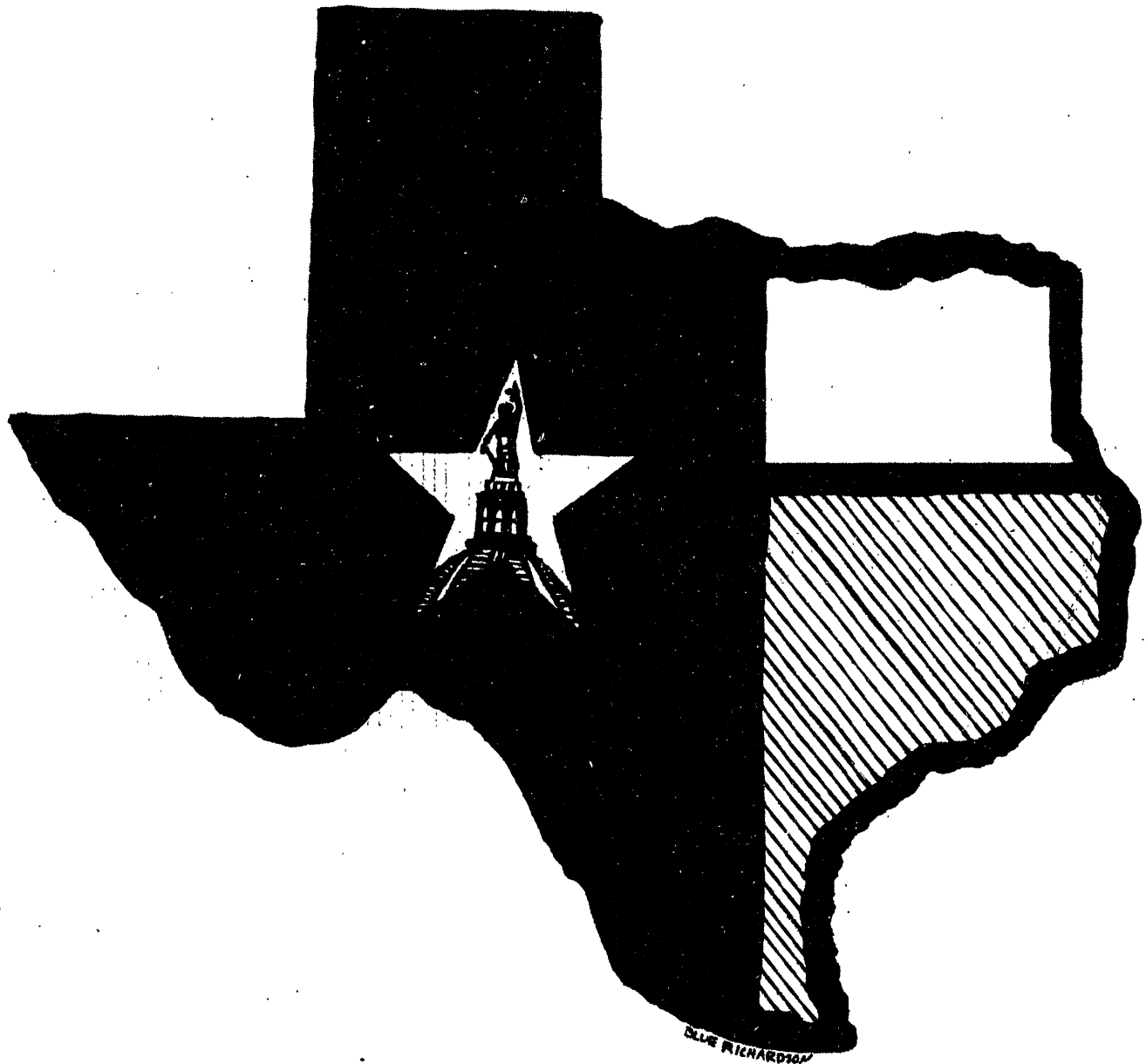


Texas Register

Volume 12, Number 95, December 22, 1987

Pages 4801-4864



Highlights

The **Railroad Commission of Texas** adopts on an emergency basis amendments and new sections concerning various regulations of the Transportation Division. Effective date - January 1, 1988 **page 4809**

The **State Board of Barber Examiners** proposes a new section concerning applications for permits setting time limits for processing licenses and

permits. Proposed date of adoption - February 2, 1988 **page 4819**

The **Texas Water Commission** adopts amendments concerning application of permits under the Injection Well Act. Effective date - January 5, 1988 **page 4844**

**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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- 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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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—notice of open meetings
- In Addition—miscellaneous information required to be published by statute or provided as a public service

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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*.

Opinions

JM-814B (RQ-1114). Request from Patrick O. Hardy, Criminal District Attorney, Woodville, concerning clarification of JM-814.

Attorney General Opinion JM-814A, issued on October 27, 1987, is hereby withdrawn. Attorney General Opinion JM-814, issued on October 22, 1987, remains in effect as issued.

TRD-8711349

✦ ✦ ✦
JM-831 (RQ-1272). Request from Vernon M. Arrell, Commissioner, Texas Rehabilitation Commission, Austin, concerning whether the Human Resources Code, §111.058, authorizes the Texas Rehabilitation Commission to require applicants for employment to provide copies of their records on criminal history, traffic offenses, military service, and other matters relevant to screening applicant.

Summary of Opinion. The Texas Rehabilitation Commission may require job applicants to submit available records, including criminal history, traffic, military, and similar records, as part of the application process, and it may impose on applicants a duty to update their applications to reflect guilty pleas entered after the application was submitted. Requiring the disclosure

of this information to the commission would violate no privacy right of the applicants.
TRD-8711350

JM-832 (RQ-1034). Request from Bruce Campbell, President, Brazos River Authority, Waco, concerning the selection and qualification of depositories for the funds of river authorities.

Summary of Opinion. Texas Civil Statutes, Article 4413(34c), does not alter legal requirements for official depositories. The Brazos River Authority cannot directly or indirectly deposit its funds in depositories that have not qualified according to law, but in order to qualify as an official depository the depository selected need not furnish bonds or pledge securities to protect deposits that are insured by the Federal Deposit Insurance Corporation.

TRD-8711351

✦ ✦ ✦
JM-833 (RQ-962). Request from Carlos Valdez, Nueces County Attorney, Corpus Christi, concerning collection of county taxes.

Summary of Opinion. The legislature may not authorize the electorate to divest the county tax assessor-collector of duties respecting the assessment and collection of county taxes, other than appraisal functions. Texas Constitution, Article VIII, §§14, 18,

and 6.24 of the Tax Code, as construed, is valid, but §6.26 is unconstitutional insofar as it contravenes the constitution, Article VIII, §14.

TRD-8711352

Open Records Decision

✦ ✦ ✦
ORD-485 (RQ-1288). Request from J. W. Gary, Gary, Thomasson, Hall and Marks, Attorneys at Law, Corpus Christi, concerning whether oral or written information delivered to a governmental body during a properly conducted executive session under the Open Meetings Act, Texas Civil Statutes, Article 6252-17, §2(g), is confidential under the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(1).

Summary of Decision. The Open Records Act embraces an investigative report, the contents of which were disclosed orally to the Board of Regents of the Corpus Christi Junior College District. The report may not be withheld simply because it was considered in an executive session of the board. The board has 10 days within which to submit the report together with arguments for withholding it under the Open Records Act, §3(a).

TRD-8711353

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 60 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 16. ECONOMIC REGULATION

Part I. Railroad

Commission of Texas Chapter 5. Transportation Division

The Railroad Commission of Texas adopts on an emergency basis amendments to §§5.145, 5.148, 5.423, and 5.424, and new §§5.581-5.590 (comprising new Subchapter Z), concerning prescribed rates; collective applications; applications to establish or change rates; unprotected proceedings; and base rates, deviations, and suspensions; respectively. The amendments and new sections are adopted on an emergency basis because Texas Civil Statutes, Article 911b, §4(a)(4) and §4(a)(5), create the right of carriers to deviate from base rates, the right to petition to suspend base rates, and other statutory rights. The exercise of these rights without the governance of procedural rules would pose an imminent threat to the general welfare.

The amendments and new sections were published for public comment in the November 27, 1987, issue of the *Texas Register* (12 TexReg 4447). Some minor changes were made from the version previously proposed. The information required in a deviation request has been slightly reduced, provision has been accepted, and the requirement of publication of deviations has been changed.

Subchapter H. Tariffs and Schedules

★ 16 TAC §5.145, §5.148

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 911b, §4(a)(4) and §4(a)(5), which provide the commission with the authority to establish base rates and charges for the transportation of general commodities by motor carriers (other than specialized motor carriers and other than contract carriers subject to commission-prescribed tariffs governing transportation of specialized commodities), to allow deviations from those base rates and charges, and to consider suspension petitions filed in response to those deviations.

5.145. Prescribed Rates. Rates applicable to motor carrier(s) under the Motor Carrier Act and to motor bus companies

under the Motor Bus Act are effective and lawful only when prescribed by order of the commission. **Except as may be permitted by §5.582 of this title (relating to Deviations from Base Rates),** no motor carriers or motor bus company shall charge or apply any rates not prescribed and effective by order of the commission.

§5.148. Collective Applications. Applications to establish or change rates, deviation requests, and petitions to suspend deviations from commission-prescribed base rates and charges, may be submitted and prosecuted, or opposed by an authorized carriers association on behalf of a motor carrier(s) pursuant to an agreement which has been approved by the commission under §5.315 of this title (relating to Approval of Agreements Between Carriers Concerning Group Representation). Applications, protests, or interventions in opposition filed by an association must disclose, by reference to documents on file with the commission or otherwise, on whose behalf the application, protest, intervention, deviation request, or suspension petition is filed.

Issued in Austin, Texas, on December 14, 1987.

TRD-8711302

Kent Hance
Commissioner
Railroad Commission of
Texas

Effective date: January 1, 1988
Expiration date: April 29, 1988
For further information, please call
(512) 463-7149.

Subchapter U. General and Special Rules of Practice and Procedure

★ 16 TAC §§5.423, §5.424

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 911b, §4(a)(4) and §4(a)(5), which provide the commission with the authority to establish base rates and charges for the transportation of general commodities by motor carriers (other than specialized motor carriers and other than contract carriers subject to commission-prescribed tariffs governing transportation of specialized commodities), to allow deviations from those base rates and charges, and to consider suspension petitions filed in response to those deviations.

§5.423. Applications to Establish or Change Rates.

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

(c) **Applicability.** The provisions of this section shall not apply to annual review of base rates or charges held pursuant to §5.586 of this title (relating to Procedures for Annual Base Rate Adjustment Hearings), deviation procedures held pursuant to §5.587 of this title (relating to Base Rate Deviation Procedures), or suspension procedures held pursuant to §5.588 of this title (relating to Procedures for Deviation Suspension Proceedings).

§5.424. Unprotected Proceedings.

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

(d) The provisions of this section shall apply only to applications filed pursuant to the provisions of §5.423 of this title (relating to Applications to Establish or Change Rates).

Issued in Austin, Texas, on December 14, 1987.

TRD-8711302

Kent Hance
Commissioner
Railroad Commission of
Texas

Effective date: January 1, 1988
Expiration date: April 29, 1988
For further information, please call
(512) 463-7149.

Subchapter W. Registration of Commercial Carriers

★ 16 TAC §5.503

The Railroad Commission of Texas adopts on an emergency basis an amendment to §5.503, concerning liability insurance for commercial carriers. The amendment is adopted on an emergency basis due to the substantial burdens of insurance costs which would otherwise be imposed on commercial carriers which operate smaller commercial motor vehicles. The insurance filing requirements of Senate Bill 908 become effective January 1, 1988. If the commission is to relieve the insurance requirements on a permanent basis after a full rulemaking proceeding, the temporary requirement that the higher levels of insurance be purchased would pose an imminent threat to the general welfare. The commission proposes to prescribe two levels of minimum liability insurance dependent on the weight and size of the vehicle used.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 6701d, §139(c), which authorize the commission to set the minimum level of liability insurance required of motor carriers.

§5.503. Liability Insurance for Commercial Carriers.

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

(c) Minimum limit.

(1) For commercial motor vehicles of 48,000 pounds gross vehicular weight or less, the minimum amount referred to in subsection (a) of this section is the minimum requirement of the Safety Responsibility Law, Texas Civil Statutes, Article 6701h, §1(10).

(2) For commercial motor vehicles not covered by paragraph (1) of this subsection, the minimum amount referred to in subsection (a) of this section is \$500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to the property of others.

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

Issued in Austin, Texas, on December 14, 1987.

TRD-8711367 Kent Hance
Chairman
Railroad Commission of
Texas

Effective date: January 1, 1988
Expiration date: April 29, 1988
For further information, please call
(512) 463-7149.

★ 16 TAC §5.507

The Railroad Commission of Texas adopts on an emergency basis new §5.507, concerning temporary registration of international commercial carriers. The new section is adopted on an emergency basis due to the unacceptable burden which would be placed on international commercial motor vehicles by the registration system which is to be effective February 1, 1988. That system, which is appropriate for domestic vehicles, is inappropriate for foreign registered vehicles which operate in the United States under temporary insurance policies. This section would not become effective under normal rulemaking procedures until after the current registration system becomes effective. Such a temporary registration requirement would impose a regulatory burden without any corresponding benefit, and would pose an imminent threat to the general welfare.

The commission proposes that foreign commercial motor vehicles which operate in this country under temporary insurance policies may be registered for the same short term as the insurance is effective. The registration would be accomplished by the insurance agent which issues the temporary liability insurance policy. The foreign commercial motor vehicles will be required to have a registration stamp af-

fixed to the temporary insurance policy. The insurance agent which issues the stamps will be required to pay a filing fee of \$1.00 and a registration fee of \$1.00 for each stamp. The insurance agent may charge the fees to its customers.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 911b, §4(a)(13), and Article 6701d, §139(c), which authorize the commission to register commercial motor vehicles and to require motor carriers to file proof of insurance with the commission.

§5.507. Temporary Registration of International Commercial Carriers.

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

(1) Individual liability insurance policy—A policy issued by an insurance company registered with the State Board of Insurance which covers only one motor vehicle and is effective for no more than seven days, and which incorporates by reference the terms and conditions of the master liability insurance policy under which it is issued.

(2) International commercial carrier—A commercial motor vehicle which:

(A) is not registered in any state of the United States; and

(B) is issued an individual liability insurance policy with limits equal to or higher than those required under §5.503 of this title (relating to Liability Insurance for Commercial Carriers) by an insurance agent who has filed the master liability insurance policy under which the individual liability insurance policy is issued with the commission.

(3) Master liability insurance policy—A document which sets out the terms and conditions of individual liability insurance policies issued thereunder.

(b) Alternative system. An international commercial carrier may meet the requirement that it must register as a commercial motor vehicle with the commission either under the provisions of §§5.501-5.506 of this title (relating to Definitions; Applications for Registration of Commercial Motor Vehicles; Liability Insurance for Commercial Carriers; Cab Cards; Identification Decals; Cancellation of Registration; and Implementation) or the provisions of subsection (c) of this section.

(c) Procedures.

(1) An insurance agent which has filed a master liability insurance policy under which temporary insurance policies are issued shall obtain registration stamps from the commission. The agent shall pay to the commission a filing fee of \$1.00 and a registration fee of \$1.00 for each stamp ordered.

(2) After the master insurance policy is filed with the commission, a identification number will be assigned to that policy, and to all registration stamps issued under that policy.

(3) For each stamp issued by the insurance agent, the insurance agent shall record the name of the company to whom the stamp is issued, the vehicle identification number, the year, the make, and the license number of the vehicle for which the stamp is issued, the date of issuance, and the effective period of the temporary insurance policy. This information shall be recorded on a form approved by the director.

(4) The registration stamp shall be affixed to the temporary insurance policy, and shall be carried in the vehicle at all times the commercial motor vehicle is operated in this state.

(5) The insurance agent shall file the information recorded for each stamp issued with the commission no later than 30 days after the issuance of the stamp by the insurance agent.

Issued in Austin, Texas, on December 14, 1987.

TRD-8711303 Kent Hance
Chairman
Railroad Commission of
Texas

Effective date: December 15, 1987
Expiration date: April 13, 1988
For further information, please call
(512) 463-7149.

Subchapter Z. Base Rates,
Deviations, and Suspensions

★ 16 TAC §§5.581-5.590

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 911b, §4(a)(4) and §4(a)(5), which provide the commission with the authority to establish base rates and charges for the transportation of general commodities by motor carriers (other than specialized motor-carriers and other than contract carriers subject to commission-prescribed tariffs governing transportation of specialized commodities), to allow deviations from those base rates and charges, and to consider suspension petitions filed in response to those deviations.

§5.581. Annual Review of Base Rates and Charges.

(a) The commission shall review the base rates and charges for general commodities shipments weighing in excess of 500 pounds on an annual basis. Adjustment to such base rates and charges shall be made by the commission, if necessary, so as to make such base rates and charges just and reasonable and to ensure that such base rates and charges cover the involved carriers' actual operating costs plus a reasonable margin.

(b) On its own motion or on application of any person with an administratively cognizable or justiciable interest, the commission may review the base rates and charges for general commodities shipments

weighing in excess of 500 pounds at such other times as may be necessary to ensure that such base rates and charges are just and reasonable and cover the involved carriers' actual operating costs plus a reasonable margin.

§5.582. Deviations from Base Rates.

(a) Motor carriers (other than specialized motor-carriers and other than contract carriers subject to commission-prescribed tariffs governing transportation of specialized commodities) shall be permitted to deviate from prescribed base rates or charges on shipments weighing in excess of 500 pounds in accordance with the provisions of this section. No deviation from any base rate or charge shall be permitted except in accordance with the provisions of this section and §5.587 of this title (relating to Base Rate Deviation Procedures).

(b) Motor carriers (other than specialized motor carriers and other than contract carriers subject to commission-prescribed tariffs governing transportation of specialized commodities) shall be permitted to deviate by an amount not to exceed 5.0% above or below the applicable base rate or charge for shipments of general commodities weighing from 501 to 9,999 pounds.

(c) Motor carriers (other than specialized motor carriers and other than contract carriers subject to commission-prescribed tariffs governing transportation of specialized commodities) shall be permitted to deviate by an amount not to exceed 15% above or below the applicable base rate or charge for shipments of general commodities weighing 10,000 pounds or more.

(d) Carrier(s) proposing to deviate in accordance with the provisions of this section must file a deviation request with the commission under the provisions set forth in §5.587 of this title (relating to Base Rate Deviation Procedures). No deviation shall become effective unless it has been approved for publication pursuant to the provisions of §5.587(d) of this title (relating to Base Rate Deviation Procedures).

(e) A request to cancel or amend an effective deviation shall be made under the standards in this section and the procedures in §5.587 of this title (relating to Base Rate Deviation Procedures).

§5.583. Contract Carrier Deviations. A contract carrier may deviate under the provisions and the procedures in §5.582 (relating to Deviations from Base Rates).

§5.584. Suspension of Deviations.

(a) Any interested person shall have the right to petition the commission for suspension of a deviation published and effective in accordance with §5.587 of this title (relating to Base Rate Deviation Procedures). Any petition for suspension must be filed within 15 days from the date of the weekly notice in which the subject deviation appears.

(b) The commission shall suspend any deviation which results in predatory pricing.

A deviation which results in predatory pricing is a deviation which results in a rate:

(1) which is below the actual operating costs of the carrier(s) that proposed the deviation;

(2) which is unreasonably above the actual operating costs of the carrier(s) that proposed the deviation; or

(3) which is unduly discriminatory.

(c) The director may order the carrier(s) proposing the deviation to produce such records, documents, or other evidence as may be necessary to resolve the issues in suspension proceedings.

(d) The deviation rate or charge under review in a suspension proceeding shall remain in effect until suspended by the commission. If the commission determines that the deviation results in predatory pricing, the commission may:

(1) suspend the carrier(s)' deviation from the base rate;

(2) direct the carrier(s) to charge and collect the base rate;

(3) direct the carrier(s) to repay any overcharges and collect any undercharges; and

(4) order other or additional relief as it finds appropriate, including but not limited to administrative fines and penalties.

§5.585. Increase or Decrease in Base Rate or Charge. The percentage of deviation shall not be affected by subsequent adjustment of the base rate or charge.

§5.586. Procedures for Annual Base Rate Adjustment Hearings.

(a) The commission shall institute a base rate adjustment hearing in accordance with §5.581(a) of this title (relating to Establishment and Annual Review of Base Rates and Charges) within 12 months of the date of the notice of the previous base rate adjustment hearing. The initial annual base rate adjustment hearing shall be held prior to September 30, 1988.

(b) The commission may require motor carriers to produce relevant revenue, expense, and other data necessary for the commission to determine whether the existing base rates and charges are just and reasonable, and cover carriers' actual operating costs incurred in transporting involved shipments plus a reasonable margin.

(c) All affected motor carriers, shippers, associations, and any other person with an administratively cognizable or justiciable interest shall be allowed to become a party of record in the annual base rate adjustment hearing. Parties of record shall not be designated as applicants, protestants, intervenors, or proponents. The commission shall be responsible for all original transcript charges. All parties of record shall be allowed to present and cross examine witnesses, subject to any limitation by the presiding examiner permissible under the provisions of Subchapter U of this chapter (relating to General and Special Rules of Practice and Procedure). Subject to the pro-

visions of this section, the annual base rate adjustment hearings shall be held in accordance with the provisions of Subchapter U of this chapter (relating to General and Special Rules of Practice and Procedure) and shall be determined in accordance with the contested case provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

§5.587. Base Rate Deviation Procedures.

(a) The procedures provided in this section govern deviations proposed under §5.582 of this title (relating to Deviations from Base Rates).

(b) Any carrier(s) proposing to deviate from an established base rate or charge must file a deviation request with the director on a form promulgated by the director, setting forth the name, address, and telephone number of the applicant carrier(s); the tariff and item number thereof affected by the proposed deviation; the proposed percentage of deviation from the base rate or charge; the percentage of deviation currently applicable to the base rate or charge, if any; the origins, destinations, and commodities for which the proposed deviation will apply, if any; and the circumstances or conditions under which the deviation is proposed to be effective, if any. The deviation request shall be accompanied by a filing fee of \$25. A deviation request shall be considered filed pursuant to the provisions of §5.404 of this title (relating to Filing of Documents).

(c) No deviation request may:

(1) include the name of a shipper for whom the deviation will apply; or

(2) be filed by a carrier(s) if that carrier(s) has filed a deviation request, not yet published in the weekly notice pursuant to subsection (g) of this section, which is applicable to the same traffic.

(d) Upon filing of a deviation request by a carrier(s), the director shall determine whether the carrier(s) is permitted to file a deviation request under §5.582(a) of this title (relating to Deviations from Base Rates); whether the proposed deviation is permissible under §5.582 of this title (relating to Deviations from Base Rates); and whether the proposed deviation meets the requirements of this section. If the proposed deviation meets the requirements of this subsection, the proposed deviation shall be approved for publication by the director. The director shall mail written notice of the approval to the address specified in the request pursuant to subsection (b) of this section, within two working days of filing.

(e) If the proposed deviation does not meet the requirements of subsection (d) of this section, the director shall attempt to notify the applicant carrier(s) of the rejection by telephone within two working days of the filing of the deviation. The director shall mail written notice of the rejection to the address specified in the request pursuant to subsection (b) of this section, within two working days. The written rejection of the proposed deviation shall include the reason

for the rejection.

