the existing fee section. The club was concerned that agency funding could be adversely affected. It also suggested that lowering the maximum fee increased the inequity of the system by reducing the difference between large and small businesses.

The maximum fee of \$15,000 was retained in the proposed new fee system. Furthermore, numerous categories of facilities will be assessed fees ranging from \$10,000 to \$15,000.

Increased agency funding requirements were satisfied by adding accounts to the system. The difference between a business being large and small is not a factor in the fee determination; that is, the fees are not based on the ability to pay. Rather, the proposed fees are based on agency resources expended on inspection and enforcement activities related to specific industry types, regardless of their size.

The Galveston County Health District requested that, since it is performing many of the services in Galveston County for which the TACB is assessing fees, the TACB negotiate with the health district on a fee for service contract.

In 1985, the Texas Legislature authorized the TACB to collect fees to support the permitting and enforcement program of the agency, and established a minimum cost recovery requirement for the fee program. The appropriations bill substituted fee revenue appropriations for a corresponding portion of the agency's general revenue appropriation. No increase in the program funding to support activities of local agencies was provided or authorized. Any fees collected in excess of the appropriated fee revenue were to become unappropriated general revenue. Thus, partial funding of the TACB through fees was established as a direct substitution for total general revenue funding. The funding substitution assumed no workload change in the agency, an assumption grounded on maintenance of the same working relationship between state and local agencies as had historically existed. Thus, establishment of a contractual agreement whereby the

TACB would reimburse a city or county government for services performed would result in a net decrease in funding available to this agency to support its activities. Since no such decreases have been legislatively approved through the appropriations process, it would be very difficult for our agency to justify them administratively to provide funding for the contract. Historically, inspection, enforcement, and permitting activities in several areas of the state have been conducted by programs established within city and county governments. Such programs have not, however, been funded through the state appropriations process either from general revenue or fee revenue. In summary, the question of state funding to local programs through contracts is not affected by the mechanical change from general revenue to fees in the legislature's appropriation to the TACB.

Brandt Mannchen suggested that if a plant is not operational but has been inspected, such plant should pay a fee.

It is not the agency's general practice to inspect facilities which are not operational. The new section states that if a plant is operational at any time during the fiscal year, it must pay a fee. It would not materially improve the equity of the fee rule nor the total fees collected to add language requiring nonoperating plants receiving inspections to pay fees.

Midcon suggested that, with a September 30, 1987, adoption date, the fee due dates should be extended to give facilities time to apply for account numbers, prepare required forms, and submit fees.

The September 30, 1987, date which was published in the *Texas Register* is not intended as the adoption date for new §101.24. The September date served only as a general guideline as to the latest date that adoption might occur.

Fee assessments were mailed in late August, so that companies will have adequate time to meet due dates.

Additionally, account numbers are already on record for most of the facilities which will be assessed a fee. Such account numbers can be assigned by phone to interested companies. There will also be very little paperwork involved in the proposed fee schedule. The TACB's form will contain the account number and the SIC code on record for that account. The company will verify assignment of the proper SIC code, match its SIC code to the capacity rate listed in the fee schedule, and remit the corresponding fee.

Bell Helicopter-Textron commented that basing fees on SIC code, production, or plant employment does not meet the criteria of the TCAA §3.29(b). Bell explained that many of its employees perform administrative or research tasks rather than production activities. Bell recommends continuing the current emissions-based fee system.

Many industries have complained about the emissions-based system because of the difficulty of performing a yearly emissions inventory. Additionally, basing fees solely upon emissions is not an accurate reflection of agency costs and the factors involved in inspection and enforcement activities. The staff believes that organizing the fees by SIC code, establishing capacity rate tiers for each code, and considering emissions, compliance history, and inspection frequency and difficulty, is a more equitable and meaningful method of fee collection. With regard to the number of employees at a facility, companies may request that the TACB review such situations to ascertain the number of employees in production-related, rather than administration- or research-related, activities.

El Paso noted that the United States Office of Management and Budget has revised the SIC manual as of January 1, 1987, and recommended the revised version be used as the basis of the fee schedule.

According to the Department of Commerce the new manual has not been published yet. Thus, the 1972 version of the manual is still the most current available.

El Paso further states that the fee schedule, which is incorporated by reference into the new section, should be part of §101.24. El Paso is concerned that otherwise the agency and the legislature have a blank check to increase fees while bypassing the rulemaking process.

The economic uncertainty at the time the new section was proposed presented a special problem for the agency. In order to ensure that the necessary funds were collected for the agency's continued operation, the preamble contained language describing the possibility of changes to the fee schedule based on appropriations for the agency which were to be established by the legislature in a session running concurrently with the proposal and consideration of this revision. Since that time, the legislature has completed its review and established final appropriations for the agency. Information incorporated by reference is legally binding and cannot be changed without conducting standard rulemaking procedures.

Incorporation by reference enables the agency to provide additional documentation relating to a particular rule without adding lengthy material which may be unrelated to most of the regulation.

Cabot recommended that the term "average daily inlet volume" be used instead of the phrase "rated capacity or highest of last three years operating throughput" for SIC Group 13.

Cabot maintained that the proposed language was susceptible to differing interpretations and that their language more accurately reflected actual emissions.

The staff agrees that this language should be clarified, and is changing the capacity description. In order to ensure stability in the fee collection, the staff retains the review of a three-year history of production in establishing the appropriate throughput rate for determining the fee. The staff is proposing adding further clarification for those facilities which might qualify under more than one inlet criteria. The staff is also changing the date of the inspection fee schedule from May 29, 1987, to August 14, 1987, as referenced in §101.24(a), to establish consistency with the adoption date.

The new section is adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act, and to amend any rule or regulation the TACB makes.

§101.24. *Inspection Fees.*

(a) Applicability. The owner or operator of each account, as defined in this subsection, shall remit to the Texas Air Control Board (TACB) an annual inspection fee. The inspection fee shall apply to each account which contains one or more of the types of plants, facilities, and/or processes described in the Texas Air Control Board inspection fee schedule, dated August 14, 1987,

as filed with the secretary of state's office and herein adopted by reference. References for the industrial categories used are provided in the *Standard Industrial Classification (SIC) Manual* (United States Office of Management and Budget, Statistical Policy Division, superintendent of documents, 1972). A separate and single inspection fee is required for each account. If more than one SIC category can apply to an account, the fee required shall be the highest one listed for the applicable classifications in the fee schedule. For purposes of this section, an account shall be defined as all of the facilities located at property. Where contiguous properties or properties contiguous except for intervening roads, railroads, rights-of-way, canals, watercourses, and the like are under common ownership but contain separate operations, or are managed independently, or are carried on the records of this agency under separate account numbers, a separate fee will be charged and collected for each such account. Provisions of this section apply to all accounts, including accounts which have not been assigned specific TACB account numbers. The owner or operator of an account subject to an inspection fee requirement is responsible for contacting the appropriate TACB regional office to obtain an account number. In the event that a plant is not operational at any time during the

fiscal year for which the fee is assessed, an inspection fee is not due provided the TACB is notified in writing that the plant is not and will not be in operation. If a plant resumes operation later during the fiscal year, a full inspection fee will be due and payable prior to resumption of operations. The fiscal year is defined as the period from September 1 through August 31.

(b) Payment. Fees shall be remitted in the form of a check or money order made payable to the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. A completed inspection fee form shall accompany fees remitted. The inspection fee form shall include at least the company name, property address, TACB account number, and the SIC category on which the fee was determined

(c) Schedule. Fees shall be due annually and payable according to the following schedule. The first two digits of the appropriate SIC code indicates the date by which payment is due. Fee payments for a fiscal year must be received on or before the indicated due date as follows

First Two Digits of Account SIC Code	Date by which Fees are Due
24, 26, 28, 29, 30, 33, 37, 42, 49, 51, 97	October 15
13, 14, 20, 34, 36, 44	November 15
32, 35, 47, 50	December 15

(d) Nonpayment of Fees. Each inspection fee payment must be received by the due date specified in subsection (c) of this section. Failure to remit the full inspection fee by the due date shall result in action under the Texas Clean Air Act (TCAA), §4.041 (regarding administrative penalty) of §4.02

(regarding enforcement by suit). The provisions of this section as first adopted assessing fees for any previous fiscal year, and as amended thereafter assessing fees for any subsequent fiscal year, are and shall remain in effect for purposes of any unpaid fee assessment, and the fees assessed pursuant

to such provisions as adopted or as amended remain a continuing obligation.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 2, 1987

TRD-8707442

Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: September 24, 1987

Proposal publication date: June 9, 1987

For further information, please call
(512) 451-5711, ext. 354.



Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

★31 TAC §116.11

The Texas Air Control Board (TACB) adopts an amendment to §116.11, with changes to the proposed text published in the June 5, 1987, issue of the *Texas Register* (12 TexReg 1813). The amendment provides for assessment of the minimum permit fee for all federally owned and operated facilities for which construction permit applications are filed after January 1, 1987. This change is intended to enhance the ability of Texas to compete for the location of newly approved federal facilities.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as being against the proposal while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

A public hearing was held July 7, 1987, in Austin. Testimony was received from three commenters during the comment period. No one commented in favor of the proposal. Those commenting against the proposal were Southwestern Public Service Company (SPS) and Brandt Mannchen. The United States Environmental Protection Agency (EPA) did not comment on the proposed change, but did suggest clarification of two other paragraphs in §116.11(b), which are related to the proposed change.

SPS argued that the reasoning of enhanced ability to compete for the location of federal facilities was one that could and should apply to industrial plants as well. SPS added that private industry should not have to subsidize the permitting costs of new federal facilities, and that all new projects should pay permit fees from the same fee schedule. A reduction in permit fees for the small number of federal projects reviewed will have little effect on the overall fee revenue received by the TACB, and will not increase the fees of other permit applicants. However, an across the board reduction in fees

would require a fundamental restructuring with the Texas Clean Air Act (TCAA), §3 29(c), and appropriations legislation.

Mannchen argued that the proposal is inconsistent with the board's responsibility to protect the public health, and that the TACB should not ignore the costs of inspecting federal facilities. The proposed fee change has no bearing on the agency's review of a permit application for a federal facility. It relates only to the fee required for agency action on that application. In addition, once a federal facility is in operation, it will be subject to TACB inspections just like any other type of facility, and inspection fees will be due and payable as provided in the TACB General Rules, §101.24, concerning Inspection Fees.

EPA neither supported nor objected to the proposed change to §116.11(b)(2)(A). However, EPA did recommend clarification of two other paragraphs in §116.11(b). Section 116.11(b)(3) requires a permit applicant to submit a certification of capital cost for the project. Section 116.11(b)(4) requires payment of the maximum fee, \$50,000, if a certification is not submitted. No exception is allowed for the federal facilities which would pay the \$300 minimum fee regardless of capital cost. The EPA suggestion to clarify these two paragraphs has merit in that certification of capital cost serves no purpose if the applicant always pays the minimum fee. Section 116.11(b)(3) and (4) could be modified to remove the certification requirement for federal facilities, however, since no changes to those paragraphs were proposed in the *Texas Register* announcement on June 5, 1987, the desired revisions to those paragraphs cannot be made in this rulemaking process. However, a sentence has been added to §116.11(b)(2)(A) which specifies that the provisions of paragraphs (3) and (4) do not apply to new federally owned and operated projects which are paying the minimum permit fee.

The amendment is proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the TCAA, and to amend any rule or regulation the TACB makes.

§116.11. Permit Fees.

(a) (No change.)

(b) Determination of fees.

(1) (No change.)

(2) The following fee schedule may be used by a permit applicant to determine the fee to be remitted with a permit application.

(A) If the estimated capital cost of the project is less than \$300,000 or if the project consists of new facilities controlled and operated directly by the federal government for which an application is submitted after January 1, 1987, the fee is \$300. The provisions of paragraphs (3) and (4) of this

subsection do not apply to a project consisting of new facilities controlled and operated directly by the federal government

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

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

(c)-(f) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 1, 1987.

TRD-8707443

Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: September 24, 1987

Proposal publication date: June 5, 1987

For further information, please call
(512) 451-5711, ext. 354



TITLE 43.

TRANSPORTATION Part I. State Department of Highways and Public Transportation Chapter 17. Division of Motor Vehicles

Dealer License Plate Cancellation

★43 TAC §§17.60, 17.61, 17.70, 17.71

The State Department of Highways and Public Transportation adopts new §17.60 and §17.71, and amendments to §17.61 and §17.70. Section 17.70 is adopted with changes to the proposed text published in the June 30, 1987, issue of the *Texas Register* (12 TexReg 2097). Sections 17.60, 17.61, and 17.71 are adopted without changes to the proposed text and will not be republished.

The new sections and amendments assure that an action to cancel the license of a dealer who is actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, house trailers, trailers, or semitrailers is consistent with principles of due process and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

The new sections and amendments define certain regulatory terms, and restructure notification, hearing, and appeal procedures relative to an action to cancel such a person's license.

Comments against the proposed new and amended sections were received from the Texas Automobile Dealers Association.

Comments stated that the new sections and amendments did not adequately address the amendments to Texas Civil Statutes, Article 6686, as contained in House Bill 1953, 70th Legislature, 1987, effective June 19, 1987. Particularly, the commen-

tor was concerned over the omission of the change of the word "shall" to the word "may" in §17.70, and that the unauthorized use of a dealer license or dealership location, the assessment of civil penalties by the department against a dealer for violations of the provisions of Texas Civil Statutes, Article 6686, and the display and sale of non-motorized vehicles or trailers at a regularly scheduled vehicle or boat show with multiple vendors had not been adequately addressed.

The department accepts the comments concerning the omission of the change of the word "shall" to the word "may" in §17.70 and has made the word change. With respect to commentor's comments concerning the unauthorized use of a dealer license or dealership location, the assessment of civil penalties by the department against a dealer for violations of the provisions of Texas Civil Statutes, Article 6686, and the display and sale of non-motorized vehicles or trailers at a regularly scheduled vehicle or boat show with multiple vendors, the department neither agrees or disagrees at this time, but has determined that such changes would require further extensive review and may be addressed in sections to be filed at a future date.

The amendments and new sections are adopted under Texas Civil Statutes, Articles 6666 and 6686, which provide the State Highway and Public Transportation Commission with the authority to promulgate rules for the conduct of the work of the department and the administration of the dealer license law.

§17.70. Cancellation of Dealer License. The director may cancel a dealer's license or general distinguishing number if that dealer:

(1) fails to maintain a good and sufficient bond in the amount of \$25,000 or to be currently licensed by the Texas Motor Vehicle Commission;

(2) fails to maintain an established and permanent place of business conforming to the department's regulations pertaining to office, sign, and display space requirements;

(3) refuses to permit a representative of the department to examine, during normal working hours, the current and previous years' sales records and ownership papers for vehicles owned by him or under his control and evidence of ownership or lease agreement on the property upon which the dealership is located;

(4) holds a special wholesale dealer license and is found to be selling a vehicle to someone other than a licensed dealer;

(5) holds a travel trailer dealer license or a trailer/semitrailer dealer license and is found to be selling a motor vehicle or a motorcycle;

(6) fails to notify the department of a change of address within 10 days after such change;

(7) fails to notify the department of a change of dealership name or ownership within 10 days after such change;

(8) issues more than one buyer's temporary cardboard tag for the purpose of extending the purchaser's operating privileges for more than 20 days;

(9) fails to immediately remove out-of-state license plates from vehicles which are purchased by the dealer or consigned to the dealer;

(10) misuses a metal dealer license plate or a temporary cardboard tag;

(11) fails to display dealer license plates or cardboard tags in a manner conforming to the department's regulations pertaining to the display of such plates and cardboard tags on unregistered vehicles;

(12) fails to notify the State Department of Highways and Public Transportation of a sale or transfer of a motor vehicle, motorcycle, house trailer, trailer, or semitrailer to a retail purchaser as provided in Texas Civil Statutes, Article 6686(d). Notification to the department shall be an application for certificate of title in the name of the retail purchaser filed with the appropriate county tax assessor-collector as provided by law;

(13) holds open titles or fails to take assignment of all certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles acquired by the dealer or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for vehicles sold. (All certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles owned by a dealer must be properly executed showing transfer of ownership into the name of the dealership);

(14) fails to remain regularly and actively engaged in the business of buying,

selling, or exchanging vehicles of this type for which the general distinguishing number is issued;

(15) violates any of the provisions of Texas Civil Statutes, Article 6686, or any rule or regulation of the department; or

(16) has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 1, 1987.

TRD-8707410

Diane L. Northam
Administrative
Technician
State Department of
Highways and Public
Transportation

Effective date: September 23, 1987
Proposal publication date: June 30, 1987
For further information, please call
(512) 463-8630.

★43 TAC §17.71

The State Department of Highways and Public Transportation adopts the repeal of §17.71, without changes to the proposed text published in the June 30, 1987, issue of the *Texas Register* (12 TexReg 2098).

The repeal allows for the adoption of new §17.71, which more clearly defines the procedure of notification, hearing, and appeal of cancellation of a motor vehicle dealer's license.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Articles 6666 and 6686, which provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the department and for the orderly administration of statutory provisions relating to dealer's and manufacturer's license plates.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 1, 1987.

TRD-8707409

Diane L. Northam
Administrative
Technician
State Department of
Highways and Public
Transportation

Effective date: September 23, 1987
Proposal publication date: June 30, 1987
For further information, please call
(512) 463-8630.



Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *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 Air Control Board

Friday, September 18, 1987, 9:30 a.m. The Regulation Development Committee of the Texas Air Control Board will meet in Texas Room 332, 6330 Highway 290 East, Austin. According to the agenda, the committee will consider for adoption of revisions to the state implementation plan for protection of visibility; review and consideration for public hearing of revisions to regulation VI and the procedural rules relating to emergency orders; and public hearing of revisions to regulation VI relating to time limits for processing permits, special permits, and amendments.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: September 4, 1987, 4:09 p.m.
TRD-8707625

Friday, September 18, 1987, 10:30 a.m. The Texas Air Control Board will meet in the Auditorium, 6330 Highway 290 East, Austin. According to the agenda summary, the board will approve minutes of the August 14, 1987, meeting; hear public testimony and reports; consider update on United States Environmental Protection Agency's proposed sanctions; action on proposed visibility state implementation plan; hear the enforcement report; consider agreed enforcement orders; hear request by Manchester Terminal Corporation for enforcement action; hear staff report; and consider new business.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: September 4, 1987, 4:09 p.m.
TRD-8707626



State Aircraft Pooling Board

Wednesday, September 16, 1987, 3 p.m. The State Aircraft Pooling Board will meet in the

State Aircraft Pooling Board Hangar, 4900 Old Manor Road, Austin. According to the agenda, the board will approve minutes of the previous meeting, consider expansion of facility, Texas State Technical Institute-T41 Aircraft, Department of Public Safety—trading of aircraft, insurance, aircraft operations, and discuss any other aircraft pooling board operational matters.

Contact: Sherry Johnson, 101 West 15th Street, Austin, Texas 78711, (512) 477-8900.

Filed: September 8, 1987, 9:48 p.m.
TRD-8707636



Texas School for the Blind

Thursday, September 17, 1987, 6 p.m. The Board of Trustees of the Texas School for the Blind will meet at 1100 West 45th Street, Austin. According to the agenda summary, the board will approve minutes of the July 17, 1987, meeting; hear presentation of business requiring board approval; consider business for informational purposes; hear report of Special Committees; hold audiences with individuals or committees wishing to make a report or request; and hear report or discussions from board members.

Contact: Cyral Miller, 1100 West 45th Street, Austin, Texas 78756, (512) 454-8631, ext. 233.

Filed: September 4, 1987, 3:05 p.m.
TRD-8707622



The Texas Education Agency

The Texas Education Agency will meet in the William B. Travis Building, 1701 North Congress Avenue, Austin, unless otherwise noted. Dates, times, rooms, and agendas follow.

Friday, September 11, 1987, 8 a.m. The Committee for Finance and Programs of the State Board of Education will meet in Room 1-104, to consider investment of permanent school fund; contract with investment advisor; fund allocations and contracts and agreements; applications for small businesses; textbooks; large print textbooks; student attendance; Accountable Cost Advisory Committee; research, development, and evaluation funds; programs for disadvantaged and gifted/talented students; revised per capita apportionment; drug education and prevention; mathematics and science teacher excellence; gifted/talented education; master plan for vocational education; occupational education and training for economic development activities; proration authority under House Bill 177; Price Differential Index Advisory Committee; Ad Hoc Advisory Committee on Texas textbook adoption system; Governor's Task Force on Vocational Education; and discussion of grievance procedures for local school districts.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: September 3, 1987, 3:14 p.m.
TRD-8707504

Friday, September 11, 1987, 9:30 a.m. The Committee of the Whole of the State Board of Education will meet in Room 1-104 to consider amended TEA operating plan and budget for fiscal year 1988; TEA annual program budget for fiscal year 1988; and hear the 1986-1987 long-range plan report. The committee will also meet in executive session to discuss pending litigation in accordance with Texas Civil Statutes, Article 6252-17, §2(e).

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: September 3, 1987, 3:14 p.m.
TRD-8707505

Friday, September 11, 1987, 11 a.m. The

Committee for Personnel of the State Board of Education will meet in Room 1-100, to consider appraisal of certified personnel; preparation of school personnel; general requirements for inservice education; inservice training in management/leadership for district administrators; testing requirements; issuance of Texas certificates based on certificates and college credentials from other states; classes of certificates; emergency teaching permits; reading and writing examination for continued certification for teachers and administrators; effective dates; and contractor to develop a basic skills test required for admission into teacher education.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: September 3, 1987, 3:14 p.m.
TRD-8707506

Friday, September 11, 1987, 11 a.m. The Committee for Students of the State Board of Education will meet in Room 1-111, to consider school-community guidance centers; curriculum; advanced high-school program; instructor hours; class size and age level; handicapped students; high school credit for college courses; grading, promotion, retention, remediation, and placement; exit level Texas Education Assessment of Minimum Skills (TEAMS); state credit for TEAMS remediation courses; and discussion of information relating to acquired immunodeficiency syndrome education.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: September 3, 1987, 3:14 p.m.
TRD-8707507

Friday, September 11, 1987, 3 p.m. The Committee for Long-Range Planning of the State Board of Education will meet in Room 1-110, to hear the consultant's report on the long-range plan for technology; request for authorization to expend research, development, and evaluation funds for a cooperative research project with Lyndon B. Johnson School of Public Affairs; consider pilot school district's use of the electric pages electronic communication network; discussion of TEA public information activities; consider long-range plan for the Division of Accreditation; and hear a status report on agreement between the TEA and the Texas Youth Commission.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: September 3, 1987, 3:14 p.m.
TRD-8707508

Friday, September 11, 1987, 5 p.m. The Committee on Awards and Recognition of the State Board of Education will meet in Room 2-115, to discuss an analysis of campus-level achievement results which has

the potential for grouping campuses and districts in a variety of ways.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: September 3, 1987, 3:15 p.m.
TRD-8707509

Friday, September 11, 1987, 7 p.m. The State Board of Education will meet in the Longhorn Room, Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda, the board will receive reports from the chairmen of the following committees: Committee for Finance and Programs, Committee for Students, Committee for Personnel, Committee for Long-Range Planning, Committee on Awards and Recognition, and Committee of the Whole, concerning items discussed in meetings on Friday, September 11, 1987.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: September 3, 1987, 3:15 p.m.
TRD-8707510

Saturday, September 12, 1987, 8:30 a.m. The State Board of Education will meet in Room 1-104, to consider operating/program budgets for fiscal year 1988; permanent school fund; fund allocations; small businesses; textbooks; student attendance; Accountable Costs Advisory Committee; research projects; programs for disadvantaged and gifted/talented students; revised per capita apportionment; drug education; mathematics/science teacher excellence; gifted/talented education; vocational education; occupational education and training; school-community guidance centers; curriculum; advanced high school program; instructor hours, class size, and age level; handicapped students; high school credit for college courses; grading, promotion, retention, remediation, and placement; appraisal of certified personnel; preparation of school personnel; inservice education; inservice training in management/leadership; testing requirements; teaching certificates; emergency teaching permits; reading and writing examination; effective dates; and basic skills test for entry into teacher education.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: September 3, 1987, 3:08 p.m.
TRD-8707511

Thursday, September 17, 1987, 11 a.m. The Interim Reports Committee of the Commission on Standards for the Teaching Profession will meet in Room 3-108, to consider the interim report from Schreiner College.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: September 3, 1987, 3:15 p.m.
TRD-8707512

Thursday, September 17, 1987, 1:30 p.m. The Committee on Standards and Procedures for Institutional Approval of the Commission on Standards for the Teaching Profession will meet in Room 3-108, to consider information concerning review of teaching experience pursuant to TAC §137.506(b)(2)(E) regarding characteristics of teacher education faculty, Dallas Baptist University request for visiting evaluation team to review proposed professional certificate programs, and University of Mary Hardin-Baylor review of report of visiting evaluation team.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: September 3, 1987, 3:15 p.m.
TRD-8707513

Thursday, September 17, 1987, 2:30 p.m. The Committee on Certification Programs and Requirements of the Commission on Standards for the Teaching Profession will meet in Room 3-108 to hear a report on certification tests, review proposed special programs for persons with bachelor's degrees seeking initial teacher certification through approved Texas colleges and universities, and review proposed professional certificate programs.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: September 3, 1987, 3:15 p.m.
TRD-8707514

Thursday, September 17, 1987, 3:30 p.m. The Committee on Membership of the Commission on Standards for the Teaching Profession will meet in Room 3-108, to review and recommend nominees for commission membership.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: September 3, 1987, 3:15 p.m.
TRD-8707515

Thursday-Friday, September 17-18, 1987, 1 p.m. and 8:30 a.m., respectively. The Apprenticeship and Training Advisory Committee will meet in the Bluebonnet Room, Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda, the committee will hear a report from ATAC chairperson; report from director of Adult Education/Employment and Training, Funding, and Compliance Division of the Texas Education Agency; reports from Committee on Bylaws, Committee for Finance and Budget, Committee for Planning, and Committee for Resources; discussion of apprenticeship instructor training courses and the statewide plan of apprenticeship training. The ATAC will also have presentations on the Governor's Task Force

on Vocational Education, The Department of Commerce, and apprenticeship programs funded by the Coordinating Board.

Contact: James C. Woodman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9294.