(f) If the proposed deviation is approved for publication, it shall be effective five days after filing.

(g) All deviations approved for publication shall be published in a weekly notice of deviation.

§5.588. Procedures for Deviation Suspension Proceedings.

(a) Any affected motor carrier(s), shipper, receiver, or other person with an administratively cognizable or justiciable interest, including the commission on its own motion, may file a petition to suspend a deviation which has been filed pursuant to §5.587 of this title (relating to Base Rate Deviation Procedures). A petition for suspension must be filed with the commission within 15 days from the date of the weekly notice in which the subject deviation appears. A petition for suspension shall be accompanied by a filing fee of \$25.

(b) A suspension petition shall be filed with the director and shall set forth:

(1) the name of the complaining person(s);

(2) an identification of the subject deviation(s); and

(3) a statement of the grounds asserted for the sought suspension.

(c) The petitioner must serve the suspension petition on the respondent carrier(s). Upon receipt of the suspension petition the director shall issue a notice of hearing compelling the petitioner(s) and the respondent carrier(s) to appear at a designated time and place.

(d) A suspension petition shall be posted pursuant to the Open Meetings Act, Texas Civil Statutes Article 6252-17, for commission consideration of an interim order at the next regularly scheduled commission conference following the hearing on the suspension proceeding, or as early thereafter as is reasonably possible.

(e) The final disposition of any suspension proceeding shall be in accordance with all applicable contested case provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(f) A deviation may be withdrawn by the carrier(s) only after a petition for suspension has been filed. After withdrawal, the deviation will no longer be effective. The commission may order any relief provided for in §5.584(d) of this title (relating to Suspension of Deviations) if the commission determines that the withdrawn deviation resulted in predatory pricing.

§5.589. Publication of Deviations. All tariffs which include base rates and charges adopted pursuant to §5.581 of this title (relating to Annual Review of Base Rates and Charges) shall be supplemented no less frequently than monthly to reflect all deviations filed with the commission, as well as those deviations which have been suspended by order of the commission.

§5.590. Specific Rates and Charges.

(a) In addition to the base rates and charges established pursuant to §5.581 of this title (relating to Annual Review of Base Rates and Charges), the commission may establish specific rates and charges applicable to transportation of shipments of general commodities weighing in excess of 500 pounds by motor carrier(s) (other than specialized motor carrier(s) and contract carrier(s) subject to commission prescribed tariffs governing transportation of specialized commodities).

(b) No carrier(s) shall be permitted to deviate from specific rates established pursuant to subsection (a) of this section.

(c) Applications to establish or change specific rates shall be filed and determined pursuant to the provisions of Subchapter H of this chapter (relating to Tariffs and Schedules).

Issued in Austin, Texas, on December 14, 1987.

TRD-8711304

Kent Hance
Commissioner
Railroad Commission of
Texas

Effective date: January 1, 1988
Expiration date: April 29, 1988
For further information, please call
(512) 463-7149.

TITLE 22. EXAMINING BOARDS

Part II. State Board of Barber Examiners

Chapter 51. Practice and Procedure

Examinations and Licensing

★ 22 TAC §51.86

The State Board of Barber Examiners adopts on an emergency basis §51.86, concerning the time limit for processing licenses and permits and an appeals process. The new section is adopted on an emergency basis to comply with House Bill 5, 70th Legislature, 1987, which requires that all licensing agencies shall adopt a rule before January 1, 1988.

The minimum time limit for processing licenses shall be 10 days, the median time limit shall be 14 days, and the maximum time limit shall be 30 days. Because the turn-around time is very short and applicants whose applications are incomplete are notified in writing the same day as received, this new section proposes that in order to continue the efficient turn-around time, applicants whose applications are complete need not be notified in writing that the application has been received.

To qualify to appeal for a refund of the cost of a license or permit, an applicant's

license or permit must have taken longer than 30 days from the time of receipt in our office until the applicant has received the license or permit.

The information in the section is based on 12 months previous performance records and reflects the amount of time this agency of five persons must have to process the applications. Additional processing involves the State Purchasing and General Services Commission data processing and the State Mail and Messenger Service.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 8407a, §28(a), which authorize the board to adopt rules and regulations for the transaction of business.

§51.86. Processing Time for Licenses and Permits; Appeals.

(a) Beginning with the date an application for a license or permit is received in complete form and is accepted by the State Board of Barber Examiners for processing, the minimum time limit for processing and mailing shall be 10 days, the maximum time limit for processing and mailing shall be 30 days, and the median time limit for processing and mailing shall be 14 days. Because the turn-around time is very short and because applicants whose applications are incomplete are notified in writing the same day they are received, this section proposes that in order to continue the efficient turn-around time, applicants whose applications are without problems need not be notified in writing of their having been received.

(b) Printed licenses and permits currently on hand do not have the appeals process printed on them; therefore, notification of the appeals process to all barber shops and barber schools will be made by inspectors until new licenses and permits are ordered.

(c) An applicant may appeal to the State Board of Barber Examiners if the license or permit has not been processed and mailed within the time periods set forth in this section. The appeal must be in writing and must state the details of the appeal. A date will be set for the applicant to appear before the board to present the appeal and supporting data. If an appeal is decided in an applicant's favor, a full refund will be made.

Issued in Austin, Texas, on December 14, 1987.

TRD-8711308

Jo King McCrorey
Executive Director
State Board of Barber
Examiners

Effective date: December 15, 1987
Expiration date: April 14, 1988

For further information, please call
(512) 835-2040.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 145. Long Term Care Subchapter E. Procedures on Long Term Care Facilities

★25 TAC §145.94

The Texas Department of Health is renewing the effectiveness of the emergency adoption of repealed §145.94 for a 60-day period effective December 30, 1987. The text of the repealed §145.94 was originally published in the August 28, 1987, issue of the *Texas Register* (12 TexReg 2902).

Issued in Austin, Texas, on December 14, 1987.

TRD-8711295 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: December 30, 1987
Expiration date: February 28, 1988
For further information, please call
(512) 458-7706.



The Texas Department of Health is renewing the effectiveness of the emergency adoption of new §145.94 for a 60-day period effective December 30, 1987. The text of the new §145.94 was originally published in the August 28, 1987, issue of the *Texas Register* (12 TexReg 2903).

Issued in Austin, Texas, on December 14, 1987.

TRD-8711296 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: December 30, 1987
Expiration date: February 28, 1988
For further information, please call
(512) 458-7706.



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administrative Division

Substantive Rules

★37 TAC §§211.102, 211.103, 211.105, 211.106

The new sections are adopted under the

following statutes which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority respectively to: §211.102, under Chapter 758, 70th Legislature, 1987, as it amends Texas Civil Statutes, Article 4413(29aa), to allow the commission to set licensing standards for armed public security officers; §211.103, under Chapter 975, 70th Legislature, 1987, as it amends Texas Civil Statutes, Article 4413(29aa), to allow the commission to set minimum standards for training, testing, and certification of peace officers who use investigative hypnosis; §211.105, under Chapter 863, 70th Legislature, 1987, as it amends Texas Civil Statutes, Article 4413(29aa), to allow the commission to set standards for training and acknowledgment of telecommunications officers; and §211.106, under Chapter 389, 70th Legislature, 1987, as it amends Texas Civil Statutes, Article 5.33A, and under that article before such amendment which allows the commission to set training and certification standards for peace officers and civilians who conduct homeowners insurance inspections.

§211.102. Armed Public Security Officers.

(a) To be issued a permanent armed public security officer license, an applicant must at the time of licensing:

(1) meet all the current minimum licensing standards for a peace officer, except for training and testing;

(2) meet the current training standards for private security officers as established by the Texas Board of Private Investigators and Private Security Agencies, and possess a certificate of completion for that course from that board; and

(3) be reported to the commission by the appointing agency on a completed commission application form.

(b) The appointing agency and its chief administrator shall comply with the section provisions relating to the reporting requirements of law enforcement agencies.

(c) The license holder shall comply with the minimum standards for retention of a peace officer license.

(d) The sections that apply to the voluntary surrender, reprimand, suspension, revocation, or cancellation of a peace officer license shall also apply to an armed public security officer license.

(e) Any temporary armed public security officer license already issued shall expire on March 31, 1988, three calendar months after the effective date of this section.

(f) The effective date of this section shall be January 5, 1988.

§211.103. Investigative Hypnosis by a Peace Officer.

(a) The commission shall issue an investigative hypnotist proficiency certificate to a person who obtains a valid passing score on the state examination for investigative hypnosis.

(b) To qualify for either taking this examination or receiving a valid score, the person must, at the time of testing:

- (1) be licensed as a peace officer;
- (2) be commissioned as a peace officer;

(3) have timely credit for an investigative hypnosis training course; and

(4) have submitted documentation of any of the requirements in paragraphs (1)-(3) of this subsection, if requested.

(c) After the effective date of this section, the standard training course shall:

(1) be approved by the commission;

(2) be taught both in-state and in conformity with the learning objectives approved by the commission; and

(3) include comprehensive testing.

(d) The commission may approve and give credit for other similar, nonstandard training courses which were either:

(1) completed in-state before the effective date of this section; or

(2) completed out-of-state at any time.

(e) Such nonstandard training may be approved by the executive director or, if denied and upon petition, may be the subject of an administrative hearing held to determine approval based on:

(1) testimony from the Texas Association of Investigative Hypnotists; and

(2) proof that the nonstandard curriculum meets or exceeds the standard curriculum.

(f) For training course credit to be timely, it must be given for a standard course completed no more than two years before the state examination is passed, except that a person must both receive commission credit and pass the state examination within two years after either the effective date of this section or the date of peace officer commissioning, whichever is later, if that person completed at any location any nonstandard training course as defined in this section.

(g) The examination to test the officer's knowledge of investigative hypnosis shall:

(1) be developed by or with the approval of the commission;

(2) be administered by the commission or its agent,

(3) be written only; and

(4) be taken only three times after qualifying by training.

(h) After three failures or after course credit ceases to be timely, the officer must requalify for the state examination by completing a standard training course.

(i) An examination may be given credit under this section if it was administered by the commission in accordance with this section, but before its effective date.

(j) Certificates issued under this section are subject to the same provisions for cancellation as a peace officer proficiency certificate.

(k) The effective date of this section shall be January 5, 1988.

§211.105. Telecommunicator Acknowledgments.

(a) The commission may issue a written, grandfather acknowledgment to an agency which has appointed, or which is served by, an individual who:

(1) was serving under permanent appointment with or for that agency as a telecommunicator on and before September 1, 1987; and

(2) has been reported as such by that agency.

(b) This grandfather acknowledgment shall expire when the individual leaves continuous appointment with or for that agency.

(c) The commission may issue a written, temporary acknowledgment to an individual who has been reported by an agency as either currently appointed, or about to be appointed within the next calendar month, as a telecommunicator with or for that agency. A temporary acknowledgment expires one calendar year after the original appointment date and may not be reinstated except under the following conditions.

(1) After another calendar year has elapsed from that expiration date, the agency seeking reissue or reinstatement may then informally petition the commission, acting through its executive director, for such reinstatement.

(2) If denied, the agency may petition the commission for a formal reinstatement hearing based on proof by the agency of:

(A) the reason no training was available or possible within the original year;

(B) the manpower shortage at the agency or the entity serving the agency, analogous to the provisional license section;

(C) either the fact that the individual is currently enrolled in training or the date of the next available training for which the individual will be enrolled; or

(D) any other relevant issue.

(d) The commission shall issue a written training acknowledgment to an individual who:

(1) has met the training standards of this section; and

(2) has made a written request for such issuance, including any documentation, if requested.

(e) The commission shall issue a written, permanent acknowledgment to an individual who:

(1) has met the training standards of this section; and

(2) has been reported to the commission on a completed commission form by an agency as currently appointed as a telecommunicator with or for that agency, including any documentation, if requested.

(f) An agency which has appointed or which is served by an individual as a telecommunicator only in the event of an emergency is not required to report such appointment or service to the commission.

(g) Any appropriate acknowledgment may be issued to an individual appointed or

serving as a telecommunicator with any agency that either:

(1) has 20 or fewer employees; or

(2) does not perform law enforcement services on a 24-hour basis.

(h) The permanent acknowledgment shall be issued in a format similar to a proficiency certificate. Other acknowledgments may be in letter form.

(i) The minimum telecommunicator training standards shall be successful completion of a course which:

(1) consists of at least 40 hours; and

(2) has been developed or approved by the commission.

(j) Acknowledgments issued under this section are subject to the same provisions for cancellation as a peace officer proficiency certificate.

(k) The effective date of this section shall be January 5, 1988.

§211.106. Crime Prevention and Homeowners Insurance Inspector Certificates and Inspection Standards.

(a) The commission shall issue a crime prevention inspector proficiency certificate to an individual who:

(1) is a licensed peace officer;

(2) is reported as a currently-commissioned peace officer;

(3) is of high moral integrity; and

(4) has already completed an approved crime prevention training course.

(b) The commission shall, upon application, issue a homeowners insurance inspector certificate to an individual who:

(1) is a building inspector or other official, whether civilian, commissioned reserve, or peace officer, so long as that person has been designated by a city or county to serve as a homeowners insurance inspector;

(2) is of high moral integrity; and

(3) has completed either an approved homeowners inspection training course or an approved crime prevention training course.

(c) The training required under this section must be approved by the commission and may be taught:

(1) by an approved law enforcement academy; or

(2) by agreement with the commission.

(d) After the applicant has completed the prescribed training, an application for a homeowners insurance inspection certificate must be submitted to the commission on its form by the chief administrator of a law enforcement agency of the city or county government which will make the appointment or, if none, by the administrator who will make the appointment.

(e) Any agency or governmental entity, which has appointed an individual as a homeowners inspector who is not a commissioned peace officer, must report to the commission when the individual is no longer appointed by that agency as an inspector. The report shall be sent within 10 working

days of such termination by the chief administrator of the law enforcement agency whose office made the original report or, if none, by the administrator who made the appointment.

(f) The commission shall make a monthly report to the State Board of Insurance, listing any individual who:

(1) is currently reported as both a commissioned peace officer and the holder of a valid crime prevention inspector proficiency certificate; or

(2) is the holder of a valid homeowners insurance inspector certificate.

(g) The commission shall purge from this report each month the name of any person who:

(1) loses either certificate by revocation, suspension, cancellation, or any other means;

(2) holds a crime prevention inspector proficiency certificate and is reported terminated as a peace officer; or

(3) holds a homeowners insurance inspector certificate and is reported terminated as an inspector.

(h) The standards for conducting a homeowners insurance inspection are as follows.

(1) The inspector shall not conduct an inspection without being qualified for the report maintained by the State Board of Insurance because of either:

(A) termination as a peace officer or homeowners inspector;

(B) failure to complete any required training; or

(C) loss of certificate by revocation, suspension, cancellation, or any other means.

(2) The inspector shall not charge or collect a fee for the inspection or report unless it has been set by the appointing agency and the homeowner is informed of all such costs beforehand.

(3) The inspector shall not charge or collect any fee for remedial work necessary to pass the inspection and shall not make any specific referrals either directly or indirectly. The inspector may make a general reference to the phone book or other lists of businesses.

(4) All inspections shall be conducted by an inspector who either:

(A) is in a peace officer uniform with badge; or

(B) provides to the homeowner or occupant, before entering the home, an identification card which contains both a photograph and the official title of the inspector.

(5) No inspection shall be made except upon request by and with the approval of the owner or occupant.

(6) Inspections shall comply with the minimum requirements of the Insurance Code, Article 5.33A, §6.

(7) The inspector shall verbally inform the homeowner of the results and provide, upon request, a copy of the report

within 10 working days.

(8) The inspector shall complete and sign the inspection form required by the board, and forward it to them within 10 working days.

(i) The commission may revoke or suspend any certificate issued under this section:

(1) for failure to comply with the standards for conducting an inspection found in subsection (h) of this section; or

(2) for failure to comply with the minimum standards for retention of a peace officer license.

(j) Certificates issued under this section are subject to the same provisions for cancellation as a peace officer proficiency certificate.

(k) The term "high moral integrity" shall mean the person:

(1) is not currently on criminal probation;

(2) has never been convicted of a felony, as that phrase is used in these sections;

(3) has not been convicted of a DWI within the past 24 months, a Class A misdemeanor within the last 12 months, or a Class B misdemeanor within the last six months;

(4) has not been discharged from any military service under less than honorable conditions; and

(5) has never had a license revoked by the commission.

(l) Offenses under the federal criminal laws or those of other states will be construed as their closest equivalent under current Texas law.

(m) The effective date of this section

shall be January 5, 1988.

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 December 15, 1987.

TRD-8711380

David M. Boatright
General Counsel
Texas Commission on
Law Enforcement
Officer Standards and
Education

Effective date: January 5, 1988

Proposal publication date: October 23, 1987

For further information, please call
(512) 834-9222.

✱ ✱ ✱

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 16. ECONOMIC REGULATION

Part I. Railroad

Commission of Texas

Chapter 1. Practice and Procedure

Subchapter C. Pleadings

★16 TAC §1.32

The Railroad Commission of Texas proposes an amendment to §1.32, concerning the form of pleadings and briefs. The amendment requires that all pleadings and briefs be typewritten or printed on paper not to exceed 8½ inches by 14 inches for pleadings and briefs. This amendment will foster increased uniformity of paper size which will result in greater efficiency in all Railroad Commission activities involving the handling of pleadings and briefs.

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

Mr. Biard also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased efficiency in many areas of Railroad Commission activity. 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 Bob Biard, Oil and Gas Section, Office of the General Counsel, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. The docket number is 10-91,675, and the due date for filing comments is February 5, 1988.

This amendment is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(a)(1), which requires each state agency to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

§1.32. *Form and Content of Pleadings.*

(a) Typewritten or printed. Pleadings and briefs shall be typewritten or printed on

paper not to exceed 8½ inches by 11 [14] inches, with an inside margin at least one inch wide and annexed exhibits shall be folded to the same size. Unless printed, the impression shall be on one side of the paper only and shall be double spaced, except that footnotes and quotations in excess of a few lines may be single spaced. Reproductions may be by any process, provided all copies are clear and permanently legible.

(b)-(f) (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 December 14, 1987.

TRD-8711317

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Proposed date of adoption:

February 22, 1988

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

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

★16 TAC §3.22

The Railroad Commission of Texas proposes the repeal of §3.22, concerning oil wells produced by means of artificial lifting devices. The Texas Mid-Continent Oil and Gas Association filed a rulemaking petition on October 27, 1987, requesting this repeal. This section places restrictions on the size of tubing used on wells produced by means of artificial lifting devices. An oil well operator may obtain exceptions to the restrictions by paying a \$50 fee, if there is no protest from potentially affected parties. In earlier rulemakings the Railroad Commission has removed tubing size restrictions with respect to flowing oil wells and has removed restrictions on the use of down-hole centrifugal pumps. Other Railroad Commission rules effectively regulate the allowable an artificially lifted well is assigned without the need for the restrictions in §3.22.

Rita E. Percival, systems analyst, has determined that for the first five-year pe-

riod the proposed repeal will be in effect there will be fiscal implications as a result of enforcing or administering the repeal. The effect on state government will be an estimated loss of \$270 in revenues from fees for exception to statewide rules in fiscal year 1988; and \$800 each fiscal year from 1989-1992. There will be no effect on local government or small businesses.

Bob Biard, legal examiner, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be reduced administrative burdens and the elimination of sometimes costly delays in obtaining exceptions that, in general, are routinely granted. There is no anticipated economic cost to the public as a result of the repeal.

Public comment is invited and may be submitted in writing to Bob Biard, Oil and Gas Section, Office of the General Counsel, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. The docket number for this proposal is 20-91,664, and all comments must be submitted by 5 p.m. on February 5, 1988.

This repeal is proposed under the Natural Resources Code, Title 3, Subtitle B, Chapter 85, §85.201 and §85.202, which provides the Railroad Commission with the authority to make and enforce rules, and to do all things necessary, for the conservation of oil and gas and preventing waste of oil and gas in the State of Texas.

§3.22. *Rule 22. Artificial Lift.*

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 December 14, 1987.

TRD-8711319

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Proposed date of adoption:

February 22, 1988

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

★16 TAC §3.42

The Railroad Commission of Texas proposes an amendment to §3.42, concern-

ing discovery allowables. The current section only provides for oil discovery allowables. The amendment provides for discovery allowables for certain gas wells drilled in areas the Railroad Commission has designated as new fields. The proposed discovery allowable is equal to a gas well's deliverability as determined by the most recent deliverability test on file with the Railroad Commission, and is available for a period of 24 months from the date of first sale from such new field or until the sixth well is completed in the new field, whichever occurs first. Gas produced under a discovery allowable is given a priority equivalent to category three under 16 TAC §3.34(f). The proposal also allows the Railroad Commission to set an alternative method of determining the allowable(s) in order to prevent waste or to protect correlative rights.

Rita E. Percival, systems analyst, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in

effect is an estimated additional cost of \$13,000 in fiscal year 1988; and \$1,000 each fiscal year from 1989-1992. An increase in revenues from the gross production tax on natural gas may be expected on the production from any gas wells drilled and completed in direct response to this amendment that might not have been brought into production otherwise. While the number of these incremental wells can not be known, each such well would bring in approximately \$8,437 in severance taxes from fiscal year 1988, and \$16,875 as an annual average for fiscal years 1989-1992. There are no fiscal implications for local government or small businesses.

Bob Biard, legal examiner, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased exploration activity and increased gas reserves in the State of Texas. There may be an economic cost to producers of gas assigned to a priority category equal to or lower than the priority category assigned to discovery allowable gas.

Public comment may be submitted in writing to Bob Biard, Oil and Gas Section, Office of the General Counsel, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. The docket number is 20-91,699 and the deadline for filing comments is 5 p.m. on February 19, 1988.

This amendment is proposed under the Natural Resources Code, Title 3, Subtitle B, Chapter 86, §86.401, which provides the Railroad Commission with the authority to adopt rules it finds necessary to effectuate the provisions and purposes of Chapter 86; and §86.081, which provides the Railroad Commission with the authority to prorate and regulate the production of natural gas in the State of Texas for the purposes of preventing waste and protecting correlative rights.

§3.42. [Oil] Discovery Allowable.

(a) Oil well discovery allowable.

(1) The discovery allowable rate for oil wells proven to be completed in a new and separate reservoir shall be determined from the following discovery allowable schedule:

Scale of Allowables

Interval of Depth (ft.)	Daily Well Allowable
0 - <u>999</u> [1,000]	20 barrels
1,000 - <u>1,999</u> [2,000]	40 barrels
2,000 - <u>2,999</u> [3,000]	60 barrels
3,000 - <u>3,999</u> [4,000]	80 barrels
4,000 - <u>4,999</u> [5,000]	100 barrels
5,000 - <u>5,999</u> [6,000]	120 barrels
6,000 - <u>6,999</u> [7,000]	140 barrels
7,000 - <u>7,999</u> [8,000]	160 barrels
8,000 - <u>8,999</u> [9,000]	180 barrels
9,000 - <u>9,999</u> [10,000]	200 barrels
10,000 - <u>10,499</u> [10,500]	210 barrels
10,500 - <u>10,999</u> [11,000]	225 barrels
11,000 - <u>11,499</u> [11,500]	255 barrels
11,500 - <u>11,999</u> [12,000]	290 barrels
12,000 - <u>12,499</u> [12,500]	330 barrels

12,500 - 12,999 [13,000]

13,000 - 13,499 [13,500]

13,500 - 13,999 [14,000]

14,000 - 14,500

375 barrels

425 barrels

480 barrels

540 barrels

(Reference Order Number 20-56,204, effective 3-28-66 and Order Number 20-56,342, effective 5-31-66).