Filed: September 3, 1987, 3:14 p.m.
TRD-8707503

Friday, September 18, 1987, 8:10 a.m. The Executive Committee of the Commission on Standards for the Teaching Profession will meet in Room 3-102, to review agenda items with committee chairmen.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: September 3, 1987, 3:16 p.m.
TRD-8707516

Friday, September 18, 1987, 9 a.m. The Commission on Standards for the Teaching Profession will meet in Room 1-104, to consider adoption of agenda; approval of minutes of the July 17, 1987, meeting; hear information items reports from the following committees: Interim Reports Committee, Committee on Standards and Procedures for Institutional Approval, Committee on Certification Programs and Requirements, Committee on Membership, and Executive Committee.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: September 3, 1987, 3:16 p.m.
TRD-8707517



Texas Higher Education Coordinating Board

Friday, September 18, 1987, 10:30 a.m. The Administrative Council of the Texas Higher Education Coordinating Board will meet in Conference Room 209, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the council will consider final adoption of proposed amendment to §25.33 concerning basic coverage standards, final adoption of proposed amendment to §25.72 concerning ORP Standards, consider proposed amendment to §25.33 concerning basic coverage standards, discuss the requirement that each governing board provide a uniform group insurance program for all employees of the institution, and hear the executive secretary's report.

Contact: James McWhorter, P.O. Box 12788, Austin, Texas 78711, (512) 462-6420.

Filed: September 4, 1987, 9:14 a.m.
TRD-8707534



State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto Street, Austin, unless otherwise noted. Dates, times, rooms, and agendas follow.

Tuesday, September 8, 1987, 10 a.m. The board met in emergency session in Room 414, to consider appointment of deputy insurance commissioner for the legal and compliance program. The emergency status was necessary because the position needs to be filled as soon as possible to assure the proper ongoing functioning of the agency.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: September 4, 1987, 9:11 a.m.
TRD-8707533

Friday, September 11, 1987, 11 a.m. The board will meet in Room 414, to consider amendments to the Texas general basis schedules for the adoption of various National Fire Protection Association pamphlets and State Board of Insurance supplemental rules for the installation of automatic sprinkler systems.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: September 3, 1987, 1:29 p.m.
TRD-8707492

Friday, September 11, 1987, 11 a.m. The board will meet in Room 414, to consider extension of emergency effectiveness of an amendment to 28 TAC §7.1, concerning annual statement diskette filing requirements for financial activities by insurance companies and other entities regulated by the board.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: September 3, 1987, 3:07 p.m.
TRD-8707502

Tuesday, September 15, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9658—Application for amendment to the Articles of Incorporation of Charter Insurance Company, Houston, changing the name of the company, changing the location of the home, and increasing its authorized capital stock.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: September 4, 1987, 2:47 p.m.
TRD-8707613

Tuesday, September 15, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9665—Application of Ann Lafay Westbrook, Dallas, for a managing general agent's license.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: September 4, 1987, 2:47 p.m.
TRD-8707614

Wednesday, September 16, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9644—Application for amendments to the Articles of Incorporation of Hochheim Prairie Insurance Company, Yoakum, increasing the authorized capital.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: September 4, 1987, 2:47 p.m.
TRD-8707615

Wednesday, September 16, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9659—Application of CDS Insurance Holding Company, Inc., Fort Worth, to acquire control of Allied Bankers Life Insurance Company, Dallas.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: September 4, 1987, 2:47 p.m.
TRD-8707616

Thursday, September 17, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9488—Application of Texas Central Life Insurance Company, Dallas, for approval of revaluation of home office property.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: September 4, 1987, 2:47 p.m.
TRD-8707617

Friday, September 18, 1987, 9 a.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 9660—Whether disciplinary action should be taken against John E. Boyd, III, Houston, who holds a group I, legal reserve life insurance agent's license and a local recording agent's license issued by the State Board of Insurance.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: September 4, 1987, 2:47 p.m.
TRD-8707618

Friday, September 25, 1987, 9 a.m. The board will meet in Room 101, John H. Reagan Building, 15th Street and Congress Avenue, Austin. According to the agenda, the board will consider possible approval of other action on petitions by the Texas Medical Liability Insurance Underwriting Association under legal authority of the Texas Insurance Code, Articles 1.04, 5.15, 5.15-1, 5.97 and 21.49-3, with agenda items

as follows: petition for modification of rates for medical professional liability insurance for physicians, surgeons, and other non-institutional health care providers; petition for modification of rates for medical professional liability insurance for hospitals and other institutional health care providers.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: September 4, 1987, 4:09 p.m.
TRD-8707624



Texas Department of Labor and Standards

Friday, September 11, 1987, 10 a.m. The Labor/Licensing and Enforcement Division will meet in Room 105, E.O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will consider the boxer-manager contract of Matthew Brooks and Ralph Wilson.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 3, 1987, 4:26 p.m.
TRD-8707523

Thursday, September 24, 1987, 11 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 105, E.O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will consider suspension or revocation of the manufactured housing registration of Saenz Mobile Home Outlet for alleged violation of the department's manufactured housing rules and regulations.

Contact: Craig F. Sandling, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 3, 1987, 4:25 p.m.
TRD-8707524

Thursday, September 24, 1987, 1:30 p.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 105, E.O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will consider suspension or revocation of the manufactured housing registration of Used Mobile Home Center for alleged violation of the department's manufactured housing rules and regulations.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 3, 1987, 4:25 p.m.
TRD-8707525

Friday, September 25, 1987, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 105, E.O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will con-

sider suspension or revocation of the manufactured housing registration of Sunbelt Mobile Homes for alleged violation of the department's manufactured housing rules and regulations.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 3, 1987, 4:25 p.m.
TRD-8707526

Friday, October 2, 1987, 10 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Suite 209, 4615 North Freeway, Houston. According to the agenda, the division will consider suspension or revocation of the manufactured housing registration of Spring Mobile Homes for alleged violation of the department's manufactured housing rules and regulations.

Contact: Craig Sandling, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: September 3, 1987, 4:25 p.m.
TRD-8707527



Texas National Guard Armory Board

Sunday, September 13, 1987, 8 p.m. The Texas National Guard Armory Board will meet in the Conference Room, Building 64, Camp Mabry. According to the agenda, the board will approve minutes of the previous meeting, consider personnel matters, and schedule the next board meeting.

Contact: Sandra Hille, P.O. Box 5218, Austin, Texas 78763-5218, (512) 451-6394/6143.

Filed: September 3, 1987, 2:28 p.m.
TRD-8707493



Texas Board of Licensure for Nursing Home Administrators

Friday, September 16, 1987, 9 a.m. A hearing officer approved by the Attorney General of Texas will conduct a formal hearing in the matter of Deborah L. Lally, LNHA 5287, Joan Willis, LNHA 5204, and Shirley Mullins, LNHA 5230, to receive testimony regarding possible violation of the Nursing Home Administrator's Licensure Act, Texas Civil Statutes, Article 4442d, §11(1)(a) and §247.2(2) of the regulations.

Contact: Janet M. Moore, 4800 North Lamar Boulevard, Suite 355, Austin, Texas 78756, (512) 458-1955.

Filed: September 4, 1987, 2:58 p.m.
TRD-8707621



Pan American University

Tuesday, September 8, 1987, 10 a.m. The Board of Regents of Pan American University will meet in the Boardroom, Administration Building, Pan American University, Edinburg. According to the agenda, the board will consider the Finance Committee reconsideration of PAU-E and PAU-B budgets, 1987-1988; Development Committee acceptance of Ford Foundation grants; president's informational items; and set date for next meeting. The board will also meet in executive session to consider personnel matters concerning president's salary supplement, new faculty hires, leaves of absence without pay (Dr. Wendy James-Aldridge and Mrs. Ruth Crews); and pending litigation regarding construction of Learning Resource Center.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2100.

Filed: September 3, 1987, 4 p.m.
TRD-8707522



Board of Pardons and Paroles

Monday-Friday, September 14-18, 1987, 1:30 p.m. daily Monday-Thursday, and 11 a.m. Friday. A three-member panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoners and inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2713.

Filed: September 4, 1986, 10:49 a.m.
TRD-870572

Tuesday, September 15, 1987, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions, other than out-of-country conditional pardons, including full pardons and restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; and other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2749.

Filed: September 4, 1987, 10:49 a.m.
TRD-8707573



Public Utility Commission of Texas

The Public Utility Commission of Texas will

meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Friday, September 11, 1987, 9 a.m. The Hearings Division will consider dockets 6072, 7355, and 7289.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 3, 1987, 2:30 p.m.
TRD-8707494

Friday, September 11, 1987, 11 a.m. The Administrative Division submitted a revised agenda concerning a staff report on conduct of nuclear prudence audit and rate filing package related to Senate Bill 444, §43B.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 3, 1987, 4:38 p.m.
TRD-8707528

Friday, September 11, 1987, 11 a.m. The Administrative Division will approve minutes of the previous meeting, hear reports, discuss and act on budget and fiscal matters, and set time and place for next meeting. The division will also meet in executive session to consider personnel and litigation matters.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 3, 1987, 2:29 p.m.
TRD-8707495

Wednesday, September 16, 1987, 1:30 p.m. The Hearings Division will consider Docket 7652—Application of General Telephone Company of the Southwest for tariff revision to offer Centranet sm Service.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 3, 1987, 2:29 p.m.
TRD-8707496

Thursday, September 17, 1987, 10 a.m. The Hearings Division will consider Docket 7361—Application of Rayburn Country Electric Cooperative, Inc. for approval of wholesale rates.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 3, 1987, 2:29 p.m.
TRD-8707497

Wednesday, October 7, 1987, 10 a.m. The Hearings Division will consider Docket 7635—Petition of Southwestern Electric Power Company to refund fuel cost over-recoveries and to set interim fixed fuel factor.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 3, 1987, 2:29 p.m.
TRD-8707498

Tuesday, November 3, 1987, 1:30 p.m. The Hearings Division will consider Docket 7651—Complaint of Sidney L. Scott against Gulf States Utilities Company.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 4, 1987, 2:48 p.m.
TRD-8707619



Railroad Commission of Texas

Friday, September 4, 1987, 4:30 p.m. The Transportation Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting held in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the division discussed and decided with respect to a possible violation of Texas Civil Statutes, Article 6252-9b, or Article 36.02 P.C. The emergency status was necessary because on September 3, 1987, a possible violation of Texas Civil Statutes, Article 6252-9b or Article 36.02 P.C. came to the attention of the commission and the immediate need to discuss the matter constitutes a reasonably unforeseeable situation requiring immediate action by the commission.

Contact: Tom Clowe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: September 4, 1987, 11:02 a.m.
TRD-8707574

Monday, September 14, 1987, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission will consider and act on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters, including but not limited to discussion, consideration and/or action on the following: management study, oil and gas general counsel, and oil field investigator personnel and their operations.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: September 4, 1987, 11:10 a.m.
TRD-8707589

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: September 4, 1987, 11:08 a.m.
TRD-8707575

The Flight Division director's report on division administration, budget, procedures, and

personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6787.

Filed: September 4, 11:08 a.m.
TRD-8707576

Various matters falling within the Gas Utilities Division's regulatory jurisdiction.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: September 4, 1987, 11:08 a.m.
TRD-8707577

The Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78704, (512) 463-6710.

Filed: September 4, 1987, 11:09 a.m.
TRD-8702684

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: September 4, 1987, 11:09 a.m.
TRD-8702685

Various matters falling within the Oil and Gas Division's regulatory jurisdiction.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: September 4, 1987, 11:09 a.m.
TRD-8707581

The Oil and Gas Division will investigate cementing practices of Western Co. of North America.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: September 4, 1987, 11:09 a.m.
TRD-8707580

Additions to the previous agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: September 4, 1987, 11:09 a.m.
TRD-8707582

The Oil and Gas Division will consider a commission order to Nugget Oil Corporation to re-enter the Jacob #1, Goliad County for the purpose of conducting a cement evaluation log or to consider the use of state funds to conduct said survey.

Contact: Willis Steed, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6380.

Filed: September 4, 1987, 11:09 a.m.
TRD-8707583

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: September 4, 1987, 11:10 a.m.
TRD-8707584

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: September 4, 1987, 11:10 a.m.
TRD-8707585

The Office of the Special Counsel director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters, including but not limited to discussion and/or decision in Docket 500 amendment Hufo Oils, et al v. Railroad Commission, C-5937 in the Supreme Court of Texas, Walker Operating Corp., et al v. Federal Energy Regulatory Commission, U.S. Court of Appeals for the 10th Circuit, 85-2683 and 86-2698 et al in relation to Oil and Gas Docket 10-87,017.

Contact: Walter Earl Lilie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: September 4, 1987, 11:10 a.m.
TRD-8707586

The Office of Special Counsel will discuss and/or decide with respect to Cause 14,674, Railroad Commission of Texas v. Concerned Citizens to Protect the Edwards Aquifer, et al.

Contact: Walter Earl Lilie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: September 4, 1987, 4:11 p.m.
TRD-8707627

Various matters falling within the Surface Mining and Reclamation Division's regulatory jurisdiction.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-6900.

Filed: September 4, 1987, 11:10 a.m.
TRD-8707587

Various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: Michael A. James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: September 4, 1987, 11:07 a.m.
TRD-8707588

Texas National Research Laboratory Commission

Monday, September 14, 1987, 10 a.m. The Texas National Research Laboratory Commission will meet in Room 412, Sam Houston Building, 201 East 14th Street, Austin. According to the agenda, the commission will approve minutes of the July 13, 1987, meeting; hear the chairman's report; executive director's report; Advisory Committee report; and consider old business, new business, and other business.

Contact: Edward C. Bingler, 201 East 14th Street, Room 412, Austin, Texas 78701, (512) 463-1873.

Filed: September 3, 1987, 4:12 p.m.
TRD-8707521

Texas Savings and Loan Department

The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. Dates, times, and agendas follow.

Tuesday, September 15, 1987, 9 a.m. The department will accumulate a record of evidence in regard to the application of Bright Banc Savings Association, Dallas, Dallas County, to relocate a branch office from 1811 Commerce Street, Dallas, Dallas County, to the immediate vicinity of I-35 and Loop 288, Denton, Denton County, from record the commissioner will determine whether to grant or deny the application.

Contact: Russell R. Oliver, 2601 North Lamar Boulevard, Suite 102, Austin, Texas 78705, (512) 479-1250.

Filed: September 4, 1987, 8:35 a.m.
TRD-8707529

Tuesday, September 15, 1987, 9 a.m. The department will accumulate a record of evidence in regard to the application of Bright Banc Savings Association, Dallas, Dallas County, to relocate a branch office from 234 Casa Linda Plaza, Dallas, Dallas County, to the immediate vicinity of West Main and Old Orchard, Lewisville, Denton County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Russell R. Oliver, 2601 North Lamar, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: September 4, 1987, 8:35 a.m.
TRD-8707530

Thursday, September 17, 1987, 9 a.m. The department will accumulate a record of evidence in regard to the application of Cornerstone Savings Association, Houston, Harris County, for a branch office for 1000 Memorial City, Houston, Harris County, (this is a purchase from Texas Western

Federal Savings and Loan Association) from which record the commissioner will determine whether to grant or deny the application.

Contact: Russell R. Oliver, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: September 4, 1987, 8:35 a.m.
TRD-8707531

School Land Board

Tuesday, September 15, 1987, 10 a.m. The School Land Board will meet in Room 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will approve minutes of the previous meeting; consider pooling applications; ratification of withdrawal of Mgl #559 from October 6, 1987, lease sale; direct land sale in Webb County; excess acreage applications; good faith claimant applications; coastal public lands and lease applications; easement applications; cabin permit applications; cabin permit assignments; cabin permit terminations; cabin permit renewals; presentation of flags by John Watson of Mitchell Energy; and requests for temporary royalty reduction.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5016.

Filed: September 4, 1987, 2:22 p.m.
TRD-8707602

Secretary of State

Monday, September 14, 1987, 10 a.m. The Elections Advisory Committee of the Secretary of State will meet in Room 309, Appropriations Committee Meeting Room, State Capitol, Austin. According to the agenda, the committee will review the operations manual for the constitutional amendment election on November 3, 1987, and discuss preparation for that election and the Texas super Tuesday presidential primary.

Contact: Richard D. English, 201 East 14th Street, Austin, Texas 78701, (512) 463-5650.

Filed: September 4, 1987, 5:38 p.m.
TRD-8707635

State Securities Board

Wednesday, September 16, 1987, 10 a.m. The Securities Commissioner of the State Securities Board will meet at 1800 San Jacin-

to Street, Austin. According to the agenda summary, the commissioner will determine whether an order should be issued revoking the registration of North American Oil and Gas, Inc. as a securities dealer and whether a cease and desist order should be issued prohibiting the sale of securities issued by North American Oil and Gas, Inc.

Contact: Sue B. Roberts, 1800 San Jacinto Street, Austin, Texas 78711, (512) 474-2233.

Filed: September 3, 1987, 1:45 p.m.
TRD-8707491



Texas State Soil and Water Conservation Board

Wednesday, September 16, 1987, 8 a.m. The Texas State Soil and Water Conservation Board will meet in the Conference Room, 311 North Fifth Street, Temple. According to the agenda, the board will approve minutes of the July 15, 1987, meeting; consider district director appointments; the 1988 fiscal year operating budget; allocation of 1988 fiscal year Subchapter H technical assistance funds; board members' travel; 1987 state meeting of Soil and Water Conservation District directors; funding for non-point source pollution activities; hear a report on nonpoint source pollution activities; consider watershed programs; working agreement between Texas State Soil and Water Conservation Board and State Department of Highways and Public Transportation; new subdivision boundaries for Dos Rio SWCD; meeting of State Conservation Review Group; financial statements of employees authorized to sign contracts; agency travel; legislation affecting the board and districts; and the next regular board meeting of November 18, 1987.

Contact: Harvey Davis, P.O. Box 658, Temple, Texas 76501, (817) 773-2250.

Filed: September 3, 1987, 2:13 p.m.
TRD-8707499



Texas State Technical Institute

Sunday, September 20, 1987, 1 p.m. The Policy Committee of the Board of Regents will meet in the Sears Building, TSTI-Sweetwater Campus, Sweetwater. According to the agenda summary, the committee will review minute orders and reports to the board.