[(b) Exemption from market demand limitation.]

(2)[(1)] Each oil well drilled in a new field onshore [or in a new oil producing reservoir onshore within the confines of an established field] may receive, as a maximum daily allowable, its discovery allowable, exempt from market demand limitation, for a period of 24 months from the date of assignment of the oil allowable to such discovery well or until the 11th oil well has been completed therein, whichever occurs first.

(3)[(2)] Each oil well drilled in a new field offshore [or in a new oil producing reservoir offshore within the confines of an established field] may receive, as a maximum daily allowable, its discovery allowable, exempt from market demand limitation, for a period of 18 months from the date of assignment of the oil allowable to such discovery well or until the sixth oil well has been completed therein, whichever occurs first.

(b) Gas well discovery allowable.

(1) The discovery allowable rate for gas wells proven to be completed in a new and separate nonassociated gas producing reservoir shall be determined as follows.

(A) Each gas well drilled in a new field may receive, as a maximum daily allowable, its deliverability, as determined by the most current deliverability test on file with the commission, for a period of 24 months from the date of first sale from such new field, or until the sixth gas well has been completed therein, whichever occurs first. However, such discovery allowable will not be assigned to any well that is or would be subject to an existing gas purchase agreement.

(B) For ratability purposes as stated in Statewide Rule 34(f), gas produced under a discovery allowable shall be given a priority rating equivalent to priority three.

(2) If necessary to prevent waste or to protect correlative rights, the commission may set an alternative method of determining the allowable(s).

(c) (No change.)

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

Issued in Austin, Texas, on December 14, 1987.

TRD-8711318

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Proposed date of adoption:

February 29, 1988

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

Chapter 5. Transportation Division Subchapter W. Registration of Commercial Carriers

★16 TAC §5.503

(Editor's note: The Railroad Commission of Texas proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendment is published in the Emergency Rules section of this issue.)

The Railroad Commission of Texas proposes an amendment to §5.503, concerning liability insurance for commercial carriers. The commission proposes to prescribe two levels of minimum liability insurance dependent on the weight and size of the vehicle used. The amendment allows operators of commercial motor vehicles who operate vehicles with a gross vehicular weight of 48,000 pounds or less to use the minimum insurance limits prescribed by the Safety Responsibility Law, Texas Civil Statutes, Article 6701h, §1(10). Operators of commercial motor vehicles with a gross vehicular weight of more than 48,000 pounds will still be required to have insurance limits of five hundred thousand combined single limit.

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

Ronald Stutes, hearings examiner, 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 lower insurance costs for businesses that operate smaller commercial vehicles. 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 within 30 days to Ronald D. Stutes, Office of General Counsel, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711.

The amendment is adopted under Texas Civil Statutes, Article 6701d, §139(c), which authorizes the commission to set the minimum level of liability insurance required of motor carriers, including private carriers.

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 December 14, 1987.

TRD-8711366

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:

January 22, 1988

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

★16 TAC §5.507

(Editor's note: The Railroad Commission of Texas proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is published in the Emergency Rules section of this issue.)

The Railroad Commission of Texas proposes new §5.507, concerning temporary registration of international commercial carriers. The commission proposes to institute a special system for the registration of commercial motor vehicles entering the United States which operate under a temporary insurance policy. As these vehicles operate in the state on an intermittent and unpredictable basis, the requirement that each vehicle have a cab card and an identification decal, as required by §5.502, would pose an unacceptable burden on the carriers, and would have made compliance unlikely.

Nim K. Graves, assistant director, has determined that for each year of the first five years the section as proposed will be in effect there will be fiscal implications as a result of enforcing and administering the section. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of \$163,000 in 1988, and \$121,000 each year from 1989-1992. There

will be no fiscal implications for local governments or small businesses.

Ronald Stutes, hearings examiner, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increased level of compliance with the registration requirement, and a decreased burden on international commercial motor vehicles operating for short periods of time in Texas. The anticipated economic cost each year to persons required to comply with the sections as proposed is \$2.00 per commercial motor vehicle per trip in registration and filing fees.

The new section allows commercial motor vehicles registered in another county which enter Texas while covered with an insurance policy effective for seven days or less to register the vehicle for the duration of that policy. The insurance agent which covers a carrier's operations, and which issues the temporary policies covering a particular vehicle, will be responsible for purchasing registration stamps and affixing the stamp to the temporary policy which must be carried in the vehicle under current Interstate Commerce Commission rules. The insurance agent will also be responsible for returning to the commission all required information about the vehicles covered by the stamps issued.

Public comment may be submitted within 30 days to Ronald D. Stutes, Hearings Examiner, P.O. Drawer 12967, Austin, Texas 78711-2967.

The new section is proposed under Texas Civil Statutes, Article 911b, §4(a)(13), and Article 6701d, §139(c), which authorize the commission to register commercial motor vehicles and to require motor carriers to file proof of insurance with the commission.

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 December 14, 1987.

TRD-8711369 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:
January 22, 1988
For further information, please call
(512) 463-7149.



TITLE 22. EXAMINING BOARDS

Part II. State Board of Barber Examiners

Chapter 51. Practice and Procedure

Examinations and Licensing

★22 TAC §51.86

(Editor's note: The State Board of Barber Examiners proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is published in the Emergency Rules section of this issue.)

The State Board of Barber Examiners proposes new §51.86, concerning processing time limits for licenses and permits and an appeals process in compliance with House Bill 5, 70th Legislature, 1987. The new section sets maximum, minimum, and median times for processing licenses and permits by our office.

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

Ms. McCrorey 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 barbers will be aware of the periods for licenses and permits to be processed by the agency and of the existence of a remedy for any failure of the agency to comply with those periods. 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 Jo King McCrorey, Executive Director, 1300 East Anderson Lane, C-275, Austin, Texas 78752, (512) 835-2040.

The new section is proposed under Texas Civil Statutes, Article 8407a, §28(a), which provide the State Board of Barber Examiners with the authority to adopt rules and regulations for the transaction of business.

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 December 14, 1987.

TRD-8711309 Jo King McCrorey
Executive Director
State Board of Barber
Examiners

Proposed date of adoption:
February 2, 1988
For further information, please call
(512) 835-2040.



Part V. State Board of Dental Examiners Chapter 109. Conduct Anesthesia and Anesthetic Agents

★22 TAC §109.171

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Dental Examiners, 411 West 13th Street, Suite 503, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas State Board of Dental Examiners proposes the repeal of §§109.171-109.183, concerning anesthesia and anesthetic agents. The standards of care, the level of training, and the levels of monitoring have changed. The requirements in general for the administration of anesthesia have evolved over the last several years. Therefore, the board proposes the repeal of its current anesthesia rules and new anesthesia rules.

William S. Nail, executive director, has determined that for the first five-year period the proposed repeals 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 repeals.

Mr. Nail also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the upgrading of the standards for the administration of anesthesia, thereby providing better protection for the public. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to William S. Nail, Executive Director, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754.

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.171. Definitions.

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

Issued in Austin, Texas, on December 14, 1987.

TRD-8711338 William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:
January 22, 1988
For further information, please call
(512) 834-6021.

★22 TAC §109.171

The Texas State Board of Dental Examiners proposes new §§109.171-109.177, concerning anesthesia and anesthetic rules. The standards of care, the levels of training, and the levels of monitoring have changed. The requirements in general for the administration of anesthesia have evolved over the last several years and it is felt that a total revision of the anesthesia rules is needed. Also, this revision will closely parallel the standards set by the American Dental Association and will bring Texas up to national standards in the administration of anesthesia.

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

Mr. Nail also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the upgrading of the standards for the administration of anesthesia, thereby providing better protection for the public. The possible economic cost to individuals who are required to comply with the section as proposed will be possibly the upgrading of monitoring equipment, which cannot be determined.

Comments on the proposal may be submitted to William S. Nail, Executive Director, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754.

The new sections are proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.171. *Effective Date.* The effective date of these sections shall be March 1, 1988.

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 December 14, 1987.

TRD-8711339 William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:
January 22, 1988
For further information, please call
(512) 834-6021.

★22 TAC §109.172

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Dental Examiners, P.O. Box 13165, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.172. *Professional Requirements.*

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 December 14, 1987.

TRD-8711332 William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:
January 22, 1988
For further information, please call
(512) 834-6021.

★22 TAC §109.172

The new section is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Analgesia—The diminution or production of increased tolerance to pain in the conscious patient.

Direct supervision—The dentist responsible for the sedation/anesthesia procedure shall be physically present in the office and shall be continuously aware of the patient's physical status and well being.

General anesthesia—A controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to verbal command, produced by a pharmacologic or nonpharmacologic method, or a combination thereof.

Local anesthesia—The elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

May or could—Indicates freedom or liberty to follow a suggested alternative.

Must or shall—Indicates an imperative need and/or duty; an essential or indispensable item; mandatory.

Nitrous oxide/oxygen inhalation conscious sedation—The administration by inhalation of a combination of nitrous oxide and oxygen producing an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and/or verbal command.

Parenteral conscious sedation—A minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, produced by a pharmacologic or nonpharmacologic method, or a combination thereof.

Personal supervision—The dentist responsible for the sedation/anesthesia procedure shall be physically present in the room with the patient at all times during the induction and maintenance of the procedure or in the event of a post procedure emergency.

Should—Indicates the recommended manner to obtain the standard; highly desirable.

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 December 14, 1987.

TRD-8711340 William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:
January 22, 1988
For further information, please call
(512) 834-6021.

★22 TAC §109.173

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Dental Examiners, P.O. Box 13165, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.173. Emergency Equipment.

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 December 14, 1987.

TRD-8711333

William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:

January 22, 1988

For further information, please call
(512) 834-6021.



The new section is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.173. Minimum Standard of Care. Each dentist licensed by the Texas State Board of Dental Examiners and practicing in Texas shall utilize the following standard of care:

(1) shall maintain a current history and limited physical evaluation on all dental patients. This shall include, but shall not necessarily be limited to, physiologic vital signs, known allergies to drugs and anesthetics, serious illnesses, previous hospitalizations and surgery, and physiologic systems review;

(2) shall maintain emergency equipment appropriate for patient resuscitation. Such equipment shall include a positive pressure breathing apparatus, including oxygen. All emergency equipment shall be present in the dental office and shall be utilized by the licensed dentist or under his/her personal supervision;

(3) shall provide training of emergency procedures to his/her personnel;

(4) shall maintain current certification in basic cardiopulmonary resuscitation sponsored by either the American Heart Association or the American Red Cross. Proof of current certification shall be the responsibility of the dentist;

(5) should maintain an informed consent for all procedures where a reasonable probability of complications from the procedure exists.

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 December 14, 1987.

TRD-8711341

William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:

January 22, 1988

For further information, please call
(512) 834-6021.

★ 22 TAC §109.174

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Dental Examiners, P.O. Box 13165, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.174. Current History and Evaluation.

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 December 14, 1987.

TRD-8711334

William S. Nail
Executive Director
Texas State Board of
Dental Examiners

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January 23, 1988

For further information, please call
(512) 834-6021.



The new section is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the prac-

tice of dentistry to protect the public health and safety.

§109.174. Sedation/Anesthesia Permit.

(a) The Texas State Board of Dental Examiners shall appoint advisory consultants for advice and recommendations to the board on permit requirements, applicant, and facility approval.

(b) From the effective date of these sections, each dentist licensed by the Texas State Board of Dental Examiners and practicing in Texas who desires to utilize nitrous oxide/oxygen inhalation conscious sedation, parenteral conscious sedation, and/or general anesthesia, must obtain a permit of authorization from the Texas State Board of Dental Examiners for the requested procedure.

(c) Any dentist approved by the Texas State Board of Dental Examiners under previous rules prior to the effective date of this section for the utilization of nitrous oxide/oxygen inhalation conscious sedation, parenteral conscious sedation, or general anesthesia may qualify for a new permit.

(d) Each holder of an existing permit shall be required to complete and submit a new application for the procedure(s) desired within one year from the effective date of these sections to the Texas State Board of Dental Examiners. If the new permit application is not received within this designated period, the prior permit may be cancelled. Each new application shall be reviewed to determine if the permit holder meets the standard of care requirements for the permit requested. If the requirements are met, a new permit shall be issued. If the requirements are not met, the permit applicant shall be notified and provided an appropriate period, at the discretion of the board, to correct the deficiency.

(e) For new applicants who are otherwise properly qualified, a temporary provisional permit may be issued for one year by the board, based solely upon the credentials contained in the application, pending complete processing of the permit when, in the opinion of the board, other areas for approval must be evaluated (on-site office evaluation).

(f) Prior to or after the issuance of any permit, the Texas State Board of Dental Examiners may, at its discretion, require an off-site office evaluation to determine if all standards of these sections are being met.

(g) Once a permit is issued, the Texas State Board of Dental Examiners shall automatically renew the permit annually unless the holder of said permit is informed by the board that an evaluation of the permit is required. Prior to an evaluation of an existing permit, the board shall consider factors to include patient complaints, morbidity, mortality, and advisory consultant recommendations.

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 December 14, 1987.

TRD-8711342

William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:

January 22, 1988

For further information, please call
(512) 834-6021.

★22 TAC §109.175

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Dental Examiners, P.O. Box 13165, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.175. *Application for Permit.*

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 December 14, 1987.

TRD-8711335

William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:

January 22, 1988

For further information, please call
(512) 834-6021.

The new section is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.175. *Permit Requirements.*

(a) Nitrous oxide/oxygen inhalation conscious sedation. To induce and maintain this type of conscious sedation on dental office patients in the State of Texas, the following requirements must be met.

(1) Professional requirements.

(A) Each dentist wishing to utilize this technique must produce satisfactory evidence of completion of a didactic and clinical course of instruction in this technique. Such courses of instruction shall:

(i) be directed by qualified instructors with advanced education in comprehensive pain control and with broad clinical experience in this technique;

(ii) include a minimum of four hours of didactic work in pharmacodynamics of nitrous oxide/oxygen inhalation conscious sedation;

(iii) include a minimum of six hours of clinical experience under personal supervision.

(B) Each dentist must produce satisfactory evidence of completion of a continuing education course in the prevention and management of emergencies in the dental office. Such eight-hour course must be approved by the Texas State Board of Dental Examiners.

(C) Each dentist must have successfully completed qualifications governing the use of parenteral conscious sedation as noted in subsection (b) of this section or general anesthesia as noted in subsection (c) of this section.

(2) Standard of care requirements.

(A) Each dentist must maintain the minimum standard of care as noted in §109.173 of this title (relating to Minimum Standard of Care).

(B) Each dentist shall induce, maintain, and provide continuous personal supervision of the inhalation conscious sedation procedure.

(b) Parenteral conscious sedation (IV, IM, SC, SM, oral, rectal). To induce and maintain this type of conscious sedation on dental office patients in the State of Texas, the following requirements must be met.

(1) Parenteral conscious sedation shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas only when he/she has successfully completed a course of study in the technique of parenteral conscious sedation being utilized and approved by the Texas State Board of Dental Examiners, a physician licensed by the Texas State Board of Medical Examiners, or a certified registered nurse anesthetist licensed in Texas (see paragraph (3)(G) of this subsection).

(2) Professional requirements are as follows:

(A) has satisfactorily completed an intensive course that meets the *Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry*, published by the American Dental Association Council on Dental Education for the parenteral conscious sedation technique requested;

(B) has satisfactorily completed an approved graduate program by the Commission on Dental Accreditation of the American Dental Association where training to competency in parenteral conscious sedation is a minimum standard required in

the training guidelines (oral and maxillofacial surgery), pediatric dentistry, periodontics, and some general practice residencies); or

(C) has satisfactorily completed qualifications governing the use of general anesthesia.

(3) Standard of care requirements. Each dentist shall utilize the following standard of care in addition to the minimum standards noted in §109.173 of this title (relating to Minimum Standard of Care):

(A) maintain an informed conscious sedation consent by each dental patient on which this technique is performed;

(B) maintain an adequate written sedation record which shall include physiologic vital sign monitoring during the course of the procedure;

(C) maintain continuous direct supervision of the sedation procedure and patient vital sign monitoring during the course of the procedure;

(D) maintain original certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross;

(E) for each dentist utilizing parenteral conscious sedation via an intravenous (IV) route of administration, maintenance of personal supervision of the patient during the induction, maintenance, and vital sign monitoring utilizing visual and mechanical methods which shall include, but shall not necessarily be limited to, pulse rate, patient color/texture, blood pressure, respiration, blood and tissue oxygenation, and heart rhythm;

(F) maintain personally supervised auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of parenteral conscious sedation;

(G) not allow a parenteral conscious sedation procedure to be performed in his/her office by a certified registered nurse anesthetist (CRNA), unless the dentist holds a permit for the procedure being performed issued by the Texas State Board of Dental Examiners.

(c) General anesthesia. To induce and maintain general anesthesia on dental office patients in the State of Texas, the following requirements must be met.

(1) General anesthesia shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician licensed by the Texas State Board of Medical Examiners (see paragraph (3)(G) of this subsection), or a certified registered nurse anesthetist licensed in Texas (see paragraph (3)(G) of this subsection).

(2) Professional requirements are as follows:

(A) has completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program as described in Part II of

the *Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry* of the American Dental Association Council on Dental Education;

(B) has completed an approved graduate program by the Commission on Dental Accreditation of the American Dental Association where training to competency in general anesthesia is a minimum standard in the training guidelines and maintains an equivalency to one year of anesthesia training (oral and maxillofacial surgery); or

(C) has completed the requirements for admission to and has passed the fellowship exam in the American Dental Society of Anesthesiology.

(3) Standard of care requirement. Each dentist shall utilize the following standard of care in addition to the minimum standards noted in §109.173 of this title (relating to Minimum Standard of Care):

(A) maintain an informed general anesthesia consent by each dental patient on which this technique is performed;

(B) maintain an adequate written anesthesia record which shall include, but shall not necessarily be limited to, physiologic vital signs and all medications administered during the course of the procedure;

(C) maintain personal supervision of the patient during the induction, maintenance, and vital sign monitoring utilizing visual and mechanical methods which shall include, but shall not necessarily be limited to, pulse rate, patient color/texture, blood pressure, respiration, blood and tissue oxygenation, and heart rhythm;

(D) maintain original certification in advanced cardiac life support from a course sponsored by the American Heart Association. The dentist shall require his assistant staff to maintain original certification in basic life support as obtained by courses offered by the American Heart Association or the American Red Cross;

(E) maintain the necessary emergency equipment and medications to perform advanced cardiac life support under the guidelines of the American Heart Association (airway equipment, required intravenous equipment and medication, defibrillator, electrocardioscope, etc.);

(F) maintain a minimum of two personally supervised auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of general anesthesia;

(G) not allow a general anesthesia procedure to be performed on a dental patient in his/her office by a physician who has not completed anesthesia training at least equal to that required under this section;

(H) not allow a general anesthesia procedure to be performed on a dental patient in his/her office by a certified registered nurse anesthetist (CRNA), unless the dentist maintains a permit for general anesthesia issued by the Texas State Board of Dental Examiners.

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 December 14, 1987.

TRD-8711343

William S. Nail
Executive Director
Texas State Board of
Dental Examiners

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January 22, 1988

For further information, please call
(512) 834-6021.

★ 22 TAC §109.176

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Dental Examiners, P.O. Box 13165, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.176. Office Team.

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 December 14, 1987.

TRD-8711336

William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:

January 22, 1988

For further information, please call
(512) 834-6021.

The new section is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.176. Authority to Demonstrate Anesthesia. Any course, clinic, lecture, or demonstration involving the use of any seda-

tive/anesthetic agent or technique except local or topical anesthesia must have prior approval by the Texas State Board of Dental Examiners unless such course, clinic, lecture, or demonstration is given and supervised within the confines of an established and recognized school of dentistry or medicine.

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

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William S. Nail
Executive Director
Texas State Board of
Dental Examiners

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For further information, please call
(512) 834-6021.

★ 22 TAC §109.177

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Dental Examiners, 411 West 13th Street, #503, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.177. CPR Course Requirement.

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 December 14, 1987.

TRD-8711337

William S. Nail
Executive Director
Texas State Board of
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January 22, 1988

For further information, please call
(512) 834-6021.

The new section is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not

inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.177. Report of Injury (Morbidity) or Death (Mortality) in the Dental Office Or Hospital.

(a) All licensees engaged in the practice of dentistry in the State of Texas must submit a written report within a period of 30 days to the Texas State Board of Dental Examiners after the occurrence of any incident, injury (morbidity), or death (mortality), resulting in temporary or permanent physical or mental disability or injury to any patient for whom said dentist has rendered any dental or medical service. Routine hospitalization to guard against postoperative complications for patient comfort need not be reported where complications do not thereafter result in injury (morbidity) or death (mortality) as hereinafter set forth. Additional patient records may be requested at the discretion of the board.

(b) In the evaluation of sedation/anesthesia morbidity or mortality, the Texas State Board of Dental Examiners shall consider the standard of care necessary to be that applicable to the patient's state of consciousness during the procedure.

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 December 14, 1987.

TRD-8711345 William S. Nail
Executive Director
Texas State Board of
Dental Examiners

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January 22, 1988
For further information, please call
(512) 834-6021.

★22 TAC §109.178

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Dental Examiners, 411 West 13th Street, #503, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.178. Report of Injury (Morbidity) or Death (Mortality) in the Office or Hospital.

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 December 14, 1987.

TRD-8711228 William S. Nail
Executive Director
Texas State Board of
Dental Examiners

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(512) 834-6021.

★22 TAC §109.179

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Dental Examiners, 411 West 13th Street, #503, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.179. Special Considerations.

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 December 14, 1987.

TRD-8711327 William S. Nail
Executive Director
Texas State Board of
Dental Examiners

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January 22, 1988
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(512) 834-6021.

★22 TAC §109.180

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Dental Examiners, 411 West 13th Street, #503, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners

with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.180. Advisory Consultants.

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

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Executive Director
Texas State Board of
Dental Examiners

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For further information, please call
(512) 835-6021.

★22 TAC §109.181

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Dental Examiners, 411 West 13th Street, #503, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.181. Effective Date of Rules.

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 December 14, 1987.

TRD-8711329 William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:
January 22, 1988
For further information, please call
(512) 834-6021.

★22 TAC §109.182

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

Examiners, 411 West 13th Street, #503, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.182. Authority to Demonstrate Anesthesia.

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 December 14, 1987.

TRD-8711330 William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:
January 22, 1988
For further information, please call
(512) 834-6021.

★ 22 TAC §109.183

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Dental Examiners, 411 West 13th Street, #503, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.183. Guidelines for N₂O/O₂ Conscious Sedation.

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 December 14, 1987.

TRD-8711331 William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption:
January 22, 1988
For further information, please call
(512) 834-6021.