Contact: Theodore A. Talbot, 3801 Campus Drive, Waco, Texas 76706, (817) 799-3611, ext. 3910.

Filed: September 4, 1987, 1:08 p.m.
TRD-8707600

Monday, September 21, 1987, 8:30 a.m. The Board of Regents of Texas State Technical Institute will meet in the Boardroom, Sears Building, TSTI-Sweetwater Campus, Sweetwater. According to the agenda summary, the board will consider action on proposed minute orders.

Contact: Theodore A. Talbot, 3801 Campus Drive, Waco, Texas 76705, (817) 799-3611, ext. 3910.

Filed: September 4, 1987, 1:07 p.m.
TRD-8707601



The University of Texas at Austin

Thursday, September 10, 1987, 2 p.m. The Intercollegiate Athletics for Women of the University of Texas at Austin met in 606 Conference Room, Belmont Hall, University of Texas, 21st and San Jacinto Streets, Austin. According to the agenda summary, the university approved minutes of the July 20, 1987, meeting; heard announcements and reports; and considered old and new business.

Contact: Donna A. Lopiano, Belmont Hall, University of Texas, 21st and San Jacinto Streets, Austin, Texas 78712, (512) 471-7693.

Filed: September 4, 1987, 10:13 a.m.
TRD-8707537



Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, unless otherwise noted. Dates, times, rooms, and agendas follow.

Tuesday, September 15, 1987, 10 a.m. The commission will meet in Room 118, to consider water district release from escrow and use of surplus funds, change in plans, water rate matters, proposed water quality permits, amendments and renewals, water right applications, extension of time application, contract amendments relating to superfund sites, and referral of water rate matter to the Attorney General's office.

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

Filed: September 4, 1987, 4:07 p.m.
TRD-8707628

Tuesday, September 22, 1987, 2 p.m. The commission will meet in Room 118, to consider the Langson family, owners of Pleasure Acres Lake Dam, whether a dam should not be breached or modified to a safe condition; and application by Chacko Thomas and Associates, Inc. for approval to purchase the entire water and sewer systems of Pinehurst Utilities (Docket 5699).

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

Filed: September 4, 1987, 4:07 p.m.
TRD-8707629

Wednesday, October 14, 1987, 9 a.m.

The Office of Hearings Examiner will meet in the City Commission Chambers, Third Floor, Amarillo City Hall, 509 East Seventh Street, Amarillo. Agendas follow.

The examiner will consider application of Amarillo Hide Co., Division of Amarillo By-Products, Inc., P.O. Box 2067, Amarillo, Texas 79105, to the Texas Water Commission for an amendment to Permit 01741 to authorize an increase in the volume of industrial wastewater discharged to evaporation ponds for disposal at its Amarillo Hide Plant. The proposed amendment would also authorize the transfer of pretreated industrial wastewaters from the company's hide curing and rendering plants to any one of three company-owned evaporation sites (Amarillo Hide Plant, Carson County; Holl-Texas Plant, Potter County; Tal Pro Plant, Deaf Smith County) for disposal by evaporation.

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

Filed: September 4, 1987, 4:08 p.m.
TRD-8707630

The examiner will consider application of Amarillo By-Products, Inc., P.O. Box 2067, Amarillo, Texas 79105, to the Texas Water Commission for a permit (Proposed Permits 02903) to authorize disposal by evaporation of industrial wastewater at a volume not to exceed an average of 6,000 gallons per day from a rendering plant and hide processing plant. Pretreated wastewater from the rendering plant located just west of Lakeside Street (FM Road 335) and just north of East Third Avenue in the City of Amarillo will be hauled to and evaporated at the applicant's Tal Pro Plant.

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

Filed: September 4, 1987, 4:08 p.m.
TRD-8707631

The examiner will consider application of Amarillo By-Products, Inc., P.O. Box 2067, Amarillo, Texas 79105 to the Texas Water Commission for an amendment to Permit 0203 to authorize an increase in the volume of industrial wastewater discharged to evaporation ponds for disposal at the Holl-Tex Plant from a volume not to exceed an average of 15,400 gallons per day to a volume not to exceed an average of 16,000 gallons per day. Pretreated wastewater from the Amarillo By-Products Plant, located across the street from the Holl-Tex Plant, is to be hauled by truck to the Holl-Tex site for disposal by evaporation in three evaporation ponds with a total surface area of 4.35 acres.

Contact: Carl Forrester, P.O. Box 13087,

Austin, Texas 78711, (512) 463-7875.

Filed: September 4, 1987, 4:08 p.m.
TRD-8707632



Regional Agencies Meetings Filed September 3

The Central Texas Mental Health and Mental Retardation Center, Board of Trustees, met at 408 Mulberry Drive, Brownwood, on September 10, 1987, at 4:30 p.m. Information may be obtained from Don Jones, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574, ext. 102.

The Concho Valley Council of Governments, Executive Committee, met at 5002 Knickerbocker Road, San Angelo, on September 9, 1987, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666.

The Golden Crescent Service Delivery Area, Private Industry Council, Inc., met at 1301 East Rio Grande, Victoria, on September 9, 1987, at 6:30 p.m. Information may be obtained from Cleve Shoener, P.O. Box 2149, Victoria, Texas 77902, (512) 578-0341.

The Hays County Central Appraisal District, Board of Directors, met on the First Floor, 102 LBJ Drive, San Marcos, on September 8, 1987, at 5 p.m. Information may be obtained from Lynnell Sedlar, 102 LBJ Drive, San Marcos, Texas 78666, (512) 396-4777.

The Lamb County Appraisal District, Board of Directors, will meet at 330 Phelps Avenue, Littlefield, on September 15, 1987, at 7:30 p.m. Information may be obtained from Murlene J. Milbrey, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474.

TRD-8707469



Meetings Filed September 4

The Bosque County Appraisal District, Board of Directors, met at 104 West Morgan, Meridian, on September 9, 1987, at 7:30 p.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665, (817) 435-2019.

The Brazos Higher Education Authority, Inc., Executive Committee of the Board of Directors, met in the City Club, 801 Washington Avenue, Waco, on September 9, 1987, at noon. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913.

The Brown County Appraisal District,

Board of Directors, will meet at 403 Fisk Avenue, Brownwood, on September 14, 1987, at 7 p.m. Information may be obtained from Alvis Sewalt, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 463-5676.

The Dallas Area Rapid Transit, Minority Affairs Committee, Art Committee, and Board, met at 601 Pacific Avenue, Dallas, on September 8, 1987, at 2 p.m., 3 p.m., and 4 p.m., respectively. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Hockley County Appraisal District, Board of Directors, will meet at 1103-C, Houston Street, Levelland, on September 14, 1987, at 7 p.m. Information may be obtained from Keith Toomire, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

The Hunt County Tax Appraisal District, Appraisal Review Board, will meet in the Boardroom, 4801 King Street, Greenville, on September 16, 1987, at 9 a.m. Information may be obtained from Joe Pat Davis or Jeanette Jordan, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Mental Health and Mental Retardation Regional Center of East Texas, Board of Trustees, met in the Boardroom, 2323 West Front Street, Tyler, on September 10, 1987, at 4 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

The Panhandle Regional Planning Commission, Board of Directors, met in the Amarillo Tascosa Country Club, Amarillo, on September 10, 1987, at 5:15 p.m. Information may be obtained from Gary Pitner, P.O. Box 9257, Amarillo, Texas 79105-9257, (806) 372-3381.

The Plateau Region Outer Parkway Corporation, Board of Directors, met in Suite 1800, 515 Congress Avenue, Austin, on September 9, 1987, at 9 a.m. Information may be obtained from Thomas H. Hill, 515 Congress Avenue, Suite 1800, Austin, Texas 78701, (512) 499-8200.

TRD-8707532



Meetings Filed September 8

The Bexar-Medina-Atascosa Counties Water Control and Improvement District #1, Board of Directors, will meet in the District Office, Highway 81, Natalia, on September 14, 1987, at 8 a.m. Information may be obtained from C.A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132.

The Cass County Appraisal District, Board of Directors, will meet at 400 North Main, Linden, on September 14, 1987, at 6:30 p.m. Information may be obtained from Janelle

Clements, P.O. Box 1150, Linden, Texas 75563, (214) 756-7545.

The Deep East Texas Council of Governments-Area Agency on Aging, Regional Aging Advisory Council, will meet in the Angelina County Senior Center, 2801 Valley Avenue, Lufkin, on September 11, 1987, at 1:30 p.m. Information may be obtained from Martha Jones, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704.

The Dewitt County Appraisal District, Board of Directors, will meet at 103 Bailey Street, Cuero, on September 15, 1987, at 7:30 p.m. Information may be obtained from Wayne K. Woolsey, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Garza County Appraisal District, Board of Directors, met in the Courthouse, Post, on September 10, 1987, at 9 a.m. Information may be obtained from Jean Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The Golden Crescent Regional Planning Commission, General Assembly, will meet in the Confederate Air Force Officer's Club, Regional Airport, Victoria, on September 16, 1987, at 8 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Gonzales County Appraisal District, Board of Directors, will meet at 928 St. Paul Street, Gonzales, on September 10, 1987, at 7:30 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Jasper County Appraisal District, Appraisal Review Board, will meet in the Courthouse Annex, 121 North Austin, Jasper, on September 14, 1987, at 9 a.m. Information may be obtained from David W. Luther, Jasper County Courthouse Annex, Jasper, Texas 75951, (409) 384-2544.