Part IX. State Board of Medical Examiners

Chapter 195. Administrative Sanction Procedure

★ 22 TAC §§195.1-195.4

The State Board of Medical Examiners proposes amendments to §§195.1-195.4, concerning administrative sanction procedure. The amendments reflect new statutory changes. Additionally, some portions of the sections are rephrased, with the intent of being more clear to a reader. Of significance are the notification of time frames and reiteration of the public action provision when a physician's practice is modified, limited, or restricted.

Florence Allen, business manager, and Jean Davis, Texas Register liaison, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Davis also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be continuation of freedom of information between the public and the board office in its records of actions if a physician's license is modified, limited, or restricted. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held by the board, probably at its January meeting. Please contact the board office for more information on the exact date and time.

The amendments are proposed under Texas Civil Statutes, Article 4495b, which provide the State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§195.1. Purpose. The purpose of this chapter [these sections] is to encourage the expeditious resolution or correction of medical practice activities which constitute [resulting in] a violation of the Act [statutes] or the rules of the board [regulating a licensee of the board where the director of the Field Operations Division and the secretary or chief executive officer of the board concur that the alleged violation is either minor in nature or subject to proper resolution by voluntary restriction or limitation of the authority to practice medicine by the licensee]. The administrative sanction pro-

cedure shall be available to resolve those cases in which the secretary-treasurer or executive director of the board determines that the alleged violation is either minor in nature or subject to proper resolution by voluntary restriction or limitation of the licensee's authority to practice medicine. Through this chapter, the board will [It is the further purpose of these sections to] make public actions [, when possible, the action] taken to modify, limit, or restrict a [the] physician's practice [pattern].

§195.2. Approval for Administrative Sanction. Upon completion of an investigation [by the Field Operations Division,] the director of the Field Operations Division shall [evaluate the final investigation reports and if he or she determines that the alleged violations may be properly handled by the administrative sanction procedure, he or she shall] present a summary of the investigation reports and his or her recommendations [recommendation] to the secretary-treasurer [secretary] or [chief] executive director [officer of the board]. The secretary-treasurer [secretary] or [chief] executive director [officer of the board] shall determine if the violations are minor in nature or subject to proper resolution by voluntary restriction or limitation of the licensee's authority to practice medicine [by the licensee], that the public health and welfare will not be adversely affected in any way by utilization of the administrative sanction procedure, that the public interest will be served by use [institution] of the administrative sanction procedure in lieu of a formal disciplinary procedure [as provided by law or rule], and that the matter may be handled more expeditiously [handled] by the utilization of the administrative sanction procedure. The secretary-treasurer [secretary] or [chief] executive director [officer of the board] shall approve the matter for administrative sanction and shall notify the licensee and other persons as provided [set out] in this chapter.

§195.3. Procedure. If the secretary-treasurer [secretary] or [chief] executive director [officer] of the board approves use of the administrative sanction hearing procedure for the resolution of alleged violations of the Act [Texas Civil Statutes, Article 4495b,] or the rules of the board, the following procedure shall [is to] be followed.

(1) The secretary-treasurer [secretary] or [chief] executive director [officer] or his or her designee will provide [notify] the licensee not less than 10 or more than 40 days notice in writing of the time, date, and place of the administrative sanction hearing. [Such notice shall provide sufficient time for the licensee to adequately prepare and arrange for appearance at the site of the hearing but shall not be less than 10 nor more than 40 days following receipt of the notice.] Such [letter of] notification shall inform the licensee of the nature of the alleged violation, [shall inform the licensee] that he or she may be represented by counsel

[but need not be necessarily so represented] that the licensee may offer the testimony of such witnesses as he or she [the licensee] may desire, that the hearing will be conducted before a hearings officer and one or more representatives of the board or members of a district review committee and that the licensee may choose [exercise his or her option] to have the matter presented by formal complaint [as provided by law or rule]. A copy of the board rules relating to [the] administrative sanction hearing procedure shall be enclosed with the notice of the hearing. Notice of the hearing, with enclosures, shall be sent by certified mail, return receipt requested, to the current address of the licensee on file with the State Board of Medical Examiners. The period of notice provided by this section shall be computed beginning on the day following delivery to the licensee.

(2) Notice of the hearing, with enclosures, shall be sent by certified mail, return receipt requested, to the current address of the complainant on file with the State Board of Medical Examiners. The complainant shall be given the opportunity to appear and testify, or the complainant may submit a written statement for consideration at the hearing. [At the election of the complainant, a written statement may be submitted for consideration at the hearing.]

(3) The hearing procedure shall be informal and need not follow the procedure established in Chapter 187 of this title [relating to Procedure] for contested cases. [The hearing procedure shall be informal in nature and need not follow the procedure established for other disciplinary hearings pursuant to a formal complaint, but] The licensee, his or her attorney, and representatives of the board may [shall have the opportunity to] question witnesses, make relevant statements [as are relevant to the hearing], present affidavits or statements of persons not in attendance, and present other [such documentary] evidence as deemed appropriate by the hearings officer.

(4) The administrative sanction hearing will be conducted by a hearings officer who shall explain the provisions of this chapter relating to the conduct of the hearing to the licensee and his or her counsel [the provisions of these sections relating to the conduct of the hearing, shall swear each witness, question each witness, and afford all parties to the hearing the opportunity to make such statements as are material and relevant]. The hearings officer shall require that each witness be sworn, shall question each witness, and shall afford all parties to the hearing the opportunity to make such statements as are material and relevant. The hearings officer may exclude irrelevant, immaterial, or unduly repetitious evidence. The secretary-treasurer [secretary] or [chief] executive director [officer] may designate one or more members of the board or members of a district review committee to represent the whole board at [to serve as board representatives for] the hearing.

(5) (No change.)

(6) The hearings officer may review the board's investigative file and [of the Field Operations Division but] may prohibit review of such file by the licensee, his or her attorney, the complainant, and his or her representative, if such review might [would] jeopardize confidential information or [jeopardize] an ongoing investigation.

(7) Minutes of the hearing shall be taken by an employee of the board or [, at the direction of] the hearings officer [,] may direct that a recording of the testimony [may] be made in lieu of minutes. The minutes or recording, or a transcription thereof, shall be for the exclusive use of the board and shall not be made available to the licensee, his or her attorney, or any other person, unless such minutes, recording, or transcription will [is to] be used in a subsequent disciplinary proceeding.

(8) The hearings officer shall exclude from the hearing room all persons except witnesses during their testimony, the licensee, his or her attorney, the complainant and his or her representative, board members, district review committee members, and board employees.

(9) After presentation of all evidence and argument [At the conclusion of the hearing] or as soon thereafter as is practicable, the hearings officer and the board representatives [, if any,] shall make [findings of fact and conclusions of law which shall be recorded and shall make] recommendations to the licensee for resolution or correction of any violations of the Act [the matters found in violation of the Medical Practice Act, Texas Civil Statutes, Article 4495b,] or board rules. Such recommendations may include limitation or cancellation of the licensee's authority to practice medicine; limitation or cancellation of the licensee's authority to possess, prescribe, administer, or dispense drugs or medications; limitation or cancellation of hospital privileges; change or limitation of practice setting or practice organization; submission by [requirement that] the licensee [submit] to care, counseling, or treatment from [of] physicians designated by the secretary-treasurer [secretary] or [chief] executive director [officer] of the board as a condition for continuation [initial, continued,] or renewal of license or other authorization to practice medicine; participation [requirement that the person participate] in a program of education or counseling specified [prescribed] by the secretary-treasurer [secretary] or [chief] executive director [officer] or [recommended] by the board representative [hearings officer]; and required [requirement that the person] practice under the direction of a physician designated by the secretary-treasurer [secretary] or [chief] executive director [officer] of the board for a specified period of time. The board representative and hearings officer may also conclude that a violation of the Act or the board's rules has not been established, and may recommend

that no action against the licensee is warranted.

(10) [Following the presentation of recommendations by the hearings officer and] With the advice of counsel if the licensee is so represented at the hearing, the licensee shall either reject or voluntarily accept the recommendations of the board representative and the hearings officer. If the licensee accepts such recommendations, the licensee shall execute as soon thereafter as is practicable such [letters,] agreements, affidavits, or other documents as are necessary to implement his or her [effect the accomplishment of the] voluntary acceptance [of the recommendations]. If the licensee rejects the proposed agreement [recommendations of the hearings officer], the matter shall be automatically referred to the secretary-treasurer [secretary] or [chief] executive director [officer] for appropriate action.

(11) Following acceptance by the licensee of the recommendations [presented by the hearings officer] and [the] execution by the licensee of the necessary documents as provided in paragraph (10) of this section, [a report of the hearing, the findings made by the hearings officer and representatives of the board, and] the executed documents shall be [subject to review by] submitted for approval to the secretary-treasurer [secretary] or [chief] executive director [officer] of the board [who may approve or disapprove the recommendations and actions taken pursuant to the administrative sanction hearing].

(12) If the secretary-treasurer [secretary] or [chief] executive director [officer] approves the actions taken as a result of the hearing, then said [the] approval shall be noted in the investigation file and the licensee and the complainant shall be so notified [The results and] Any [letter,] agreement [,] or affidavit which reflects a disciplinary action or a restriction on the physician's practice shall be an open record.

§195.4. Approval by Secretary-Treasurer [Secretary] or [Chief] Executive Director [Officer] and Reporting to Board. After receiving [Following recommendation by the hearings officer and upon presentation of a summary of the findings of the hearings officer and] documents evidencing a licensee's voluntary acceptance of the recommendations for resolution of the complaint, the secretary-treasurer [secretary] or [chief] executive director [officer] shall take the following actions.

(1) If the secretary-treasurer [secretary] or [chief] executive director [officer] approves the proposed resolution of the complaint voluntarily agreed to [recommendations of the hearings officer and the limitations or other restrictions, if any, voluntarily agreed upon] by the licensee, the secretary-treasurer [secretary] or [chief] executive director [officer] shall report [note] his or her approval [of such action and make a report] at the next meeting of the board [for its acceptance or rejection of the admin-

istrative sanction report or action concerning the licensee).

(2) The report of the secretary-treasurer [secretary] or [chief] executive director [officer] to the board shall include the physician's name and license number [of the physician], the city or county of the physician's practice, [and] a summary of the action recommended [taken], and the licensee's voluntary acceptance of said limitations [limitation] or restrictions upon his or her [restriction of] license, if any.

(3) The board shall approve or disapprove [Upon presentation of] the administrative sanction report [to the board, the board shall approve or disapprove the report]. If the board approves the administrative sanction [action,] recommendation for a particular licensee, said [the] approval shall be noted in the minutes of the board and the investigation file [, and the licensee and the complainant shall be so notified]. [The results, as well as the letters,] The agreements [, and] or affidavits reflecting a disciplinary action or a restriction on the physician's practice shall be open records.

(4) If the board does not [fails to] approve the administrative sanction recommendation [action], such disapproval [failure to approve] shall be [likewise] noted, and the licensee shall be so informed [, and the matter shall be referred to the secretary or chief executive officer of the board for filing of formal complaint for disciplinary action before the board or other appropriate action]. The matter shall be referred to the secretary-treasurer or executive director for consideration or other appropriate action. If [In such event, where voluntary limitation of practice] notification of the licensee's voluntary acceptance of a limitation or restriction on his or her practice has already been provided [made] under [the] provisions of the Act [Texas Civil Statutes, Article 4495b,] or in accordance with the rules of the board, [these sections, such] additional notification indicating the board's decision not [failure] to approve the proposed administrative sanction agreement [action by the board] shall be promptly made.

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 December 11, 1987.

TRD-8711307

G. V. Brindley, Jr.
Executive Director
State Board of
Medical Examiners

Earliest possible date of adoption:
January 22, 1988

For further information, please call
(512) 452-1078.

Part XIX. Polygraph Examiners Board Chapter 395. Code of Operating Procedure for Polygraph Examiners

★ 22 TAC §395.2

The Polygraph Examiners Board proposes an amendment to §395.2, concerning marking questions and answers. The amendment further clarifies the procedure for marking questions and answers.

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

Mr. Perot 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 more close regulation in areas that the board determines to be critical. 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 Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

The amendment is proposed under Texas Civil Statutes, Article 4413(29cc), which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

§395.2. Marking Questions and Answers. All questions asked a subject during a polygraph examination by the examiner and all subject's answers shall be marked on each polygraph chart. Such marking shall be accomplished by making a stimulus mark at the exact point on each polygraph chart where questions commenced, concluded, and the subject's answer was given. Each polygraph examination administered shall have a written question sheet which contains the exact wording of every question asked. Questions on question sheets may be identified by numbers, letters, or any combination thereof. Each question asked on every polygraph chart shall be noted by marking the letter, number, or combination of same in the proximate area of the stimulus marks so that the relationship of the question asked on the chart and the question sheet may be reasonably identified. Question sheets shall be regarded as pertinent papers and subject to filing and retention requirements identified in this Act, Regulation 395.4. [All questions and answers during a polygraph examination shall be marked on the polygraph charts at the appropriate place

on the chart where the question was asked and the answer was given. A question sheet shall be used with numbered questions. The number of the question asked along with the answer shall be noted at the appropriate place on the polygraph chart. The question sheet shall be attached to the polygraph chart and made a part of the subject's file.]

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 December 10, 1987.

TRD-8711261

Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Earliest possible date of adoption:

January 22, 1988

For further information, please call
(512) 465-2058.

Chapter 397. General Rules of Practice and Procedure

★ 22 TAC §397.22

The Polygraph Examiners Board proposes an amendment to §397.22, concerning motions for postponement, continuance, withdrawal, or dismissal of applications and appeals, or other matters before the board; proposals for decision. The amendment further clarifies the section.

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

Mr. Perot 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 more close regulation in areas that the board determines to be critical. 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 Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

The amendment is proposed under Texas Civil Statutes, Article 4413(29cc), which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

§397.22. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Applications and Appeals, or Other Matters before the Board.

(a) (No change.)

(b) Motions for postponement, continuance, withdrawal, or dismissal of appeals, or other matters which have been duly set for hearing, shall be in writing, shall be filed with the secretary, and distributed to all interested parties, under a certificate of service, not less than five days prior to the designated date that the matter is to be heard. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding. The board may, in its discretion, upon a showing of good cause waive a failure to comply with the provisions of this section. If, in the opinion of the board, no such showing has been made and the board has denied such motion, the hearing will take place pursuant to the original notice issued. Failure of any party to attend the hearing shall not preclude the board from reaching a decision. [Failure to comply with the provisions of this section, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and at the discretion of the board, may result in the dismissal of the appeal or other matter in issue, with prejudice to refiling. Once an application has actually proceeded to a hearing, pursuant to the notice issued thereon, no postponement or continuance shall be granted by the board without the consent of all parties involved, unless the board shall have ordered such postponement or continuance.]

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 December 10, 1987.

TRD-8711260 Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Earliest possible date of adoption:
January 22, 1988
For further information, please call
(512) 465-2058.

◆ ◆ ◆

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter L. Reporting Requirements for Liability Insurers under the Insurance Code, Article 1.24A and Article 1.24B

★28 TAC §5.9201

The State Board of Insurance proposes new §5.9201, concerning adoption by reference of quarterly closed claims

report forms and instructions for use by liability insurers. This new section is necessary to effectuate compliance with reporting requirements under the Insurance Code, Article 1.24B. The new section adopts by reference the report form to be completed by liability insurers on all closed claims having an indemnity payment of more than \$10,000 for bodily injury. The board has filed with the Office of the Secretary of State, Texas Register Section, a copy of the forms and instructions proposed for adoption by reference. Other copies are available for inspection in the offices of the Statistical and Rate Development Division of the State Board of Insurance at 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

Gaylon Daniel, chief property/casualty actuary, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The cost of compliance for small businesses would be approximately \$15 per form completed. On the basis of cost per hour of labor, there will be no difference between the cost of compliance for small businesses and the cost of compliance for large businesses affected by the section.

Mr. Daniel also has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be the availability of information to be utilized by the Texas Legislature and others for analysis in the determination of the impact of the Texas civil justice system on the handling and cost of insurance claims. The anticipated economic cost to persons required to comply with the proposed section will be \$15 per completed report form.

Comments on the proposal may be submitted to Gaylon Daniel, Chief Property/Casualty Actuary, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 1.24B, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.24B, authorizes the State Board of Insurance to prescribe the form and content of closed claim reports which insurers shall file with the Board under Article 1.24B, to promulgate necessary rules for carrying out the article, to define terminology, criteria, content, and other matters relating to the reports, and to designate types or lines of liability insurance required to provide information under this article. Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures. Section 5 prescribes the procedure for adoption of rules by any state administrative agency.

§5.9201. Quarterly Closed Claim Report Forms—Liability Insurance under the Insurance Code, Article 1.24B. The State Board of Insurance adopts by reference quarterly closed report forms—liability insurance together with instructions effective February 14, 1988. The forms and instructions, which liability insurers shall use in complying with reporting requirements under the Insurance Code, Article 1.24B, are published by and are available from Hart Graphics, P.O. Box 968, Austin, Texas 78767 and are available from and on file at the Statistical and Rate Development Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

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 December 16, 1987.

TRD-8711371 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption:
January 22, 1988
For further information, please call
(512) 463-6327.

◆ ◆ ◆

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Parks and Wildlife Department

Chapter 55. Law Enforcement Mobile Beach Business Licensing

★31 TAC §55.31

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Parks and Wildlife Department, 4200 Smith School Road, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Parks and Wildlife Department proposes the repeal of §55.31, concerning beach vending permits. This section is proposed to be replaced by new and different sections.

James E. Dickinson, director of finance, has determined that for the first five-year period the proposed repeal 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 repeal.

Mr. Dickison also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be elimination of inappropriate or unneces-

sary rules relating to law enforcement functions of the agency. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Chester Burdett, Director of Law Enforcement, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4979 or 1-(800)-792-1112, extension 4845.

The repeal is proposed under the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) which governs rulemaking, and the Natural Resources Code, Subchapter 61E, which relates to beach business regulations.

§55.31. Authorization.

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 December 15, 1987.

TRD-8711323

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption:

January 22, 1987

For further information, please call
(512) 389-4809.



Procedure for Issuance of Mobile Beach Business Permits

★31 TAC §§55.41-55.44

The Texas Parks and Wildlife Department proposes the repeal of §§55.41-55.44, concerning beach vending permits. These sections are to be replaced by new and different sections.

James E. Dickinson, director of finance, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Dickinson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be elimination of inappropriate or unnecessary rules relating to law enforcement functions of the agency. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Chester Burdett, Director of Law Enforcement, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4979 or 1-(800)-792-1112, extension 4845.

The repeals are proposed under the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a,

which governs the rulemaking, and the Natural Resources Code, Subchapter 61E, which relates to beach business regulations.

§55.41. Request for Application.

§55.42. Application Processing.

§55.43. Permit Issuance.

§55.44. Change or Renewal.

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 December 15, 1987.

TRD-8711325

Boyd M. Johnston
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption:

January 22, 1988

For further information, please call
(512) 389-4809.



Mobile and Stationary Beach Vending Permits

★31 TAC §§55.41-55.47

The Texas Parks and Wildlife Department proposes new §§55.41-55.47, concerning mobile and stationary beach vending permits. These sections will replace existing §§55.31 and 55.41-55.44, which are proposed for repeal. The new sections prescribe certain information to be included in the permit application, permit fees, qualification for permit, permit term, provision for amending and renewing permit, permit conditions, and penalty for violating these section.

James E. Dickinson, director of finance, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Dickinson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that beach vendors will be allowed to provide goods and services consistent with the public welfare. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Gene Van Meter, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4854 or 1-(800)-792-1112, extension 4854.

The new sections are proposed under the Natural Resources Code, Chapter 61, which provides authority to regulate beach vending businesses.

§55.41. Application. These sections apply to the requirement for a mobile and stationary beach vending permit to operate, a business on the public beaches of the State of Texas.

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

Business establishment—Any structure or vehicle where any commodity, including memberships in any private club or other similar organization, is offered to the public for sale or lease, but does not include any structure or vehicle where only services are offered to the public for sale.

Department—The Texas Parks and Wildlife Department or a specifically authorized employee of the department.

Mobile beach vending permit—A license allowing a vendor or permittee to sell or lease a commodity while traversing public beaches that are not within the boundaries of a state park or an incorporated city.

Permittee—A person who is granted a permit to operate a business establishment on a public beach.

Public beach—Any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over the area by prescription, dedication, presumption, or has retained the right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

Stationary beach vending permit—A license allowing a vendor or permittee to sell or lease a commodity from a stationary location on public beaches that is not within the boundaries of a state park or an incorporated city.

Vendor—A person who sells or leases commodities from a licensed business establishment on a public beach.

§55.43. Application for Permit.

(a) An applicant for a mobile beach or stationary beach vending permit shall complete and place on file an application on the form prescribed by the department. The application shall include:

(1) the name and street address of the applicant;

(2) the commodity to be sold or leased; and

(3) the limits of the territory within which the mobile or stationary business establishment will operate.

(b) Each application shall be accompanied by the appropriate fee as follows:

(1) original or renewal mobile beach vending permit—\$25;

(2) original or renewal stationary beach vending permit—\$100;

(3) permit amendment—\$5.00.

(c) If a license is not granted, the department shall return the fee to the appli-

cant. Each business establishment, whether mobile or stationary, must submit a separate application and fee. A permit is only valid for the vehicle described on the permit.

(d) Upon filing of a properly executed application, the director or his designee may issue a permit if:

(1) it is consistent with recreational needs and the public welfare;

(2) it will not create a traffic hazard;

(3) it has been endorsed by the county commissioner's court where the permit is to be used;

(4) the permittee or vendor has not knowingly failed to disclose any material information required, or has not knowingly made any false statement regarding any material fact in connection with the application;

(5) the permittee or vendor has not been convicted of a felony or misdemeanor relating directly to the mobile beach vending business as provided for by Texas Civil Statutes, Article 6252-13c. Criminal conduct which adversely affects public health, safety, and welfare shall be deemed to related to a mobile beach vending permit. This general guideline is pursuant to Texas Civil Statutes, Article 6252-13d;

(6) it is otherwise in compliance with the Natural Resources Code, Chapter 61, Subchapter E.

§55.44. Period of Validity of Permit. A permit shall be valid for a period of one year from the date of issuance. A permit is not transferable or assignable.

§55.45. Amendment of Permit. When a permittee desires to have a permit amended, an application for amendment form provided by the department must be submitted to the department accompanied by the appropriate fee. An application for amendment is subject to the same issuance criteria as the original application for a permit.

§55.46. Renewal of Permit. When a permittee desires to have his permit renewed, he must file a request for permit renewal on a renewal application form provided by the department, accompanied by the appropriate fee, at least 30 days prior to the expiration of the original permit.

§55.47. General Conditions.

(a) A vendor shall not conduct business between the hours of sunset and sunrise.

(b) The vendor shall not leave litter, signs, posts, stakes, vehicles, or any other material on the beach after business hours.

(c) Should the department determine that a beach is too narrow and too crowded to allow a vendor to traverse the beach while conducting business, the department, with the recommendation of the commissioner's court, may authorize stationary locations for such vendors.

(d) The vendor shall not conduct business from stationary locations within 50

yards of another stationary beach vendor or an established business adjacent to the beach.

(e) The vendor or permittee, as a condition of the permit, shall maintain or comply with the criteria or standards set by these sections for issuance of the permit during the term of the permit.

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 December 15, 1987.

TRD-8711324

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption:

January 22, 1988

For further information, please call
(512) 389-4809.