The Appraisal District of Jones County, Board of Directors, will meet at 1137 East Court Plaza, Anson, on September 17, 1987, at 8 a.m. Information may be obtained from John Steele, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422.

The Kendall County Appraisal District, Board of Directors, will meet at 207 East San Antonio Street, Boerne, on September 16, 1987, at 7 p.m. and 7:30 p.m. Information may be obtained from Alton Pfeiffer, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

The Lower Neches Valley Authority, Board of Directors, will meet at 7850 Eastex Freeway, Beaumont, on September 15, 1987, at 10:30 a.m. Information may be obtained from A.T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011.

The Mason County Appraisal District, will meet at 206 Fort McKavitt, Mason, on September 16, 1987, at 5:15 p.m. Information may be obtained from Ann Stapp, P.O. Drawer 1119, Mason, Texas 76856, (915) 347-5989.

The Palo Pinto Appraisal District, Board of Directors, will meet in the Palo Pinto County Courthouse, Palo Pinto, on September 16, 1987, at 3 p.m. Information may be obtained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-3651, ext. 234.

The Central Appraisal District of Rockwall County, Board of Directors, met at 106 North San Jacinto, Rockwall, on September 8, 1987, at 7:30 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214)

722-2034.

The San Antonio River Authority, Board of Directors Audit Report Committee, Board of Directors, and Board of Trustees of the Employees Retirement Trust Fund will meet at 100 Guenther Street, San Antonio, on September 16, 1987, at 1:30 p.m., 2 p.m., and 3:30 p.m. respectively. Information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, San Antonio, Texas 78204, (512) 227-1373.

The South East Texas Regional Planning Commission, Executive Committee, will meet in the Beaumont City Council Chambers, 800 Main, Beaumont, on September 16, 1987, at 7 p.m. Information may be obtained from Jackie Vice, P.O. Drawer 1387, Nederland, Texas 77627, (409)

727-2384.

The Wheeler County Appraisal District, Board of Directors, will meet in the District Office, County Courthouse Square, Wheeler, on September 14, 1987, at 2 p.m. Information may be obtained from Marilyn Copeland, P.O. Box 349, Wheeler, Texas 79096, (806) 826-5900.

The Wise County Appraisal District, Board of Directors-Budget Hearing, will meet at 206 South State, Decatur, on September 17, 1987, at 9 a.m. and 10 a.m. Information may be obtained from Brenda Jones, 206 South State, Decatur, Texas 76234, (817) 627-3084, ext. 74.

TRD-8707637



Name: Uyen Chau
Grade: 9
School: Carter Jr. High, Arlington

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.

Texas Department of Agriculture Consultant Contract Awards

The Texas Department of Agriculture has awarded a consultant contract under Texas Civil Statutes, Article 6252-11c. Notice of the proposed request was published in the July 24, 1987, issue of the *Texas Register* (12 Tex-Reg 2442).

Description. A consultant has been selected by the department to direct survey research concerning socioeconomic effects of a potential high-level nuclear waste repository. The contractor shall design and direct survey research in agricultural communities and disseminate results.

Consultant Name. The name and address of the private consultant is Julia G. Brody, 15 Brewster Road, Newton, Massachusetts 02161.

Terms. The maximum value of this contract is \$18,100, with the beginning date being September 1, 1987, and the ending date being August 31, 1988.

Report Dates. The contractor shall submit all data and information to department as specified by the project manager of this contract.

Issued in Austin, Texas, on September 1, 1987.

TRD-8707449 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Filed: September 3, 1987
For further information, please call (512) 463-7583.

The Texas Department of Agriculture has awarded a consultant contract under Texas Civil Statutes, Article 6252-11c. Notice of the proposal request was published in the July 24, 1987, issue of the *Texas Register* (12 Tex-Reg 2443).

Description. A consultant has been selected by the department to plan and coordinate data collection, sample selection, and community interviews for studies concerning socioeconomic effects of a potential high-level nuclear waste repository. The contractor shall coordinate new research to complement earlier procedures used in the research program.

Consultant Name. The name and address of the private consultant is Christine Galavotti, 4014-B Avenue D, Austin, Texas 78751.

Terms. The maximum value of this contract is \$19,900, with the beginning date being September 1, 1987, and the ending date being August 31, 1988.

Report Dates. Contractor shall submit all data and information to department as specified by the project manager of this contract.

Issued in Austin, Texas, on September 1, 1987.

TRD-8707450 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Filed: September 3, 1987
For further information, please call (512) 463-7583.

The Texas Department of Agriculture has awarded a consultant contract under Texas Civil Statutes, Article 6252-11c. Notice of the proposal request was published in the July 24, 1987, issue of the *Texas Register* (12 Tex-Reg 2442).

Description. A consultant has been selected by the department to plan and coordinate studies concerning socioeconomic effects of a potential high-level nuclear waste repository. The contractor shall analyze data from earlier surveys, coordinate new research to complement the previous studies, and disseminate the results.

Consultant Name. The name and address of the private consultant is Judy Fleishman, 3110 Dancy Street, Austin, Texas 78722.

Terms. The maximum value of this contract is \$64,000, with the beginning date being September 1, 1987, and the ending date being August 31, 1988.

Report Dates. Contractor shall submit all data and information to department as specified by the project manager of this contract.

Issued in Austin, Texas, on September 1, 1987.

TRD-8707451 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Filed: September 3, 1987
For further information, please call (512) 463-7583.



Office of the Attorney General Revised Order Withholding From Earnings for Child Support

The following form has been promulgated by the Office of the Attorney General as stipulated in the Texas Family Code, §14.43(p). This form is to be used by the attorney general to make changes to orders withholding from earnings for child support (to employer) when a client terminates IV-D services and the state is still owed money for prior months unrecovered assistance paid out through the AFDC program.

NO _____

_____ § _____

_____ § _____

_____ § _____

**REVISED
ORDER WITHHOLDING FROM EARNINGS FOR CHILD SUPPORT
(TO EMPLOYER)**

The Court, having previously ordered you, the employer of the Obligor, to withhold income from the Obligor's disposable earnings from his/her employment, finds that said withholding should be revised as the obligee named below is no longer receiving child support services from the Attorney General of Texas and or Aid to Families with Dependent Children from the State of Texas, therefore the Court ORDERS you, the employer of the Obligor, to withhold income from the Obligor's disposable earnings from this employment as follows.

OBLIGOR

Name: _____
 Address: _____
 City, State, Zip _____
 Social Security No _____

OBLIGEE

Name: _____
 SSN: _____

CHILDREN

Name _____ DOB _____ SSN _____
 Name _____ DOB _____ SSN _____

WITHHOLDING EARNINGS FOR CHILD SUPPORT:

The Court ORDERS that any employer of the Obligor shall begin withholding from Obligor's disposable earnings no later than the first pay period which occurs 14 days following the date this Order is served on the employer

IT IS ORDERED that the amount of earnings to be withheld for current child support by the employer is

- (1) \$ _____ if the obligor is paid monthly
- (2) \$ _____ if the obligor is paid twice monthly
- (3) \$ _____ if the obligor is paid every other week
- (4) \$ _____ if the obligor is paid every week

The employer IS ORDERED to withhold earnings for current child support in the above amount until _____ In the first pay period following that date, IT IS ORDERED that the amount of earnings to be withheld by the employer is.

- (1) \$ _____ if the obligor is paid monthly
- (2) \$ _____ if the obligor is paid twice monthly
- (3) \$ _____ if the obligor is paid every other week
- (4) \$ _____ if the obligor is paid every week

The employer IS ORDERED to withhold earnings for current child support in the above amount until _____ In the first pay period following that date, IT IS ORDERED that the amount of earnings to be withheld by the employer is:

- (1) \$ _____ if the obligor is paid monthly
- (2) \$ _____ if the obligor is paid twice monthly
- (3) \$ _____ if the obligor is paid every other week
- (4) \$ _____ if the obligor is paid every week

The employer IS ORDERED to withhold earnings for current child support in the above amount until _____ In the first pay period following that date, IT IS ORDERED that the amount of earnings to be withheld by the employer is:

- (1) \$ _____ if the obligor is paid monthly
- (2) \$ _____ if the obligor is paid twice monthly
- (3) \$ _____ if the obligor is paid every other week
- (4) \$ _____ if the obligor is paid every week

The employer IS ORDERED to withhold earnings for current child support in the above amount until _____ In the first pay period following that date, IT IS ORDERED that the amount of earnings to be withheld by the employer is:

- (1) \$ _____ if the obligor is paid monthly
- (2) \$ _____ if the obligor is paid twice monthly
- (3) \$ _____ if the obligor is paid every other week
- (4) \$ _____ if the obligor is paid every week

The employer is ORDERED to withhold earnings in the above amount until _____

METHOD OF PAYMENT OF CURRENT SUPPORT

The Court ORDERS the employer to pay all amounts withheld for current child support on each regular pay day to

Name of Oblige _____
c.o. Local Registry _____
Mailing Address _____
City, State, Zip _____

WITHHOLDING EARNINGS FOR ARREARAGES

The Court ORDERS that any employer of the Obligor shall begin withholding from obligor's disposable earnings no later than the first pay period which occurs 14 days following the date this Order is served on the employer

IT IS ORDERED that the amount of earnings to be withheld for arrearages by the employer is

- (1) \$ _____ if the obligor is paid monthly
- (2) \$ _____ if the obligor is paid twice monthly
- (3) \$ _____ if the obligor is paid every other week
- (4) \$ _____ if the obligor is paid every week

The employer IS ORDERED to withhold earnings for arrearages in the above amount until _____

METHOD OF PAYMENT OF ARREARAGES:

The Court ORDERS the employer to pay all amounts withheld for arrearages on each regular pay day through

Attorney General State of Texas
P.O. Box 13499
Austin, TX 78711-3499

All payments shall identify the Obligor, Obligee, the Attorney General Case Number, which is _____

MAXIMUM AMOUNT WITHHELD:

The maximum amount to be withheld shall not exceed 50 percent of the Obligor's disposable earnings

CALCULATING DISPOSABLE EARNINGS:

The employer shall calculate the Obligor's disposable earnings which are subject to withholding for child support, as follows

- a. Determine the "earnings" of the Obligor, which means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, disability and retirement program and unemployment benefits
- b. Subtract the following sums to calculate the Obligor's "disposable earnings"
 - (1) any amounts required by law to be withheld, i.e., Federal Income Tax and Federal FICA or OASI tax (Social Security), Railroad Retirement Act contributions;
 - (2) union dues;
 - (3) nondiscretionary retirement contributions by the Obligor, and
 - (4) medical, hospitalization and disability insurance coverage for the Obligor and his or her children

MORE THAN ONE ORDER WITHHOLDING:

In the event that you receive more than one "Writ of Withholding" or "Order of Income Withholding," for the named employee you shall pay an equal amount towards the current support portion of all orders or writs until each order is individually complied with, and thereafter pay equal amounts on the arrearage portion of all orders or writs until each order or writ is complied with, or until the maximum total amount of allowable withholding, 50 percent of the obligor's disposable earnings, is reached

NOTICE OF CHANGE OF EMPLOYMENT:

The Court ORDERS an employer to notify this Court and the Oblige within seven days of the date that the Obligor terminates employment. The employer is ORDERED to provide the Obligor's last known address and the name and address of the Obligor's new employer, if known.

REFERENCE TO THE INCOME WITHHOLDING LAW:

Attached to this ORDER is a copy of Texas Family Code §14.43 which sets forth rights, duties and potential liabilities of employers, in addition to the provisions of this ORDER.

SIGNED _____, 19 ____

Judge Presiding

Issued in Austin, Texas, on September 3, 1987

TRD-8707490 Lou McCreary
Special Assistant
Office of the Attorney General

Filed: September 3, 1987
For further information, please call (512) 463-2087



**Office of Consumer Credit
Commissioner**

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ Agricul- tural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 09/07/87-09/13/87	18.00%	18.00%
Monthly Rate— Article 1.04(c) ⁽¹⁾ 09/01/87-09/30/87	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 10/01/87-12/31/87	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11 ⁽³⁾ 10/01/87-12/31/87	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d) ⁽³⁾ 10/01/87-12/31/87	14.00%	N/A

Standard Annual Rate—Article 1.04(a)(2) ⁽²⁾ 10/01/87-12/31/87	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11 ⁽³⁾ 10/01/87-12/31/87	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 10/01/87-12/31/87	18.00%	N/A
Judgment Rate—Article 1.05, §2 09/01/87-09/30/87	10.00%	10.00%

(1) For variable rate commercial transactions only.
(2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069.101(f).
(3) Credit for personal, family, or household use.
(4) Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas, on August 31, 1987

TRD-8707452 Al Endsley
Consumer Credit
Commissioner

Filed September 3, 1987
For further information, please call (512) 479-1280



Texas Education Agency Consultant Proposal Request

This request is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

The Texas Education Agency is requesting proposals from established educational software evaluation and/or research firms to develop a portion of the 1988 Approved Software Reference Guide pursuant to the Texas Education Code, §14.022. The contractor will compile information for use by the agency that will enable districts to make informed decisions regarding the preview, selection, and purchase of software for classroom use. The deadline for proposal submission is October 9, 1987.

Selection will be made based on the experience of the contractor with similar projects, the quality of the product, and the cost to the State of Texas, and school districts.

Copies of the consultant proposal request may be obtained by calling or writing the Document Control Center, Room 6-108, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304. Additional information may be obtained by calling or writing Thomas E. Boudrot, Division of Educational Technology, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9087.

Issued in Austin, Texas, on September 1, 1987.

TRD-8707518 W. N. Kirby
 Commissioner of Education

Filed: September 3, 1987
For further information, please call (512) 463-9212.

Intent to Amend Consultant Contract Agreement

On September 8, 1986, Billy R. Bates, P.O. Box 386, Waxahachie, Texas 75165, entered into a contract with the Texas Education Agency to serve under the direction of the commissioner of education as the commissioner's monitor or master of independent school districts identified by the commissioner as being in substantial non-compliance with state accreditation standards. The contractor will give necessary advice, direction, and approvals to the boards of trustees of the said school districts and will make such reports as the commissioner shall require.

The amount of the contract is \$9,500 and runs through August 31, 1987.

The contract will be amended by increasing the maximum amount to be paid to Billy R. Bates to \$11,181. The amendment is based upon additional services to be provided by Billy R. Bates in serving as a monitor.

Issued in Austin, Texas, on September 2, 1987

TRD-8707520 W. N. Kirby
 Commissioner of Education

Filed: September 3, 1987
For further information, please call (512) 463-9212

Request (Revised) for Proposals

This request is filed pursuant to Texas Civil Statutes, Article 6252-11c. The original request was issued in the June 23, 1987, issue of the *Texas Register* (12 TexReg 2022). (\$450,000)

Adaptive/Assistive Device Center. This project is to provide a centralized bank of adaptive/assistive devices, technical assistance to education service centers and local education agencies, and training to personnel in using adaptive equipment and technology.

The due date for proposals has been changed to October 9, 1987. The rest of the requests for proposals remains unchanged. A copy of the complete request for proposals may be obtained by calling or writing the Document Control Center, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304. Applications may be delivered by mail or in person to the Texas Education Agency Document Control Center. Applications received after 5 p.m. on October 9, 1987, will not be considered for funding.

Issued in Austin, Texas, on September 2, 1987.

TRD-8707519 W. N. Kirby
 Commissioner of Education

Filed: September 3, 1987
For further information, please call (512) 463-9212.



Texas Department of Human Services Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (TDHS) invites proposals for consulting services.

Description. The contractor will conduct computer analyses of data using multivariate statistics, research, and modeling procedures, and will develop related computer software for interactive use by human service professionals with little or no previous experience with computers. During the period of this contract, the consultant will develop a model for classifying children by level of care needed. The contractor may also be assigned other tasks at the discretion of the project manager. The department is responsible for providing to the contractor clerical support, computer time and supplies, and reimbursement to the agreed fee schedule.

Limitations. The contract period will be November 1, 1987-August 31, 1988, and funding will not exceed \$17,100.

Contact Person. Michael Bruce, Texas Department of Human Services, 701 West 51st Street, P.O. Box 2960, Mail Code 537-W, Austin, Texas 78769, (512) 450-3145.

Evaluation and Selection. The TDHS project director and a division administrator will select and award the contract on the basis of demonstrated competence and qualifications, such as, but not limited to, history of similar work, references, and ability to complete the work in the designated timeframe. This proposed consultation is a continuation of a current program and the department intends to contract with the current provider unless a substantially better offer is received.

Closing Date for Receipt of Offers. The closing date for receipt of offers is September 21, 1987.

Issued in Austin, Texas, on September 3, 1987

TRD-8707501 Marlin W. Johnston
 Commissioner
 Texas Department of Human Services

Filed: September 3, 1987
For further information, please call (512) 450-3766.



Texas Water Commission Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Countrywide Partnership Investments, Inc., on August 25, 1987, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Andrew Barrett, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on August 26, 1987.

TRD-8707379

Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: September 2, 1987

For further information, please call (512) 463-7898

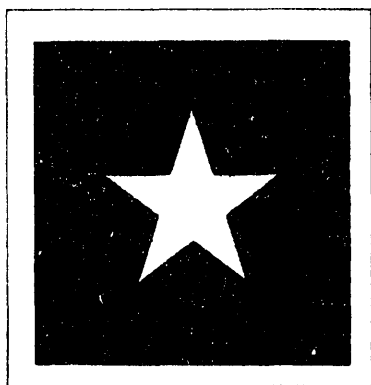


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