Chapter 63. Administration Mandatory Hunter Education Program

★31 TAC §§63.5-63.9

The Texas Parks and Wildlife Commission proposes new §§63.5-63.9, concerning a mandatory hunter education program. These new sections provide for fees to cover the cost of administering the hunter education training program and to provide public information on future requirements for hunter education as a prerequisite for certain age groups to hunt in Texas.

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

Mr. Dickinson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the fees and hunter education training requirements will be known. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be the student registration fee of \$5.00 and the duplicate certificate fee of \$2.00.

Comments on the proposal may be submitted to Roy Hogan, Director of Administration, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4854 or 1-(800)-792-1112, extension 4854.

The new sections are proposed under the Texas Parks and Wildlife Code, §62.014, which authorizes the commission to implement a mandatory hunter education program and to charge a fee to defray the administrative costs of administering the hunter education program.

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

Archery equipment—A long bow that is capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards.

Firearm—Any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

§63.6. Hunter Education Course and Instructors.

(a) The course shall consist of at least 10 classroom hours of instruction over a minimum two-day period, exclusive of shooting range time, on the following subjects:

(1) the safe handling and use of firearms and archery equipment;

(2) wildlife conservation and management;

(3) hunting laws and regulations of this state; and

(4) hunting safety and ethics, including landowners' rights.

(b) The department may certify instructors who have successfully completed the department's hunter education instructor course and instructors approved to teach the department's Voluntary Hunter Safety Program.

(c) The department may decertify instructors for the following reasons:

(1) violation of provisions of the Parks and Wildlife Code or regulations adopted pursuant to the Code;

(2) falsification of records or document; or

(3) action that is detrimental to the objectives of the program.

(d) The department shall provide hunter education opportunities in each county of the state at least once a year.

(e) The department shall issue a certificate to persons who successfully complete the course. A duplicate certificate may be issued upon submittal of an affidavit prescribed by the department.

§63.7. Hunter Education Requirements.

(a) Persons whose date of birth is on or before September 1, 1971, are exempt from the requirements of the Mandatory Hunter Education Program.

(b) Persons who have previously successfully completed the voluntary hunter safety course in Texas are certified under the Mandatory Hunter Education Program.

(c) A person must be at least 12 years of age to be certified.

(d) The course will be implemented by age groups as shown following.

(1) Effective September 1, 1989, all persons whose date of birth is during the period September 2, 1971, through August

31, 1973, must have successfully completed the course to hunt in Texas.

(2) Effective September 1, 1990, all persons whose date of birth is during the period September 2, 1971, through August 31, 1974, must have successfully completed the course to hunt in Texas.

(3) Effective September 1, 1991, all persons whose date of birth is during the period September 2, 1971, through August 31, 1975, must have successfully completed the course to hunt in Texas.

(4) Effective September 1, 1992, all persons whose date of birth is during the period September 2, 1971, through August 31, 1976, must have successfully completed the course to hunt in Texas.

(5) Effective September 1, 1993, all persons whose date of birth is on or after September 2, 1971, must have successfully completed the course to hunt in Texas.

(e) The course is successfully completed when the student:

(1) attends at least 10 classroom hours over a minimum two-day period, exclusive of shooting range time;

(2) is evaluated by the instructor as acceptable in attitude, knowledge, and skill; and

(3) scores a minimum of 70 points on an examination prescribed by the department.

(f) A person who is required to be certified must possess the certificate or evidence of completion of a comparable course while hunting in Texas.

(g) Any individual may take the course on a voluntary basis.

§63.8. Other Noncertified Persons. Persons who do not meet the minimum age requirements and persons under 17 years of age may hunt without certification if accompanied by a person 17 years of age or older licensed to hunt in Texas in accordance with the Parks and Wildlife Code, §62.014(d).

§63.9. Hunter Education Fees. The following fee amounts are effective March 1, 1988:

(1) student registration fee—\$5.00; and

(2) duplicate certificate fee—\$2.00.

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 December 16, 1987.

TRD-8711370

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption:

January 22, 1988

For further information, please call
(512) 389-4809.

Part X. Texas Water Development Board Chapter 355. Water Assistance Fund Water Research

★31 TAC §§355.51-355.60

The Texas Water Development Board proposes new §§355.51-355.60, concerning water research. These new sections contain the new application requirements and evaluation criteria for water research for the limited amount of funds in the board's research and planning fund under the Texas Water Code, §15.402 and §15.404.

Section 355.51 provides definitions for the terms used in §§355.51-355.60, and §355.52 states the purpose of the sections. Section 355.53 addresses rule applicability. The method for board solicitation of research proposals is outlined in §355.54. The board will publish all solicitations for research proposals in the *Texas Register*. Deadlines for submission will also be established in the published notice. Section 355.54(b) states that unsolicited research proposals may be submitted at any time. Section 355.55 presents the criteria for eligibility, which are designed to ensure that desirable projects are undertaken and appropriate applicants apply.

Section 355.56 identifies the information that must be contained in a research proposal. The form published in the Uniform Grants and Contract Management Act (UGCMA), Texas Civil Statutes, Article 4413(32g), does not have to be used because the Texas Water Code, §15.405, establishes certain statutory requirements for the content of a research proposal. Further, the UGCMA form does not include the information needed by the board, so the UGCMA form does not need to be used. Section 355.56(b)(10) specifies that the applicant is responsible for supplying information which addresses each of the criteria, including those in §355.57.

Section 355.57 outlines the methods and evaluation criteria that will be used to choose which research proposals will be recommended to the board to possibly receive grants from the limited amount of funds available. All applications may be reviewed by a technical advisory committee appointed by the executive administrator. Important considerations such as the degree to which the proposal is responsive to the overall purpose of the research, the urgency of need for the research, and the availability of matching funds and services are addressed in §355.57.

The method of contract fund disbursement and cost accounting is described in §355.58. Any subcontracts that the contractor enters into for professional services must be approved by the executive administrator. Also, no subcontracts can be entered into until the board approves

the application and negotiates a contract that establishes fair and reasonable professional fees. The definitions of direct costs, fringe costs, overhead or indirect costs, travel, and subsistence are included in §355.58, and are designed to provide the applicant and the subcontractors guidance in preparing the proposed budget required in the application. Contract project reporting procedures are described in §355.59.

The results of a water research project are public information and will be made available to the public. Section 355.60 also states that the board will contract with the applicants regarding copyrights and patents.

These new sections ensure fairness in selecting water research proposals for funding and ensure that contracts entered into by the board achieve the most benefit for water resources planning in the state.

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

Ms. Stansberry also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more effective use of limited state funds for water research. Additionally, these sections provide for improved accountability for the use of public funds. There will be no economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Herbert W. Grubb, Director of Planning, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711.

The new sections are proposed under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties, and the Texas Water Code, §15.403, which directs the board to adopt rules governing the research and planning fund.

§355.51. Definitions. The following words and terms, when used in §§355.52-355.60 of this title (relating to Purpose; Applicability; Solicitation Procedures; Criteria for Eligibility; Submission of Proposals; Evaluation and Selection of Proposals; Disbursement of Contracted Funds and Cost Accounting; Contract Project Reporting; and Dissemination of Results), shall have the following meanings, unless the context clearly indicates otherwise.

Applicant—Any person(s) or political subdivision(s) that apply(ies) for financial assistance for a research contract from the research and planning fund.

Fund—The research and planning fund authorized and described in the Texas Water Code, Chapter 15, Subchapter F.



Political subdivision—A city, county, district, or authority created under the Texas Constitution, Article III, §52, or Article XIV, §59; any other political subdivision of the state; any interstate compact commission to which the state is a party; and any non-profit water supply corporation created and operating under Texas Civil Statutes, Article 1434a.

Research—Scientific activities that are undertaken to address practical problems rather than to expand the frontiers of knowledge. Research can include development, which refers to activities undertaken to solve the technical problems involved in bringing a new product or process into production.

§355.52. Purpose. It is the intent of the board to establish a general policy for processing applications to fund water resources research. Because of the limited availability of funds, each applicant will have 90 days from the date of board approval of an application to enter into the contract and, if applicable, to demonstrate to the executive administrator that the applicant has the local matching share committed and available. Funding of water research projects shall be at the discretion of the board from funds in the research and planning fund created in the state treasury and in accordance with §355.1 of this title (relating to Fund Allocation).

§355.53. Applicability.

(a) The board will consider applications and may enter into contracts with any person(s) for water resources research.

(b) The board may provide funding up to 100% of research costs.

§355.54. Solicitation Procedures.

(a) Solicited proposals.

(1) The board may solicit proposals for research into the solution of problems which would significantly enhance the proper planning, management, conservation, and development of the state's water resources.

(2) The board will specify the subjects and topics for which the research proposals are being solicited. The board will publish information on the solicitation in the *Texas Register*, including appropriate schedules for submission of research proposals by applicants. Proposal solicitations for research will include the following:

- (A) a description of project objectives;
- (B) a description of funding considerations;
- (C) an explanation of review criteria and procedures;
- (D) a deadline and address for proposal submission;
- (E) a target date for contract award;
- (F) guidelines for proposal contents; and
- (G) the designation of a contact person for additional information.

(3) Publication of a solicitation does not obligate the board to make an

award if an appropriate or adequate proposal is not received.

(b) Unsolicited proposals. The board will consider unsolicited proposals for research provided the proposals satisfy the eligibility criteria in §355.55 of this title (relating to Criteria for Eligibility). Unsolicited proposals may be submitted at any time but will receive appropriate consideration within time and funding limitations.

§355.55. Criteria for Eligibility.

(a) To be eligible for funding from the research and planning fund, the applicant must demonstrate:

(1) specific application of the proposed research to the water planning, management, conservation, and development of the state's water resources;

(2) a need for funds;

(3) an indication that the proposed research project does not duplicate previously completed or on-going research;

(4) for a corporation organized under the Texas Business Corporation Act, Article 1.01 et seq., proof that it is not delinquent in a tax owed the state under the Tax Code, Chapter 171.

(b) In order to assure equitable distribution of limited funds and to avoid conflicts of interest, the following criteria are established for acceptability of applicants.

(1) Texas-based applicants will be given priority consideration and only in unusual circumstances will this priority be disregarded.

(2) Research projects to be conducted in Texas will be given priority consideration and only in unusual circumstances will this priority be disregarded.

(3) Individual members of the Texas Water Development Board, board staff members, or their immediate families are not eligible to apply for or work on research funded from the research and planning fund.

(4) A member of the technical advisory committee is eligible to submit a research proposal, in which case the member will not participate in the evaluation process for that proposal.

(c) In addition to these criteria, funding of specific research proposals will be contingent upon meeting the standards set forth in §355.57 of this title (relating to Evaluation and Selection of Proposals).

§355.56. Submission of Proposals.

(a) Any person or applicant seeking financial assistance pursuant to the Texas Water Code, §15.404, shall file an application for research funds with the executive administrator. The application shall include a written proposal. Ten copies of the full proposal must be filed. The application need not be in the form prescribed by the Uniform Grants and Contract Management Act, Texas Civil Statutes, Article 4413(32g).

(b) The following information shall be included in a research contract proposal:

(1) proposal classification:

(A) if the proposal is in response to a board solicitation or request, the spe-

cific proposal title and number as listed in the request for proposals; or

(B) if the proposal is submitted on an unsolicited basis and does not address a specific identified project, indication of the general category of research from the categories listed in §355.57(c)(10) of this title (relating to Evaluation and Selection of Proposals);

(2) discussion of how the applicant intends to fulfill the requirements of the proposal, including an identification of the potentials for or plans to incorporate and use proprietary information and any subcontracts planned;

(3) resumes of principals, potential subcontractors, and principal investigators (including names, addresses, and phone numbers), and a summary of pertinent experience of proposing organization;

(4) site(s) of proposed project;

(5) a list of tasks and a time schedule for tasks to be completed by principals and subcontractors;

(6) plans for:

(A) implementing research results; and

(B) identification and involvement of potential users;

(7) the total project cost, the amount(s) and source(s) of the local matching funds and services, and the total amount requested from the research and planning fund;

(8) a detailed object class cost budget, as defined in §355.58 of this title (relating to Disbursement of Contracted Funds and Cost Accounting), and a detailed task budget for all aspects of the project;

(9) all information required by §355.55 of this title (relating to Criteria for Eligibility);

(10) all information necessary to evaluate the application under §355.57 of this title (relating to Evaluation and Selection of Proposals);

(11) list of products (reports, plans, or other products) the board will receive;

(12) suggested progress monitoring procedures;

(13) other information as indicated by specific project description; and

(14) any other pertinent data as deemed necessary by the executive administrator.

§355.57. Evaluation and Selection of Proposals.

(a) Board staff review. Upon receipt, proposals will be referred to the board staff member responsible for the specific problem area for which the proposal has been submitted. The responsible board staff member will review and prepare a written evaluation of each proposal.

(b) Committee review. A technical advisory committee(s) may be appointed by the executive administrator to assist in the review and evaluation of research proposals and to make recommendations to the executive administrator. Technical advisory committee

members will be selected so as to minimize conflicts of interest while maintaining the highest available level of expertise in the proposal area. Technical advisory committee members will be required to indicate potential conflicts of interest so that evaluations can be weighed accordingly.

(c) Proposal rating. In addition to providing specific comments, each evaluator will, where appropriate, rate the proposals in the following areas:

(1) the urgency of need for the research;

(2) degree to which the proposal is responsive to the overall purpose and funding criteria or the specific purpose of an individual solicitation;

(3) qualifications of project staff and directly-related project and staff experience;

(4) reasonableness of proposed budget and time schedule;

(5) availability of matching funds or services, if any;

(6) project organization and management, including project monitoring procedures;

(7) statewide or regional application of research results;

(8) technical, economic, and environmental merit of the proposal;

(9) probability that the research will result in significant water conservation, water quality protection, or flood protection within 15 years;

(10) relevance to at least one of six major research priority areas that include:

(A) water supply;

(B) water quality;

(C) hazardous waste management;

(D) water financing and economics;

(E) structural and nonstructural flood protection;

(F) water resource-related social and legal issues;

(11) method of assessing the economic ramifications of proposed research results;

(12) method of assessing the ramifications as to public safety and welfare; and

(13) other information as may be required for the specific project.

(d) Staff summary. Each responsible board staff member reviewing the proposal will prepare for the executive administrator a summary of all proposals submitted for review, a summary of the evaluations, and an identification of potential conflicts of interests, if any.

(e) Recommendations. On the basis of the preceding information and independent investigation, the executive administrator may recommend those proposals that meet requirements for funding to the board. Upon approval of the board, the executive administrator will be authorized to negotiate and finalize a contract with the applicant.

§355.58. Disbursement of Contracted Funds and Cost Accounting.

(a) Contracts. Two contracting documents will be used. An interagency contract prepared pursuant to Texas Civil Statutes, Article 4413(33), will be used to contract with state agencies and state universities and institutions. For political subdivisions and private contractors, a contract between the contractor and the board will be used. In both instances, contracts entered into shall contain terms and conditions considered appropriate to protect the interests of the state and the contractor. The applicant has 90 days from the date of board approval to execute the contract and, if applicable, to provide written evidence acceptable to the executive administrator that the applicant has available its matching share of funds.

(b) Subcontracts. The applicant may not enter into a subcontract until after the date of board approval of the application. Professional services shall be selected and awarded in accordance with the Professional Services Procurement Act, Texas Civil Statutes, Article 664-4. All subcontracts between the contractor and subcontractors must be approved in writing by the executive administrator before they can be considered in effect and work can begin.

(c) Method of payment. State of Texas contractors will be paid on an actual cost reimbursement basis provided for in the State Purchasing and General Services Commission's rules and regulations and board policies and procedures. Contractor billings must be submitted on a state of Texas purchase voucher and be accompanied by sufficiently detailed invoice information from the contractor and subcontractors to verify the authenticity of billing charges and amounts. All contracts shall provide that 10% of the contract amount be retained for final payment until after receipt and acceptance of all required reports and documentation. All contract payments shall be made in accordance with the Prompt Payment Act, Texas Civil Statutes, Article 601f, unless otherwise noted in the contract.

(d) Records. Contractors and subcontractors shall maintain satisfactory financial accounts, documents, and records, and shall make all records available for examination and audit by the staff of the board and the state. Accounting by contractors and subcontractors shall be in a manner consistent with generally accepted accounting procedures.

(e) Uniform grants and contract management. The contractor will be subject to the Uniform Grants and Contract Management Act, Texas Civil Statutes, Article 4413(32g).

(f) Capital equipment. Capital equipment may be purchased with research grant funds. Capital equipment purchased with research and planning funds shall be board property and must be returned to the board following completion of the research unless disposed of according to Texas Civil Sta-

tutes, Article 601b, §9, dealing with the disposal of state property.

(g) Computer programs. All computer programs and models that are acquired or developed as a part of the research project are to be provided to the board for use by board staff and other state agencies, as appropriate.

(h) Project budgets. Application budgets shall be based upon fair and reasonable rates for all cost items. The board reserves the right to require specific information to explain and justify each cost element, including salary rates for professional staff, fringe benefits, overhead or indirect costs, and profits, if applicable.

(1) Direct costs are defined to include the cost of salaries for professional staff, draftsmen, stenographers, surveymen, clerks, laborers, etc., for time directly chargeable to the planning project; computer services; communication expenses; travel expenses; and expendable supplies.

(2) Fringe costs are defined to include social security contributions, unemployment compensation insurance, retirement benefits, medical and insurance benefits, and sick leave, vacation, and holiday pay applicable thereto.

(3) Overhead or indirect costs are those costs incurred in maintaining a place of business and performing professional services. In all cases, overhead or indirect cost rates are to be reasonable and are subject to negotiation. Overhead or indirect cost rates developed for federal projects may be acceptable.

(4) Travel and subsistence expenses are limited to those amounts authorized for state employees by the General Appropriations Act, Senate Bill 1, 70th Legislature, 1987, Second Called Session, Article V, §13 and §14, or as amended.

(5) Profit may be included in applications in which all or a part of the work is proposed to be done by private sector subcontractors. In all cases, profit rates are to be reasonable and are subject to negotiation.

§355.59. Contract Project Reporting. The executive administrator will monitor the progress of the contract through a contract manager to assure satisfactory performance by the contracting party. Progress reports, including work performed and expenditures related to the project budget, shall be submitted periodically by the contractor. The contractor will be required to submit a draft of a final report for review and evaluation on or before the termination of the contract. Upon satisfactory completion of the final report, the executive administrator shall issue a written authorization for final payment to the contractor.

§355.60. Dissemination of Results.

(a) Reports. Results of all research completed under contract with the board will be submitted by the applicant in the form of a written report, which will then become public information. A minimum of 12 copies

of all final reports shall be delivered to the board. The applicant and subcontractors shall be available for brief presentations of results as required by the board. Specific provisions will be included in each contract to establish eventual ownership of results and potential patents, copyrights, and licenses at the conclusion of the research project.

(b) Patents. In the absence of statutory or contractual limitations, the contractor may apply for patents on any discoveries made through the research. If the

contractor does not wish to make the application, the state may request and receive title to the discovery. If the contractor receives a patent, the state of Texas and its political subdivisions shall be entitled to an irrevocable, non-exclusive, royalty-free license to use the discovery(ies) for governmental purposes.

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 December 14, 1987.

TRD-8711252

Nancy Matchus
Assistant General
Counsel
Texas Water Commission

Earliest possible date of adoption:

January 22, 1988

For further information, please call
(512) 483-7850.



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 5: Transportation Division

Subchapter W. Registration of Commercial Carriers

★ 16 TAC §5.503

The Railroad Commission of Texas has withdrawn the emergency effectiveness to new §5.503, concerning the registration of commercial carriers. The text of the emergency new section appeared in the November 27, 1987, issue of the *Texas Register* (12 TexReg 4449). The effective date of this withdrawal is December 15, 1987.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711368

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Filed: December 15, 1987
For further information, please call
(512) 463-7149.

✱ ✱ ✱

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 §9.1

The Railroad Commission of Texas adopts an amendment to §9.1, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4174).

The amendment adds reference to new Division XIII (recreational vehicle rules).

Comments in favor of adoption of the amendment were filed by the 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 December 14, 1987.

TRD-8711273

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.

★16 TAC §9.4

The Railroad Commission of Texas adopts new §9.4, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4057).

The new section provides for establishing fees for testing laboratories due to the recent legislative changes.

Comments in favor of adoption of the new section were filed by the Texas LP-Gas Association. No comments were filed against adoption of 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 December 14, 1987.

TRD-8711274

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.

★16 TAC §9.6

The Railroad Commission of Texas adopts an amendment to §9.6, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4058).

The amendment provides a procedure for late filing annual registration without the necessity of re-testing each individual.

Comments in favor of adoption of the amendment were filed by the 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 December 14, 1987.

TRD-8711275

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.

★16 TAC §9.15

The Railroad Commission of Texas adopts an amendment to §9.15, with changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4058).

The amendment adds reference to existing forms which are required by rules.

Comments in favor of the amendment were filed by the 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.

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

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

(8) LPG Form 8A—report of DOT cylinder repair;

(9) LPG Form 16—application for examination;

(10) LPG Form 16A—qualified employee transfer certification;

(11) LPG Form 17—report of odorization of liquefied petroleum gases, which shall be filed within 30 days follow-

ing calendar quarters ending March 31, June 30, September 30, and December 31, by any persons, firms, or corporations who odorize liquefied petroleum gases;

(12) LPG Form 18—statement of lost or destroyed license;

(13) LPG Form 18B—statement of lost or destroyed LPG Form 4 decal;

(14) LPG Form 19—inventory of liquefied petroleum gas bulk storage plants;

(15) LPG Form 21—respondent's answer (see §9.18 of this title (relating to Answer Requirement in Commission-Called Hearing));

(16) LPG Form 500—application for tentative approval;

(17) LPG Form 500a—notice of LP-gas installation;

(18) LPG Form 501—completion report;

(19) LPG Form 996A—certificate of insurance, worker's compensation, and employer's liability;

(20) LPG Form 996B—statement in lieu of worker's compensation and employer's liability insurance;

(21) LPG Form 997A—certificate of insurance, automobile bodily injury, and property damage liability;

(22) LPG Form 997B—statement in lieu of automobile bodily injury and property damage liability insurance;

(23) LPG Form 998A—certificate of insurance, general liability;

(24) LPG Form 998C—statement in lieu of manufacturers' and contractors' and/or completed operations and products liability insurance;

(25) LPG Form 999—notice of insurance cancellation.

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 December 14, 1987.

TRD-8711278 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7008.



★ 16 TAC §9.29

The Railroad Commission of Texas adopts an amendment to §9.29, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4058).

The amendment provides fees for reviewing plans and specifications, due to recent legislative changes, and the recording of LP-gas container locations.

Comments in favor of adoption of the amendment were filed by the 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 December 14, 1987.

TRD-8711277 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.



Subchapter B. Basic Rules

★ 16 TAC §9.39

The Railroad Commission of Texas adopts new §9.39, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4059).

The new section prohibits field welding, except by a licensed fabricator.

Comments in favor of adoption of the new section were filed by the Texas LP-Gas Association. No comments were filed against adoption of 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 December 14, 1987.

TRD-8711278 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7008.



★ 16 TAC §9.58

The Railroad Commission of Texas adopts an amendment to §9.58, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4059).

The amendment provides for the addition of the words "mobile fuel containers," as well as motor fuel containers, for clarity.

Comments in favor of adoption of the amendment were filed by the 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 December 14, 1987.

TRD-8711279 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

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Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7008.



★ 16 TAC §9.64

The Railroad Commission of Texas adopts an amendment to §9.64, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4059).

The amendment adds reference to Division XII, which has been inadvertently omitted from the previously adopted section.

Comments in favor of adoption of the amendment were filed by the 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 December 14, 1987.

Effective date: January 4, 1988
 Proposal publication date: November 6, 1987
 For further information, please call
 (512) 463-7008.

★16 TAC §9.65

The Railroad Commission of Texas adopts new §9.65, with changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4060).

The new section provides uniform distance requirements from stationary LP-gas container(s) and material handling equipment from buildings, property lines, and rights-of-way. This new section also provides an exemption for small containers from minimum distances to property lines. The new section eliminates numerous safety rules which currently set various distance requirements and establishes a combined and uniform standard.

Comments in favor of adoption of the new section were filed by the Texas LP-Gas Association. No comments were filed against adoption of the new section. Thomas Petru, director, suggested a word change to §9.65(c)(5) to add clarity. The word "on" was deleted and replaced with the word "toward." Also, the *Texas*

Register failed to indicate "Figure 1" at the end of the first graph and "Figure 2" at the end of the second graph.

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.

§9.65. *LP-Gas Storage Distance Requirements.*

(a) Distance to buildings and property lines. Stationary LP-gas storage containers and material handling equipment shall be located outside of and no closer to any building or to any adjacent property line as indicated in Figure 1.

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

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

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

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

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

(1) DOT container(s) of 105 pounds or less LP-gas capacity may be located within 10 feet of a manufactured house(s). When so located, total aggregate capacity of these containers shall not exceed 300 pounds of LP-gas capacity. No container(s) shall be located within 10 feet of any source of ignition.

(2) DOT container(s) of more than 105 pounds LP-gas capacity may be located within 10 feet of a manufactured house(s), where the 10-foot distance requirement is unobtainable.

(3) Where the distance required by subsection (a) of this section to manufactured home(s) can not be obtained, ASME containers of 500 gallons or less water gallon capacity may be located within 10 feet of the manufactured house(s).

(4) Under no circumstances may any container referred to in paragraphs (2) and (3) of this subsection be closer than three feet from any manufactured house nor closer than 10 feet from any source of ignition.

(5) When any DOT container is located less than 10 feet from a manufactured house, the relief valve shall be positioned to prevent the discharge of vapor toward any manufactured house(s).

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

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 December 14, 1987.

TRD-8711281 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.

Subchapter D. Division II

★16 TAC §9.99

The Railroad Commission of Texas adopts the repeal of §9.99, without changes to

the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4061).

The repealed section dealt with requirements relating to LP-gas storage tanks which are now covered in §9.50, pertaining to minimum design working pressure of ASME and DOT containers.

Comments in favor of adoption of the repeal were filed by the Texas LP-Gas Association. No comments were filed against adoption of the repeal.

The repeal 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 December 14, 1987.

TRD-8711282 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7008.

★16 TAC §9.104

The Railroad Commission of Texas adopts an amendment to §9.104, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4061).

The amendment provides for the manner or design, installation, and use of skid tanks. The amendment also eliminates the language regarding field welding, which is now covered in §9.39.

Comments in favor of adoption of the amendment were filed by the Texas LP-Gas Association. No comments were filed against the 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 December 14, 1987.

TRD-8711283 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

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Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.

Subchapter E. Division III

★16 TAC §9.130

The Railroad Commission of Texas adopts the repeal of §9.130, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4062).

The repeal deals with requirements relating to LP-gas storage tanks which are now covered in §9.50, pertaining to minimum design working pressure of ASME and DOT containers.

Comments in favor of adoption of the repeal were filed by the Texas LP-Gas Association. No comments were filed against adoption of the repeal.

The repeal 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 December 14, 1987.

TRD-8711285 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.

Subchapter F. Division IV

★16 TAC §9.155

The Railroad Commission of Texas adopts an amendment to §9.155, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4062).

The amendment provides for the use of baffles on all truck tanks and semitrailer tanks to prevent surging of tank contents. Also, elimination of requirements relating to LP-gas storage tanks which are now covered in §9.50, pertaining to minimum design working pressure of ASME and DOT containers.

Comments in favor of adoption of the amendment were filed by the 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 December 14, 1987.

TRD-8711284 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.



★ 16 TAC §9.162

The Railroad Commission of Texas adopts the repeal of §9.162, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4175).

The repeal is necessary to clarify a definite distance requirement in regards to smoking and lighted materials, and to be more specific.

Comments in favor of adoption of the repeal were filed by the Texas LP-Gas Association. No comments were filed against adoption of the repeal.

The repeal 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 December 14, 1987.

TRD-8711297 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.



The Railroad Commission of Texas adopts new §9.162, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4174).

The new section prohibits all lighted materials within 25 feet of an LP-gas bob-tail or transport.

Comments in favor of adoption of the new section were filed by the Texas LP-Gas Association. No comments were filed against adoption of 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 December 14, 1987.

TRD-8711286 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
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For further information, please call
(512) 463-7149.



Subchapter G. Division V

★ 16 TAC §9.171

The Railroad Commission of Texas adopts an amendment to §9.171, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4063).

The amendment deletes the definition of recreational vehicle, which is now covered in Division XIII.

Comments in favor of adoption of the amendment were filed by the 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 December 14, 1987.

TRD-8711287 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.

Subchapter K. Division IX

★ 16 TAC §9.261

The Railroad Commission of Texas adopts the repeal of §9.261, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4063).

The repealed section pertains to requirements to LP-gas storage tanks which are now covered in §9.50 and the ASME Code. Also, the field welding requirement is now covered in §9.39, which makes it applicable to all divisions.

Comments in favor of adoption of the repeal were filed by the Texas LP-Gas Association. No comments were filed against adoption of the repeal.

The repeal 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 December 14, 1987.

TRD-8711288 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.



★ 16 TAC §9.265

The Railroad Commission of Texas adopts an amendment to §9.265, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4063).

The amendment provides for the installation of LP-gas service station and cylinder filling storage containers. The requirement pertaining to location, grounding, maintenance, and submission of plans for fuel storage containers located at LP-gas service station and cylinder filling plants are now covered in the basic rules of the LP-Gas Division safety rules.

Comments in favor of adoption of the amendment were filed by the 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 December 14, 1987.

TRD-8711289 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

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



Subchapter L. Division X

★ 16 TAC §9.285

The Railroad Commission of Texas adopts the repeal of §9.285, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4065).

The repeal avoids duplicity of rules, since the transfer of liquids is covered in §9.48, as amended, and published in the September 11, 1987, issue of the *Texas Register* (12 TexReg 3159).

Comments in favor of adoption of the repeal were filed by the Texas LP-Gas Association. No comments were filed against adoption of the repeal.

The repeal 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 December 14, 1987.

TRD-8711290 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-7149.



★ 16 TAC §9.291

The Railroad Commission of Texas adopts an amendment to §9.291, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4065).

The amendment provides for the use of baffles on all farm cart containers in excess of 500 water gallon capacity. It eliminates requirements relating to LP-gas storage tanks which are now covered in §9.50.

Comments in favor of adoption of the amendment were filed by the 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.

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TRD-8711291 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

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



Subchapter M. Division XI

★ 16 TAC §9.301

The Railroad Commission of Texas adopts an amendment to §9.301, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4065).

The amendment provides for the installation of fuel storage containers and deletes the requirements pertaining to the location, grounding, maintenance, and submission of plans for LP-gas fuel storage containers which are now covered in the basic rules (§§9.63-9.66 and 9.69) and the general applicability and requirements (§9.28).

Comments in favor of adoption of the amendment were filed by the 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 December 14, 1987.

TRD-8711292

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

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



★ 16 TAC §9.303

The Railroad Commission of Texas adopts an amendment to §9.303, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4066).

The amendment provides for the protection of cylinders in storage and removes the exception to the storage requirement in industrial buildings.

Comments in favor of adoption of the amendment were filed by the 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 December 14, 1987.

TRD-8711293 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

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



Subchapter O. Division XIII

★ 16 TAC §§9.400-9.415, 9.417-9.444

The Railroad Commission of Texas adopts new §§9.400-9.415 and 9.417-9.444, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4067).

The current safety rules do not provide standards for LP-gas installations in recreational vehicles (RV's). The new Division XIII establishes requirements for this type of LP-gas installation. The majority of these sections follow those portions of the National Fire Protection Association (NFPA) 501C, standard for recreational vehicles, which pertains to LP-gas. NFPA 501C is the national recognized standard for recreational vehicles.

Comments in favor of adoption of the new sections were filed by the Texas LP-Gas Association. No comments were filed against adoption of the new sections.

The new sections are 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 December 14, 1987.

TRD-8711294

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Effective date: January 4, 1988

Proposal publication date: November 6, 1987

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

TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 166. Annual Registration

★22 TAC §166.2

The State Board of Medical Examiners adopts an amendment to §166.2, with changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4091).

The amendment is necessary because of the board's recent acceptance of the special purpose examination (SPEX). The board has expanded on the types of exams which can be accepted for reac-tivation of a physician's license. Additionally, in the course of meeting the requirements for retired physicians, there was no need for the physicians to continue submitting the annual registration form to the board.

The amendment simplifies the procedure for retired physicians while on a retired status.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4495b, which provide the State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§166.2. *Retired Physician Exception.* The annual registration fee shall apply to all persons licensed by the board, whether or not they are practicing within the borders of this state, except retired physicians.

(1) (No change.)

(2) The following restrictions shall apply to physicians whose licenses are on official retired status.

(A) The physician must not engage in clinical activities or practice medicine in any state.

(B) The physician must not prescribe or administer drugs to anyone, nor may the physician possess a DEA or Texas controlled substances registration.

(C) The physician's license may not be endorsed to any other state.

(3) A physician whose license has been placed on official retired status must obtain the approval of the board before returning to active status. The physician shall then pay all previous exempt annual registration fees. Also, if the physician has been on a retired status five years or longer, he or she must:

(A) pass SPEX;

(B) pass Component II of FLEX; or

(C) be specialty certified or recertified within the last 10 years by a specialty board approved by this board as defined in §163.4 of this title (relating to Training Programs Approved by the Board).

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 December 14, 1987.

TRD-8711262

G. V. Brindley, Jr.
Executive Director
State Board of Medical
Examiners

Effective date: January 4, 1988

Proposal publication date: November 6, 1987

For further information, please call
(512) 452-1078.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug Food Service Sanitation

★25 TAC §229.172

The Texas Department of Health adopts new §229.172, with changes to the proposed text published in the October 9, 1987, issue of the *Texas Register* (12 TexReg 3635).

The new section provides for establishment of a uniform training criteria within the food service industry. Education of

the food service worker provides better qualified personnel, thereby reducing the risk of causing foodborne illness.

The new section covers intent and scope, definitions, application for accreditation, accreditation of programs, publication of a course registry, accreditation certificate, fees for accreditation, revocation of accreditation, revocation procedures, and training certificates.

A commenter suggested that the proposed section exceeded both the letter and spirit of the law, in that by statute, an audit was sufficient to validate the course curriculum whereas independent testing to determine the knowledge of the students or the skill of the instructor should not be required if the course can provide the department with sufficient data to verify course content, hours of presentation and the validity of their test results.

The agency's position is that the proposed section clarifies the term "audit" to include not only a classroom audit, but also independent test auditing of the students, or an audit review of the written course syllabus as proposed by the applicant. Therefore, the agency has not changed this provision.

Concerning subsection (d)(1), a commenter suggested that a conflict could occur if an independent testing firm, who also distributes training and testing materials, contracted to audit courses for the department, and a situation arose where the firm is auditing a course that uses the same testing examination as the audit examination. The agency agrees that such a situation could occur unless contractual stipulations between the department and the independent testing firm stated otherwise. The agency does not believe that a change is required in the proposed section.

Concerning subsection (d), a commentator suggested that it would be economically feasible for the department to purchase its own test auditing instrument from a college or university that specializes in hotel and restaurant management programs. The test could be used by the department to audit courses that are structured in such a way that renders the in-house curriculum difficult to validate. The commentator also suggested that test proctors could be hired by the department on a contract basis to reduce the overall costs of administration. The agency agrees that test development by a college or university for purchase by the department would be a viable option. Subsection (d)(1) is modified to provide for test development for contract purchase by the department, which shall be determined through a competitive bidding process.

In response to hiring test proctors, the agency disagrees in that conflicts of interest could arise if a proctor is salaried by a local health department, community college or trade association that also sponsors an accredited training course.

Concerning subsection (d), a commenter suggested that cost effective program auditing is essential since participation by the training community is voluntary and the advantages of state accreditation may not warrant the expense. The proposed solution is to package the entire auditing process and contract it to a testing company who can minimize the overall costs. The agency agrees; however a change in the proposed section is not required since reference is already made to competitive bidding in selecting a testing firm.

Concerning subsection (d), a commenter suggested that credibility of the state accreditation program may be questioned by local health departments, major industry chains, and other state agencies unless the majority of students are allowed to take the more secured audit examination as an option. Furthermore, reciprocity between jurisdictions will ensure the success of the overall accreditation program. The agency agrees that students should have an option to testing; however, it's the course sponsor's responsibility to decide which examination to provide over and above the required audit examination. The agency has made no change in response to the comment.

The names of interested groups or associations making comments for and against the section are Texas Restaurant Association and United States Food and Drug Administration. There were no comments opposing the adoption of the section, but recommendations for changes were made.

This new section is adopted under Texas Civil Statutes, Article 4476-10b, §2, which provide the Texas Board of Health with the authority to adopt standards and procedures for the accreditation of education and training programs for persons employed in the food service industry.

§229.172. Accrediting Education and Training Programs for Food Service Workers.

(a) Intent and scope. This section is intended to provide uniformity of training criteria within the food service industry. Education of the food service worker provides better qualified personnel, therefore, reducing the risk of causing foodborne illness. The mutual acceptance of uniform sanitation training standards by regulatory agencies is necessary to eliminate duplication and added expense for food service establishment workers who move from one regulatory jurisdiction to another.

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

(1) Authorized agent—An employee of the department who is designated by the commissioner to enforce state statutes and related sections.

(2) Board—The Texas Board of

Health.

(3) Commissioner—The commissioner of health of the State of Texas.

(4) Department—The Texas Department of Health.

(5) Food—Any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(6) Food service establishment—Any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off premises and regardless of whether there is a charge for the food. The term also includes delicatessen-type operations that prepare sandwiches intended for individual portion service. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.

(7) Food service worker—An employee, owner, manager, supervisor, or any other person working in a food service establishment.

(8) Independent testing organization—A privately funded legal entity capable of administering a food service worker final examination determined by the commissioner of health, or his agent, to be content valid, securely monitored, and legally reliable.

(9) Instructor—A person skilled in presenting established public health principles in food service sanitation and having demonstrated knowledge and understanding of §§229.161-229.171 of this title (relating to Food Service Sanitation) and §§229.231-229.239 of this title (relating to Retail Food Store Sanitation).

(10) Law—Includes federal, state, and local statutes, ordinances, and regulations.

(11) Person—Includes individual, partnership, corporation, association, or other legal entity.

(12) Regulatory authority—The state and/or local enforcement authority, or authorities, having jurisdiction over the food service establishment, or those determined by the commissioner of health as having jurisdiction.

(13) Retail food store—Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, nonpotentially hazardous foods; roadside markets that offer only fresh fruits and fresh vegetables for sale; food service establishments; farmers markets; or food and beverage vending machines as defined in the Vending of Food and Beverages, 1978, Department of Health, Education and

Welfare Publication Number (FDA) 78-2091.

(c) Application for accreditation. Any person sponsoring a food service training program shall file an application with the department outlining the course syllabus. All persons must meet the program requirements of Texas Civil Statutes, Article 4476-10b. This application shall include the time frame of each subject area, the total time in course hours, a copy of the instructors final examination, plus any additional sanitation quizzes used during the course of instruction.

(d) Accreditation of programs.

(1) The department shall issue provisional accreditation to a program applicant pending an on-site test audit by either an authorized agent of the department or an independent testing organization. The independent testing organization shall be selected through a competitive bidding process. Test development for contract purchase by the department shall be determined through a competitive bidding process. On-site test auditing of trainee candidates shall be randomly and uniformly conducted throughout the training year based on the following sample sizes:

Total Number of Candidates Trained During the Year	Total Number of Candidates to be Test Audited During the Year
50	30
75	38
100	43
150	50
175	53
200	55
250	58
300	60
400	63
500	65
750	68
1000	70
1200	71
1500	71

(2) The department shall maintain pass/fail ratios of each training program tested. To preclude duplication of testing, a course sponsor may elect to substitute the on-site test auditing procedure for the regular final examination.

(e) Publication of a course registry. The department shall maintain and publish a current course registry. The registry shall be circulated statewide on a quarterly basis to community colleges, local health departments, public health regions, and industry training groups. Courses listed in the registry shall reflect either a percentage (%) pass/fail ratio, or provisional status. Courses with a test audit pass/fail ratio of less than 75% shall not be listed in the registry.

(f) Accreditation certificate. The department shall issue a certificate of accreditation to each course sponsor who has demonstrated compliance with this section. A certificate issued under this section expires one year from the date of issuance.

(g) Fees for accreditation. Each training program applicant shall file a written

report quarterly with the department and shall pay a fee of \$5.00 per candidate trained for the preceding three-month period. All fees are nonrefundable and due on the first day of January, April, July, and October of each calendar year.

(h) Revocation of accreditation. A sponsor that is delinquent in payment by more than 10 days is subject to forfeiture of their accreditation certificate or may be removed from the course registry, or both. A sponsor that knowingly files a false accounting report, or fails to pay the appropriate fee, as determined through an audit by an agent of the department, shall not be listed in the course registry and shall forfeit their certificate of accreditation.

(i) Revocation procedures. Revocation procedures under this section shall be conducted in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §§1.21-1.33 of this title (relating to Formal Hearing Procedures).

(j) Training certificates. A candidate training certificate issued by an accredited course sponsor shall be valid for a period of three years from date of issuance.

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 December 10, 1987.

TRD-8711170

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

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For further information, please call
(512) 458-7248.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 305. Consolidated Permits

The Texas Water Commission (TWC) adopts amendments to §§305.49, 305.50, and 305.153, without changes to the proposed text published in the September 4, 1987, issue of the *Texas Register* (12 TexReg 3026).

The amendment to §305.49 adds a phrase to subsection (a)(8) to serve as a reminder that the Texas Water Code, §27.051(a), as amended by House Bill 2124, 70th Legislature, 1987, sets forth a list of items for commission consideration prior to issuance of a permit under the Injection Well Act (Texas Water Code, Chapter 27).

The amendment to §305.50 adds a phrase to paragraph (3) to serve as a reminder that the Solid Waste Disposal Act, §4(e) (13), as amended by House Bill 2124, 70th Legislature, 1987, sets forth a list of items for commission consideration prior to issuance of a permit for a proposed hazardous waste management facility.

In §305.153, an amendment to subsection (b) adds a sentence describing the use of the letter of credit as an additional mechanism for satisfying financial assurance or security requirements. This addition to the regulations is made in response to an amendment to the Texas Water Code, §27.073(d), as passed by House Bill 2124, 70th Legislature, 1987.

No comments were received regarding adoption of the amendments.

Subchapter C. Application for Permit

★ 31 TAC §305.49, §305.50

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

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 December 15, 1987.

TRD-8711357

J. D. Head
Director
Legal Division
Texas Water
Commission

Effective date: January 5, 1988
Proposal publication date: September 4, 1987
For further information, please call
(512) 463-8087.

Subchapter H. Additional Conditions for Injection Well Permits

★ 31 TAC §305.153

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-8711358

J. D. Head
Director
Legal Division
Texas Water Commission

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

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

The Texas Water Commission (TWC) adopts amendments to §§335.2, 335.7,

335.69, 335.321, 335.323-335.325, 335.328, 335.329, 335.332, 335.342, and 335.391, and new §335.179. Section 335.69 is adopted with changes to the text published in the September 25, 1987, issue of the *Texas Register* (12 TexReg 3354). The other sections are adopted without changes to the proposed text published in the September 4, 1987, (12 TexReg 3027) and September 25, 1987 (12 TexReg 3354) issues of the *Texas Register* and will not be republished.

The amendment to §335.2(e) deletes the reference to §335.61(c), which is no longer a correct reference after amendments to TWC regulations concerning small quantity generators, and replaces it with a reference to §335.78. The amendment to §335.7 expands the title of the section to reference other financial assurance and to clarify in the text of the regulation that persons storing, processing, or disposing of hazardous waste are subject to further requirements concerning financial assurance that are set forth in Subchapter F of Chapter 335, as well as the closure and post-closure requirements contained in that subchapter.

In amended §335.69, a provision is inserted in subsection (f) to correspond to the equivalent federal regulation at 40 Code of Federal Regulations §262.34, as amended in the rules governing hazardous waste tank systems in the July 14, 1986, issue of the *Federal Register* (51 FedReg 25421). The inserted provision concerns the generator's obligations to comply with dating and marking requirements and preparedness and prevention requirements when accumulating waste on-site. The reference in subsection (f)(4) to the requirements of 40 Code of Federal Regulations Part 264 is corrected to reference Part 265, since this was a typographical error and was intended to parallel the federal rule citing Part 265.

New §335.179 sets forth requirements concerning financial assurance for hazardous waste management facilities. These requirements are established in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(5), as amended by House Bill 2124, 70th Legislature, 1987. Under new §335.179, a permittee shall execute its financial assurance before hazardous waste may be received for storage, processing, or disposal at a solid waste facility. If liability insurance is required of a permit applicant, the applicant may not use a claims made policy as security unless the specified escrow arrangements are made. In addition to the other forms of financial assurance authorized by the commission regulations, an applicant may use a letter of credit if the specified criteria are satisfied.

The amendments to §§335.321, 335.323-335.325, 335.328, 335.329, and 335.332 are revisions of the TWC's hazardous waste generation, facility, and disposal fees system under Subchapter J of Chapter 335. The Texas Water Commis-

sion is authorized under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §§11a, 12, 13a, and 14a, to establish a hazardous waste generation, facility, and disposal fee program to support the state's costs of hazardous waste regulation. 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 to 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 nonhazardous and pose minimal risk of release. The maximum facility fee is increased from \$20,000 per year to \$25,000. Special fee categories for some facilities are eliminated.

The criteria for determination of facility fee liability is 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 commission 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. For further discussion of these amendments, please refer to the September 4, 1987, issue of the *Texas Register* (12 TexReg 3029).

The amendment to §335.342 shortens the definition of remedial action to conform to the amended statutory definition of

remedial action in the Solid Waste Disposal Act, §2(24), as amended by Senate Bill 1446, 70th Legislature, 1987.

The amendment to §335.391 reflects an amendment by Senate Bill 1446 to the Solid Waste Disposal Act, §4(e)(12), which clarifies that amendments to pending applications or to changes in waste storage or processing operations at existing sites at which waste management activities are already being conducted are not subject to the local review committee process described in the Act. The clarification is added to §335.391(b).

The TWC received two comments on the proposed sections. The Texas Chemical Council (TCC) submitted comments on the September 4, 1987, publication of proposed amendments to Subchapter J of Chapter 335. First, the TCC expressed concern that the disposal fees could be used for expenses relating to various portions of the federal Superfund Amendments and Reauthorization Act of 1986 (SARA), including Title III of SARA. The TWC believes that the statute and the implementing regulations adequately express the allowable uses of the fees deposited in the hazardous waste disposal fee fund. Although a reference is made to the SARA in subsection (c)(3), that reference is made in the context of expenses relating to the federal superfund and the state Solid Waste Disposal Act provisions relating to imminent and substantial endangerment to the public health and safety or the environment and to the identification and assessment of hazardous waste facilities.

The TCC comments also expressed concern about the wording of §335.325(a), but subsequent conversations with TCC representatives indicated that the proposed language was sufficiently clear and no further revisions were needed.

The law firm of Brown, Maroney, Rose, Barber and Dye submitted comments on proposed §335.179, requesting that the TWC delay action on the proposed section pending resolution of the issues presented in *Browning-Ferris, Inc. v. Brazoria County*, No. 3-86-132-CV (Texas Civil Application—Austin, September 23, 1987), (not yet reported).

The commenter notes that the Court of Appeals opinion seems to raise new issues and confuse existing law, and therefore the TWC should not consider the adoption of §335.179 until the pending motion for rehearing of the case and any subsequent appeals are resolved by the courts.

The TWC believes that consideration of the proposed §335.179 is appropriate at this time, even in view of the pending litigation, because the proposal merely establishes a regulatory equivalent for the statutory provisions concerning financial assurance, as amended by the 70th Legislature, 1987. The agency has a responsibility to adopt implementing regulations

In a timely manner, and believes it would not be prudent to delay rulemaking indefinitely during the pendency of litigation that may not even affect the sections. Proposed §335.179 closely tracks the language in the Solid Waste Disposal Act, §4(e)(5), from which it was derived.

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

★31 TAC §335.2, §335.7

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711359 J. D. Head
Director
Legal Division
Texas Water Commission

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

Subchapter C. Standards Applicable to Generators of Hazardous Waste

★31 TAC §335.69

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

§335.69. Accumulation Time.

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

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

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

(4) the generator complies with the requirements of subsections (a)(2) and (3) of this section and the requirements of 40 Code of Federal Regulations Part 265, Subpart C; and

(5) the generator complies with the following requirements:

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

(g)-(h) (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.

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TRD-8711360 J. D. Head
Director
Legal Division
Texas Water Commission

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

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

★31 TAC §335.179

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-8711361 J. D. Head
Director
Legal Division
Texas Water Commission

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

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 amendments are adopted under the Texas Water Code, §5.103 and §5.105,

capable of being scored"; addition of requested requirement for at least one timed reloading exercise; defining the kind of weapon to be qualified on in terms of caliber or gauge and type; and, in response to several requests for more agency control and flexibility, a new waiver provision.

The following comments are currently under study for possible future action: inclusion within the definition of the term "firearms" either rifles and automatic weapons, or both, in addition to the current handguns and shotguns; and, development of minimum requirements for any course of fire for such rifles and automatic weapons.

The following comments were considered and rejected. Dropping the minimum number of rounds from 50 to 18 was rejected as an insufficient number of rounds for annual qualification. Deleting or modifying the 50 rounds per year requirement for off duty or backup weapons (as posing an onerous burden on the agencies) was rejected as follows: the state does not and cannot mandate the type of weapon carried by an officer, but the agency can; and, an agency does not have to pay for qualification of any weapon it does not mandate and can condition approval to carry a non-standard weapon upon the individual officer purchasing and paying for annual qualification of such weapon. Increasing the longest range to 25 yards for handguns was rejected because many range facilities only have firing positions that go out to 15 yards and because 15 yards is the current maximum range for initial firearms training for peace officers and reserves.

★37 TAC §§211.80, 211.82, 211.85, 211.86, 211.87, 211.97

The amendments and new sections are adopted under the following Texas Government Code sections, which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority, respectively:

§211.8 amendment, under §415.010(10), to establish minimum standards for licensing as an officer or county jailer;

new §211.82, under §415.010(1) to adopt rules for the administration of Chapter 415, Government Code and §415.052(a) and (b), to issue licenses where appropriate;

§211.85, under §415.062, to issue professional achievement certificates;

§211.86, under §415.060(a) and (b), to revoke a license for a violation of Chapter 415 or the rules of the commission;

new §211.87, under §415.060(a) and (b), to suspend a license for a violation of Chapter 415 or the rules of the commission;

and §211.97, under §415.059, to adopt rules setting the minimum age of officer license applicants.

§211.82. Issuance of License.

(a) The commission shall issue the following licenses:

- (1) temporary jailer;
- (2) provisional peace officer or reserve; and
- (3) permanent peace officer, reserve, jailer, armed public security officer, or instructor.

(b) A temporary jailer license shall be issued to an individual who meets all the minimum standards for licensing for that license except for either the training or testing requirements. Except as provided by law, a temporary license:

- (1) expires 12 months from the original licensing date; and
- (2) may not be reissued.

(c) A provisional peace officer license or a provisional reserve license shall be issued to an individual who meets the requirements found in §211.99 of this title (relating to Provisional License).

(d) A permanent peace officer license, permanent reserve license, permanent jailer license, permanent armed public security officer license, or permanent instructor license shall be issued to an individual who meets the minimum standards for licensing for the license sought, including the appropriate training and testing requirements.

(e) Except as otherwise provided by rule or law, the commission shall issue a permanent license only to a person who:

(1) has completed any basic training course and any supplementary training required for the license sought;

(2) has received within the past two years a passing score on any examination required for the license sought;

(3) has been submitted for licensing to the commission by a law enforcement or other appointing agency on a signed, completed application for the license sought; and

(4) has been reported as currently appointed, or about to be appointed within one month to the office indicated by the license sought, except that a peace officer license applicant may be commissioned as either a peace officer, or a reserve.

(f) A permanent license is issued for an indefinite term and shall be valid permanently unless it:

- (1) is revoked;
- (2) is suspended;
- (3) is voluntarily surrendered; or
- (4) becomes inactive because of a two-year break in service as a peace officer or reserve.

(g) The commission may cancel any license if:

(1) the commission issued the license in error when the recipient had not met the minimum standards or requirements for the issuance of the license; or

(2) the commission issued the license as a result of incorrect information furnished to the commission indicating that the recipient was entitled to the license when, in truth and fact, the recipient was not entitled

to the license.

(h) The commission may issue a permanent peace officer or jailer license to any person who is otherwise qualified for that license, even if that person is not subject to the licensing law or rules because of holding a commission by virtue of election or appointment to office under the Texas Constitution.

(i) The commission shall issue a permanent peace officer license to any peace officer, elected or appointed under the Texas Constitution after September 1, 1985, if that officer meets all the minimum standards for peace officer licensing, including the training and testing requirements. Such license shall be subject to revocation as any other peace officer license issued by the commission. This subsection shall not apply to:

- (1) a sheriff; or
- (2) a constable or any other constitutional peace officer who first assumed office before September 1, 1985, even if re-elected after that date unless there was a break in office and that officer was then re-elected after that date to that or another office as a constitutional peace officer.

(j) The effective date of this section shall be January 5, 1988.

§211.86. Revocation of License.

(a) The commission shall revoke any license issued by the commission if the license holder:

(1) is or has been convicted of a felony offense under the laws of this state, another state, or the United States. (A deferred adjudication probation is not a felony conviction though it is a probation). A person is convicted of a felony when an adjudication of guilt on a felony offense is entered against that person by a court of competent jurisdiction whether or not:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense;

(C) the cause has been made the subject of an expunction order; or

(D) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence;

(2) is or has been discharged from any or all military service under other than honorable conditions;

(3) has made, submitted, caused to be submitted, or filed a false or untruthful report to the commission; or

(4) violates any section where revocation is the penalty noted.

(b) Revocation of a license shall permanently disqualify a person from licensing and a license may not be reinstated except when the license holder proves the facts supporting the revocation have been negated, such as:

(1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has issued;

(2) the discharge under other than honorable conditions has been upgraded to honorable conditions;

(3) the report was found to be truthful; or

(4) the section was not violated.

(c) During the direct appeal of any appropriate conviction, a license may be conditionally revoked pending resolution of the mandatory direct appeal. The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.

(d) The holder of any revoked license may informally petition the executive director for reinstatement of that license based upon proof by the license holder that the facts supporting the revocation have been negated.

(e) If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting.

(f) If denied informally, the holder of a revoked license may petition the commission for a hearing to determine reinstatement based upon the same proof.

(g) Once a license has been revoked, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator of any agency shown to have the license holder under either current or latest appointment.

(h) The commission may revoke a license even though it has become inactive by some other means, such as:

- (1) expiration;
- (2) suspension;
- (3) voluntary surrender;
- (4) two-year break deactivation; or
- (5) any other means.

(i) The date of revocation will be the earliest date that:

- (1) a waiver was signed by the holder; or
- (2) a final order of revocation was signed by the commissioners.

(j) Except as provided by subsection (a) of this section, the commission may revoke the license of a person who is either convicted of a misdemeanor offense or placed on deferred adjudication probation for a misdemeanor or felony offense, if the offense directly relates to the duties and responsibilities of any related office held by that person. In determining whether a criminal conviction directly relates to such office, the commission shall, under this subsection, consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license for such office;
- (3) the extent to which a license might offer an opportunity to engage in fur-

ther criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.

(k) In addition to mandatory consideration of the four factors outlined in subsection (j) of this section, the commission may, under that same subsection, consider:

(1) the extent and nature of the person's past criminal activities;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity; or

(5) if provided by the person, any other evidence of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers with personal knowledge of the facts surrounding the prosecution, arrest, probation, or incarceration of the person;

(B) the sheriff or chief of police in the community where the person resides; or

(C) any other person in contact with the license holder.

(l) The effective date of this section is January 5, 1988.

§211.87. Suspension of License.

(a) Unless revocation is explicitly noted, the commission may suspend any license issued by the commission if the license holder violates any provision of:

- (1) these sections; or
- (2) the Act, the Government Code, Chapter 415.

(b) Unless otherwise specified, the term of suspension shall be 12 months. The exceptions are as follows.

(1) If a judgment and sentence is entered resulting in a misdemeanor conviction and sentence of either a fine, a jail term or both, or probation, then, regardless of the actual sentence imposed, the term of suspension shall be essentially equal to the maximum potential confinement applicable to that offense, such as:

- (A) DWI, 24 months;
- (B) Class A Misdemeanor, 12 months;
- (C) Class B Misdemeanor, six months; or
- (D) Class C Misdemeanor, no suspension is possible (since no jail time is possible), except as otherwise provided in this section.

(2) If the court's judgment or adjudication is deferred for any felony or serious misdemeanor and the license holder is then placed on probation, the term of suspension shall be equal to the actual time served on probation.

(3) Twelve months may be added to the term of a new suspension for each separate previous violation that has resulted in either a license suspension, a probated suspension, or a written reprimand before the beginning date of the new suspension.

(c) A suspension or probation may be ordered to run concurrently or consecutively with any other suspension or probation. The beginning date of a probation must be within the term of suspension. The beginning date of the suspension shall be:

(1) any date agreed to by both parties which is no earlier than the date of the rule violation;

(2) the date the license holder notifies the commission in writing of the rule violation if the commission later receives a signed waiver of suspension from the license holder that was postmarked within 10 days of its receipt;

(3) the date the commission final order is entered in a contested case or the date it becomes effective, if that order is appealed.

(d) If a license can be suspended for a probation or misdemeanor conviction, the commissioners may, in their discretion and upon proof of mitigating factors, either:

(1) probate all or part of the suspension term during a probation term of up to twice the maximum suspension term; or

(2) issue a written reprimand in lieu of suspension.

(e) If a license can be suspended for any other reason, the commission, through its executive director may, in its discretion and upon proof of the same mitigating factors, either:

(1) probate all or part of the suspension term during a probation term of up to twice the maximum suspension term; or

(2) issue a written reprimand in lieu of suspension.

(f) The executive director shall inform the commissioners of any such probation or reprimand no later than at their next regular meeting.

(g) If probated either way, a suspension may not be probated for less than six months.

(h) The commission may impose reasonable terms of probation, such as:

- (1) continued employment requirements;
- (2) special reporting conditions;
- (3) special document submission conditions;
- (4) voluntary duty requirements;
- (5) no further rule or law violations;

or

(6) any other reasonable term of probation.

(i) A probated license remains probated until:

- (1) the term of suspension has expired;
- (2) all other term of probation have been fulfilled; and

(3) a written request for reinstatement has been received by the commission from the license holder unless the probation has been revoked by the commission for violation of probation; or

(4) until revoked.

(j) Before reinstatement, a license probation may be revoked upon a showing that any of its terms have been violated before the expiration date of the probation regardless of when the petition is filed. Upon revocation, the full term of suspension shall be imposed with credit for any time already served on that suspension.

(k) Once a license has been suspended, the suspension probated, the probation revoked, or the license holder reprimanded, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator of any agency shown to have the license holder under either current or latest appointment.

(l) A suspended license remains suspended until;

(1) the term of suspension has expired; and

(2) a written request for reinstatement has been received from the license holder; or

(3) the remainder of the suspension is probated.

(m) The commission may suspend for not less than six months and not more than 24 months the license of a person convicted of a Class C Misdemeanor that was directly related to the duties and responsibilities of office, after the commission has considered, where applicable, the factors listed in the revocation section.

(n) The commission may suspend a license even though it may have become inactive by some other means, such as:

(1) expiration;

(2) voluntary surrender;

(3) two-year break de-activation; or

(4) any other means.

(o) The effective date of this section shall be January 5, 1988.

§211.97. Minimum Licensing Standards for Entry Level Age.

(a) An applicant for each of the following licenses may not be issued such license before reaching the following age, respectively:

(1) peace officer, 21 years of age;

(2) reserve, 21 years of age;

(3) armed public security officer, 21 years of age;

(4) instructor, 21 years of age; and

(5) jailer, 18 years of age.

(b) The commission shall issue either a peace officer or a reserve license to an applicant younger than 21 years of age, who is at least 18 years of age and who meets all the other minimum standards for the license sought, and:

(1) has received credit for at least 60 semester hours of study from an accredited college or university;

(2) has received an associate degree from such school;

(3) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(4) has received either a temporary or permanent license of either type before July 1, 1986;

(5) was enrolled and attending a basic training course for either license on July 1, 1986, and then later successfully completed that course and passed the state licensing examination for that license; or

(6) has successfully completed a basic training course for either license before July 1, 1986, and then later passed the state licensing examination for that license.

(c) The effective date of this section is July 1, 1986.

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 December 15, 1987.

TRD-8711305

David M. Boatright
General Counsel
Texas Commission on
Law Enforcement
Officer Standards and
Education

Effective date: January 5, 1988

Proposal publication date: October 30, 1987

For further information, please call
(512) 834-9222.

★37 TAC §211.82, §211.87

The Texas Commission on Law Enforcement Officer Standards and Education adopts the repeal of §211.82 and §211.87, without changes to the proposed text published in the October 30, 1987, issue of the *Texas Register* (12 TexReg 3998).

Both §211.82 and §211.87 are repealed in order to replace them with completely revised and rewritten sections on the same topics.

The repeal of each section will allow the commission rules to be updated to reflect current policy and procedure as incorporated in the revised and rewritten sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Government Code, §415.052, which provides the commission with the authority to grant licenses; §415.060, which provides the commission with the authority to revoke or suspend a license; and §415.010(1), which provides the commission with the authority to adopt rules for the administration of Government Code, Chapter 415.

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 December 15, 1987.

TRD-8711306

David M. Boatright
General Counsel
Texas Commission on
Law Enforcement
Officer Standards and
Education

Effective date: January 5, 1988

Proposal publication date: October 30, 1987

For further information, please call
(512) 834-9222.

★37 TAC §§211.102, 211.103, 211.105, 211.106

The new sections are adopted under the following statutes which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority respectively to: §211.102, under Chapter 758, 70th Legislature, 1987, as it amends Texas Civil Statutes, Article 4413(29aa), to allow the commission to set licensing standards for armed public security officers; §211.103, under Chapter 975, 70th Legislature, 1987, as it amends Texas Civil Statutes, Article 4413(29aa), to allow the commission to set minimum standards for training, testing, and certification of peace officers who use investigative hypnosis; §211.105, under Chapter 863, 70th Legislature, 1987, as it amends Texas Civil Statutes, Article 4413(29aa), to allow the commission to set standards for training and acknowledgment of telecommunications officers; and §211.106, under Chapter 389, 70th Legislature, 1987, as it amends Texas Civil Statutes, Article 5.33A, and under that article before such amendment which allows the commission to set training and certification standards for peace officers and civilians who conduct homeowners insurance inspections.

§211.102. Armed Public Security Officers.

(a) To be issued a permanent armed public security officer license, an applicant must at the time of licensing:

(1) meet all the current minimum licensing standards for a peace officer, except for training and testing;

(2) meet the current training standards for private security officers as established by the Texas Board of Private Investigators and Private Security Agencies, and possess a certificate of completion for that course from that board; and

(3) be reported to the commission by the appointing agency on a completed commission application form.

(b) The appointing agency and its chief administrator shall comply with the section provisions relating to the reporting requirements of law enforcement agencies.

(c) The license holder shall comply with the minimum standards for retention of a peace officer license.

(d) The sections that apply to the voluntary surrender, reprimand, suspension, revocation, or cancellation of a peace officer license shall also apply to an armed public security officer license.

(e) Any temporary armed public security officer license already issued shall expire on March 31, 1988, three calendar months after the effective date of this section.

(f) The effective date of this section shall be January 5, 1988.

§211.103. Investigative Hypnosis by a Peace Officer.

(a) The commission shall issue an investigative hypnotist proficiency certificate to a person who obtains a valid passing score on the state examination for investigative hypnosis.

(b) To qualify for either taking this examination or receiving a valid score, the person must, at the time of testing:

- (1) be licensed as a peace officer;
- (2) be commissioned as a peace officer;

(3) have timely credit for an investigative hypnosis training course; and

(4) have submitted documentation of any of the requirements in paragraphs (1)-(3) of this subsection, if requested.

(c) After the effective date of this section, the standard training course shall:

- (1) be approved by the commission;
- (2) be taught both in-state and in conformity with the learning objectives approved by the commission; and
- (3) include comprehensive testing.

(d) The commission may approve and give credit for other similar, nonstandard training courses which were either:

- (1) completed in-state before the effective date of this section; or
- (2) completed out-of-state at any time.

(e) Such nonstandard training may be approved by the executive director or, if denied and upon petition, may be the subject of an administrative hearing held to determine approval based on:

- (1) testimony from the Texas Association of Investigative Hypnotists; and
- (2) proof that the nonstandard curriculum meets or exceeds the standard curriculum.

(f) For training course credit to be timely, it must be given for a standard course completed no more than two years before the state examination is passed, except that a person must both receive commission credit and pass the state examination within two years after either the effective date of this section or the date of peace officer commissioning, whichever is later, if that person completed at any location any nonstandard training course as defined in this section.

(g) The examination to test the officer's knowledge of investigative hypnosis shall:

- (1) be developed by or with the approval of the commission;

(2) be administered by the commission or its agent,

(3) be written only; and

(4) be taken only three times after qualifying by training.

(h) After three failures or after course credit ceases to be timely, the officer must requalify for the state examination by completing a standard training course.

(i) An examination may be given credit under this section if it was administered by the commission in accordance with this section, but before its effective date.

(j) Certificates issued under this section are subject to the same provisions for cancellation as a peace officer proficiency certificate.

(k) The effective date of this section shall be January 5, 1988.

§211.105. Telecommunicator Acknowledgments.

(a) The commission may issue a written, grandfather acknowledgment to an agency which has appointed, or which is served by, an individual who:

(1) was serving under permanent appointment with or for that agency as a telecommunicator on and before September 1, 1987; and

(2) has been reported as such by that agency.

(b) This grandfather acknowledgment shall expire when the individual leaves continuous appointment with or for that agency.

(c) The commission may issue a written, temporary acknowledgment to an individual who has been reported by an agency as either currently appointed, or about to be appointed within the next calendar month, as a telecommunicator with or for that agency. A temporary acknowledgment expires one calendar year after the original appointment date and may not be reinstated except under the following conditions.

(1) After another calendar year has elapsed from that expiration date, the agency seeking reissue or reinstatement may then informally petition the commission, acting through its executive director, for such reinstatement.

(2) If denied, the agency may petition the commission for a formal reinstatement hearing based on proof by the agency of:

(A) the reason no training was available or possible within the original year;

(B) the manpower shortage at the agency or the entity serving the agency, analogous to the provisional license section;

(C) either the fact that the individual is currently enrolled in training or the date of the next available training for which the individual will be enrolled; or

(D) any other relevant issue.

(d) The commission shall issue a written training acknowledgment to an individual who:

(1) has met the training standards of this section; and

(2) has made a written request for

such issuance, including any documentation, if requested.

(e) The commission shall issue a written, permanent acknowledgment to an individual who:

(1) has met the training standards of this section; and

(2) has been reported to the commission on a completed commission form by an agency as currently appointed as a telecommunicator with or for that agency, including any documentation, if requested.

(f) An agency which has appointed or which is served by an individual as a telecommunicator only in the event of an emergency is not required to report such appointment or service to the commission.

(g) Any appropriate acknowledgment may be issued to an individual appointed or serving as a telecommunicator with any agency that either:

- (1) has 20 or fewer employees; or
- (2) does not perform law enforcement services on a 24-hour basis.

(h) The permanent acknowledgment shall be issued in a format similar to a proficiency certificate. Other acknowledgments may be in letter form.

(i) The minimum telecommunicator training standards shall be successful completion of a course which:

- (1) consists of at least 40 hours; and
- (2) has been developed or approved by the commission.

(j) Acknowledgments issued under this section are subject to the same provisions for cancellation as a peace officer proficiency certificate.

(k) The effective date of this section shall be January 5, 1988.

§211.106. Crime Prevention and Homeowners Insurance Inspector Certificates and Inspection Standards.

(a) The commission shall issue a crime prevention inspector proficiency certificate to an individual who:

- (1) is a licensed peace officer;
- (2) is reported as a currently commissioned peace officer;
- (3) is of high moral integrity; and
- (4) has already completed an approved crime prevention training course.

(b) The commission shall, upon application, issue a homeowners insurance inspector certificate to an individual who:

(1) is a building inspector or other official, whether civilian, commissioned reserve, or peace officer, so long as that person has been designated by a city or county to serve as a homeowners insurance inspector;

- (2) is of high moral integrity; and
- (3) has completed either an approved homeowners inspection training course or an approved crime prevention training course.

(c) The training required under this section must be approved by the commission and may be taught:

- (1) by an approved law enforce-

ment academy; or

(2) by agreement with the commission.

(d) After the applicant has completed the prescribed training, an application for a homeowners insurance inspection certificate must be submitted to the commission on its form by the chief administrator of a law enforcement agency of the city or county government which will make the appointment or, if none, by the administrator who will make the appointment.

(e) Any agency or governmental entity, which has appointed an individual as a homeowners inspector who is not a commissioned peace officer, must report to the commission when the individual is no longer appointed by that agency as an inspector. The report shall be sent within 10 working days of such termination by the chief administrator of the law enforcement agency whose office made the original report or, if none, by the administrator who made the appointment.

(f) The commission shall make a monthly report to the State Board of Insurance, listing any individual who:

(1) is currently reported as both a commissioned peace officer and the holder of a valid crime prevention inspector proficiency certificate; or

(2) is the holder of a valid homeowners insurance inspector certificate.

(g) The commission shall purge from this report each month the name of any person who:

(1) loses either certificate by revocation, suspension, cancellation, or any other means;

(2) holds a crime prevention inspector proficiency certificate and is reported terminated as a peace officer; or

(3) holds a homeowners insurance inspector certificate and is reported terminated as an inspector.

(h) The standards for conducting a homeowners insurance inspection are as follows.

(1) The inspector shall not conduct an inspection without being qualified for the report maintained by the State Board of Insurance because of either:

(A) termination as a peace officer or homeowners inspector;

(B) failure to complete any required training; or

(C) loss of certificate by revocation, suspension, cancellation, or any other means.

(2) The inspector shall not charge or collect a fee for the inspection or report unless it has been set by the appointing agency and the homeowner is informed of all such costs beforehand.

(3) The inspector shall not charge or collect any fee for remedial work necessary to pass the inspection and shall not make any specific referrals either directly or indirectly. The inspector may make a general reference to the phone book or other lists of

businesses.

(4) All inspections shall be conducted by an inspector who either:

(A) is in a peace officer uniform with badge; or

(B) provides to the homeowner or occupant, before entering the home, an identification card which contains both a photograph and the official title of the inspector.

(5) No inspection shall be made except upon request by and with the approval of the owner or occupant.

(6) Inspections shall comply with the minimum requirements of the Insurance Code, Article 5.33A, §6.

(7) The inspector shall verbally inform the homeowner of the results and provide, upon request, a copy of the report within 10 working days.

(8) The inspector shall complete and sign the inspection form required by the board, and forward it to them within 10 working days.

(i) The commission may revoke or suspend any certificate issued under this section:

(1) for failure to comply with the standards for conducting an inspection found in subsection (h) of this section; or

(2) for failure to comply with the minimum standards for retention of a peace officer license.

(j) Certificates issued under this section are subject to the same provisions for cancellation as a peace officer proficiency certificate.

(k) The term "high moral integrity" shall mean the person:

(1) is not currently on criminal probation;

(2) has never been convicted of a felony, as that phrase is used in these sections;

(3) has not been convicted of a DWI within the past 24 months, a Class A misdemeanor within the last 12 months, or a Class B misdemeanor within the last six months;

(4) has not been discharged from any military service under less than honorable conditions; and

(5) has never had a license revoked by the commission.

(l) Offenses under the federal criminal laws or those of other states will be construed as their closest equivalent under current Texas law.

(m) The effective date of this section shall be January 5, 1988.

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 December 15, 1987.

TRD-8711380

David M. Boatright
General Counsel
Texas Commission on
Law Enforcement
Officer Standards and
Education

Effective date: January 5, 1988

Proposal publication date: October 23, 1987

For further information, please call

(512) 834-9222.

★37 TAC §211.104

The new section, is adopted under Chapter 1062, 70th Legislature, 1987, as it amends Texas Civil Statutes, Article 4413(29aa), by adding to §7 a new subsection (c) and (d), which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to adopt rules that define weapons proficiency. It should be noted that this new section is specifically not proposed under the Government Code, §415.035, which deals with essentially the same subject.

§211.104. *Minimum Standards for Annual Firearms Proficiency.*

(a) For purposes of this section, the term "firearms" shall mean any kind of handgun or shotgun that is carried by the individual officer on or off duty, and shall not include any other firearm weapon or any baton, tear gas, restraining or nonlethal stunning device, animal, or other nonfirearm weapon. The term "kind" means caliber or gauge and action type.

(b) This section does not prevent an agency from establishing weapons proficiency standards that exceed the minimum standards of the commission.

(c) The minimum standards for any annual proficiency course of fire shall be:

(1) use of any target capable of being scored;

(2) a minimum passing score of 70% of the total possible score;

(3) for handguns, a minimum of 50 rounds, including at least five rounds of duty ammunition, fired at ranges from point-blank to at least 15 yards with at least 20 rounds at or beyond seven yards, including at least one timed reloading;

(4) for shotguns, a minimum of five rounds of duty ammunition fired at a range of at least 15 yards;

(5) demonstration of proficiency in the care and cleaning of the weapon used; and

(6) an external inspection by the control officer or a range officer, firearms instructor, or gunsmith designated by that control officer to determine the safety and functioning of the weapon.

(d) Any standard contained in this section may, upon agency request, be waived by the executive director or, if denied and upon petition, may be the subject of an administrative hearing held to determine waiver based upon proof by the agency that its proposal meets or exceeds the commission's standards.

(e) The first calendar year to demonstrate firearms proficiency shall be 1988.

(f) The effective date of this section shall be January 5, 1988.

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 December 15, 1987.

TRD-8711381 David M. Boatright
General Counsel
Texas Commission on
Law Enforcement
Officer Standards and
Education

Effective date: January 5, 1988
Proposal publication date: October 23, 1987
For further information, please call
(512) 463-9222.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. CCAD Definitions

★40 TAC §48.1201

The Texas Department of Human Services (TDHS) adopts an amendment to §48.1201, concerning definitions of program terms, in its community care for aged and disabled chapter, without changes to the proposed text published in the October 30, 1987, issue of the *Texas Register* (12 Tex-Reg 4004).

The amendment is justified to more appropriately provide adult protective services (APS) because APS responsibility will be clarified by defining client types.

The amendment will function by adding definitions of emancipated minors and incapacitated persons, and deleting definitions that no longer apply to the program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711314 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: February 1, 1988
Proposal publication date: October 30, 1987
For further information, please call
(512) 450-3765.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711362 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: January 5, 1988
Proposal publication date: September 4, 1987
For further information, please call
(512) 463-8087.

Subchapter K. Hazardous Waste Facilities Assessment and Remediation

★31 TAC §335.342

The amendment is adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any regulations 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. The amendment is also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate regulations consistent with the general intent and pur-

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711363 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: January 5, 1988
Proposal publication date: September 4, 1987
For further information, please call
(512) 463-8087.

Subchapter M. Pre-Application Review and Permit Procedures

★31 TAC §335.391

The amendment is adopted under the Texas Water Code, §5.103 and §5.105, which provide the Texas Water Commission with the authority to adopt any regulations 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. The amendment is also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate regulations 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 requirements 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 accomplish-

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711364 J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: January 5, 1988
Proposal publication date: September 4, 1987
For further information, please call
(512) 463-8087.

Part X. Texas Water Development Board Chapter 355. Research and Planning Fund General Policy

★31 TAC §355.1

The Texas Water Development Board adopts new §355.1, without changes to the proposed text published in the September 29, 1987, issue of the *Texas Register* (12 TexReg 3468).

The new section establishes the board's policy concerning the allocation of research and planning fund by rule. The General Appropriations Act, Senate Bill 1, 70th Legislature, 1987, Article 1, Rider 16; to the Texas Water Development Board, requires the board to establish through rule a system of prioritizing the use of the research and planning fund, giving first priority to studies requires by statute. The new section establishes the allocation of funds between bays and estuaries studies, regional water supply and wastewater planning, flood protection planning, and water research. The board policy gives priority to regional planning along the Rio Grande due to the water problems facing that area. The board also gives priority to board-requested planning efforts in other areas of the state facing severe water supply or water quality problems.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules

necessary to carry out its powers and duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 14, 1987.

TRD-8711254 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date: January 4, 1988
Proposal publication date: September 24, 1987
For further information, please call
(512) 463-7850.

Regional Water Supply and Wastewater Planning

★ 31 TAC §§355.10-355.19

The Texas Water Development Board adopts new §§355.10-355.19, without changes to the proposed text published in the September 29, 1987, issue of the *Texas Register* (12 TexReg 3469).

The new sections contain new application requirements and evaluation criteria for regional water supply and wastewater planning projects for the limited amounts of funds in the board's research and planning fund under the Texas Water Code, §15.406.

Section 355.10 gives definitions to the terms used in the new sections; §355.11 states the purpose of the new sections, and §355.12 states that the board will provide not to exceed 50% of the planning costs with the applicant supplying the remainder in cash or limited in-kind services. Additionally, §355.12(b) states that for unsolicited proposals, applicants must follow the *Texas Register* to find out when unsolicited proposals will be accepted. The method for board solicitation of proposals in areas of the state where there is a need for regional water supply or wastewater facilities is outlined in §355.13. The board will publish the areas and type and scope of the project in the *Texas Register*. In the *Texas Register* notice, deadlines for submission will be established.

In §355.14, the criteria for eligibility is designed to insure that appropriate applicants apply and that all other political subdivisions in the area are given notice. Section 355.15 identifies the information that must be contained in any application. The form published in the Uniform Grants and Contract Management Act (UGCMA), Texas Civil Statutes, Article 4413(32g), does not have to be used because the board has been given certain statutory requirements in the Texas Water Code, §15.405, for the content of the applications. The UGCMA form does not include

the information needed by the board so that form does not need to be used. To assure the board that all local political subdivisions in the planning area are aware of the project, notice under §355.16 must be given.

Section 355.17 outlines the evaluation criteria which will be used by the board to choose which applications will be funded out of the limited amount of funds available. Important considerations such as the immediacy and urgency of the need, the probability that the planning proposal will be implemented, and the ability of the applicant to provide its matching share are described in this section. The applicant is responsible for supplying information which addresses each of these criteria in the applications.

The method of contracting with the board is described in §355.18. The board will contract with the local political subdivision. Any subcontracts that the political subdivision enters into for professional services must be approved by the executive administrator. Also, no subcontracts can be entered into until the board approves the application because the board intends to negotiate the project budgets to insure the fees charged by professionals are fair and reasonable. The definitions of direct costs, fringe costs, overhead, travel, and subsistence are included in §355.18, and are designed to provide the applicant and the subcontractors guidance in putting together their proposed budget for their application.

Section 355.19 states that the results of a regional water supply or wastewater planning study are public information and will be made available to the public, and that the board will contract with the applicants regarding copyrights and patents.

The new sections insure fairness in selecting planning proposals for funding, and insure that contracts entered into by the board achieve the most benefit for the planning of state water resources.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 14, 1987.

TRD-8711253 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date: January 4, 1988
Proposal publication date: September 29, 1987
For further information, please call
(512) 463-7850.

Research and Planning Fund

★ 31 TAC §§355.101-355.110

The Texas Water Development Board adopts the repeal of §§355.101-355.110, without changes to the proposed text published in the September 29, 1987, issue of the *Texas Register* (12 TexReg 3472).

These repeals cover the various requirements for applications for grants from the research and planning fund. These repeals allow for the adoption of a consolidated and revised set of research and planning sections which are adopted elsewhere in this issue.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 14, 1987.

TRD-8711255 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date: January 4, 1988
Proposal publication date: September 29, 1987
For further information, please call
(512) 463-7850.

Chapter 367. Agricultural Water Conservation Program

Introductory Provisions

★ 31 TAC §367.1, §367.2

The Texas Water Development Board adopts amendments to §367.1 and §367.2, without changes to the proposed text published in the October 16, 1987, issue of the *Texas Register* (12 TexReg 3825).

The amendment to §367.1 is the addition of a reference to the statutory changes enacted in Senate Bill 410, 70th Legislature, 1987. The definitions in §367.2 of borrower and evaluation unit are clarified to make the sections more understandable. Evaluation units are now defined as equipment which has a broader definition because of the expansion of the types of eligible equipment in Senate Bill 410. The term "conservation loan" is defined as a

loan made by an irrigation district to a borrower so there is a distinction from a loan made to an irrigation district that will be making improvements to its irrigation delivery system.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Water Code, §§6.101, 15.435, 15.472, and 15.541, which provides the board with the authority to make rules necessary to carry out its powers and duties, including the use of the agricultural soil and water conservation fund for grants for equipment purchase and the pilot program for low interest loans for agricultural water conservation equipment.

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 December 11, 1987.

TRD-8711249 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date: January 4, 1988
Proposal publication date: October 16, 1987
For further information, please call
(512) 463-7850.

Grant for Equipment Purchases

★31 TAC §§367.21-367.23, 367.25, 367.27-367.29

The Texas Water Development Board adopts amendments to §§367.21-367.23, 367.25, and 367.27-367.29, without changes to the proposed text published in the October 16, 1987, issue of the *Texas Register* (12 TexReg 3825).

These amendments bring these sections into compliance with statutory changes enacted in Senate Bill 410, 70th Legislature, 1987, which changed the Texas Water Code, §15.471. The change allows for grants to be used to measure, evaluate, and demonstrate efficient irrigation systems and agricultural water conservation practices on irrigated land, dryland, and rangeland. Section 367.21 expands the purpose of the grant program to include dryland and rangeland areas. Section 367.22 is amended to remove language limiting loans to irrigated areas because of the change in the Texas Water Code, §15.471. Section 367.23 is amended to make the items which are eligible to be purchased comply with the Texas Water Code, §15.471, and to simplify the method of determining eligible equipment by allowing the executive administrator to decide whether the equipment will aid in the measurement, evaluation, and demonstration of efficient irrigation systems and agricultural water applications. The old section was too inflexible

because only equipment on the list was eligible even though other equipment would have been appropriate.

The amendment to §367.25 expands the applications to those agricultural uses on dryland and rangeland. The amendment to §367.27 allows either the executive administrator or the board to determine whether the grant is used to supplement the applicant's money. This amendment allows the executive administrator to approve grant applications of less than \$25,000 in order to make processing some applications more efficient. Section 367.28 is amended to clarify how the grant funds must be returned. Finally, §367.29 is amended to reflect the broader scope of grant purchases and uses.

No negative comments were received regarding adoption of the amendments. Positive comments were received from the Texas Agricultural Extension Service, Texas Farm Bureau, and the USDA-Soil Conservation Service. The Texas Agricultural Extension Service requested that all districts included in §367.22(a) be spelled out. The board believes that it is unnecessary because most districts are aware of what constitutional provisions they were created under. Other comments were received regarding the administrative handling necessary after adoption and they will be given due consideration by the agency.

The amendments are adopted under the Texas Water Code, §§6.101, 15.435, and 15.472, which provides the board with the authority to make rules necessary to carry out its powers and duties, including the use of the agricultural soil and water conservation fund for grants for equipment purchases.

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 December 11, 1987.

TRD-8711250 Nancy K. Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date: January 4, 1988
Proposal publication date: October 16, 1987
For further information, please call
(512) 463-7850.

Pilot Program for Low Interest Loans for Agricultural Water Conservation Equipment

★31 TAC §§367.41-367.46, 367.48, 367.49

The Texas Water Development Board adopts amendments to §§367.41-367.46, 367.48, and 367.49, without changes to the proposed text published in the October

16, 1987, issue of the *Texas Register* (12 TexReg 3827).

These amendments bring these sections into compliance with statutory changes enacted in Senate Bill 410, 70th Legislature, 1987, which added to the districts eligible to be lenders and to the purposes for which the loans could be made. Section 367.41 is amended to reflect that the pilot loan program is extended to state fiscal years 1988 and 1989, and to reflect that these funds may be used by irrigation districts only for improvements of their irrigation water delivery systems. These changes are based on the changes to the Texas Water Code, §15.532 and §15.537. Irrigation districts created under the Texas Constitution, Article III, §52(b)(1) or Article XVI, §59, are now eligible applicants under the Texas Water Code, §15.531, and §367.42 is amended to reflect that. Changes to §367.43 are for better organization.

Section 367.44 is amended to clarify the language and to add to the equipment eligible for loans. Remote control gates and automatic water level control levee gates can help conserve water so they are included in this list. Section 367.45 is amended to clarify that different applications will be required for conservation loans to districts who will lend money to farmers and for loans to districts who will be improving their distribution system. The application contents for these types of loans are separated in the amendments to §367.45. Section 367.46 is amended to clarify that this section relates to any type of a loan application. Section 367.48 is amended to separate the lender loan limits for the two different types of loans and to establish the limit of \$1 million for loans to districts to improve their facilities.

Finally, several changes are made to §367.49 to clarify which terms will go into lender contracts for the two separate types of loans, conservation loans or loans for improvements to district facilities. A provision allowing for extensions of time is added based on the board's experience in processing these loans.

Positive comments were received from the Texas Agricultural Extension Service. The USDA Soil Conservation Service requested that reworking old irrigation wells be included in §367.44, relating to eligible equipment. Without more information, the board could not determine that savings of water would occur and therefore did not change the rules. The SCS also pointed out that the FDIC will only be honoring unconditional irrevocable collateralized annual letter of credit instead of letters of credit referred to in §367.48. This has been noted by the board staff. Finally, the SCS felt the actual loan contract paperwork is too tedious and time consuming. The board will try to work as efficiently as possible to alleviate this. No negative comments were received. The comments regarding the administrative

process are not strictly related to the adoption of the sections, but they are given due consideration in implementation.

The amendments are adopted under the Texas Water Code, §§6.101, 15.435, and 15.541, which provides the board with the authority to make rules necessary to carry out its powers and duties, including the use of the agricultural soil and water conservation fund for the pilot program for low interest loans for agricultural water conservation equipment.

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 December 11, 1987.

TRD-8711251 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date: January 4, 1988
Proposal publication date: October 16, 1987
For further information, please call
(512) 463-7850.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administrative Division

Substantive Rules

The Texas Commission on Law Enforcement Officer Standards and Education adopts amendments to §§211.80, 211.85, 211.86, and 211.97 and new §§211.82, 211.87, and 211.102-211.106. The amendments to §211.86 and §211.97, and new §§211.82, 211.87, and 211.102-211.106 are adopted with changes to the proposed text published in the October 23, 1987, and October 30, 1987, issues of the *Texas Register* (12 TexReg 3907 and 12 TexReg 3995, respectively). The amendments to §211.80 and §211.85 are adopted without changes and will not be republished.

The amendment to §211.80 removes the minimum age standards of 18 years of age since it conflicts with the statutory minimum of 21 for peace officers and reserves, and with §211.97 which has implemented that statutory minimum.

New §211.82 deletes all references to temporary peace officer licenses and tem-

porary reserve law enforcement officer licenses, since they have been eliminated by law. It enumerates the licenses issued by the commission and the conditions necessary for each to be issued including, after amendment, armed public security officer licenses and instructor licenses. It recognizes the issuance and revocation of permanent licenses to some constitutionally elected peace officers.

The amendment to §211.85 deletes the crime prevention proficiency certificate subsection since that topic is now covered by new §211.106. The amendment to §211.86 incorporates statutory language, deletes multiple and confusing cross references to other sections, and provides for notification of any appointing agency by the commission. It also clarifies the date of revocation.

New §211.87 is simplified by removing the confusing cross references to other sections and restating more clearly the various terms of suspension. It will allow the commission to better control the terms and conditions of suspension, probation of suspension, and reprimands. It also provides for notification of any appointing agency. The amendment to §211.97 simplifies that section by restating, without any significant substantive changes, the general rule and its exceptions. It also adds the two new license types, armed public security officer and instructor.

New §211.102 is passed in response to new legislation concerning licensing standards for armed public security officers. New §211.103 is also passed in response to new legislation concerning certification standards for peace officers who use investigative hypnosis. New §§211.104-211.106 were also passed in response to new legislation concerning the definition of firearms proficiency, standards for acknowledgment as telecommunicators, and standards for both homeowners insurance inspections and such inspector certification, respectively.

The amendment to §211.80 deletes the old overlapping age standard and then refers to §211.97 as the sole remaining age standard. New §211.82 provides for issuance under certain circumstances of various permanent, provisional, or temporary licenses to peace officers, reserves law enforcement officers, jailers, armed public security officers, and instructors.

The amendment to §211.85 removes a possible conflict with §211.106 passed at the same time. The amendment to §211.86 will provide for reinstatement upon proof by the licensee that the facts supporting the initial revocation have been negated and it provides for both informal and formal procedures to do this. It provides for discretionary revocation for any offense involving the licensee's duties of office after consideration of aggravating and mitigating factors.

New §211.87 specifies the exact length of various suspensions, their beginning

dates, probations, or reprimands under different conditions, terms and conditions or revocation of probation, and discretionary suspension for Class C misdemeanor offenses involving the licensee's duties of office. The amendment to §211.97 will continue to function as the previous section, since there are no substantive changes.

New §211.102 sets the licensing standards for armed public security officers as the same as already exist for peace officers except for training and testing. There is no testing standard and the training standards will, for the time being, be the same as for private security officers. Any temporary licenses that may have been issued will convert to permanent licenses.

New §211.103 sets the standards for training, testing, and certification of peace officers who use investigative hypnosis techniques and provides for cancellation of an such certificate which was issued in error or based on false or incorrect information.

New §211.104, in effect, defines the term "weapons proficiency" as used in legislation mandating demonstration of such proficiency once each year by peace officers. It initially only applies to handguns and shotguns and sets general minimum guidelines about target, distances, passing score, number of rounds, and cleaning and inspection.

New §211.105 sets standards for training and acknowledgment of law enforcement telecommunicators. It reaches anyone who works for or serves law enforcement and handles law enforcement communications information. It provides both for issuance of grandfather, temporary, training, and permanent acknowledgments and for cancellation of the same.

New §211.106 carries forward the crime prevention inspectors proficiency certificate for peace officers, as previously issued under §211.85, and adds the new standards for homeowners insurance inspector certificates and standards for conducting any such inspection. It also provides for revocation, suspension, and cancellation.

Several comments were received regarding new §211.104. Eight letters and many phone calls were received on the topic. The commission adopted, in whole or in part, most of the recommended changes to proposed §211.104, such as: clarifying the rounds per range and on/off-duty requirements; changing six shotgun rounds to five; changing the words "seven to 15 yards" for handguns to the words "point blank to at least 15 yards with at least 20 of the 50 round fired at or beyond seven yards"; elimination of the shoulder point requirement, thereby leaving the shooting stance up to the sole discretion of the weapons proficiency or range officer; deletion of the standard silhouette target and substitution of the words "any target

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. 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 Bond Review Board

Tuesday, December 22, 1987, 9:30 a.m. The Texas Bond Review Board will meet in emergency session in Room 710, Sam Houston Building, 201 East 14th Street, Austin. According to the agenda, the board will consider Lamar University System, application for approval of \$1,100,000 subordinate lien combined fee revenue bonds, series 1987. The emergency status is necessary because the applicant requests timely hearing pursuant to the emergency rules adopted by the Review Board, as published in Volume 12 of the *Texas Register*, in accordance with §181.2 of the emergency rules.

Contact: Tom K. Pollard, Seventh Floor, Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

Filed: December 16, 1987, 2:27 p.m.
TRD-8711384

Texas State Board of Examiners of Dietitians

Monday and Tuesday, December 28 and 29, 1987, 10 a.m. and 9 a.m., respectively. The Rules Committee for the Texas State Board of Examiners of Dietitians will meet in Room T-507, Texas Department of Health, 1100 West 49th Street, Austin. The committee will meet for an agenda revision to consider annual review of rules to assure currency in dietetic practice, education and evaluation procedures, rule corrections or changes received to date, and set the next meeting date.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7501.

Filed: December 15, 1987, 1:55 p.m.
TRD-8711322

Advisory Commission on State Emergency Communications

Wednesday, December 30, 1987, 9 a.m. The Advisory Commission on State Emergency Communications will meet in Room 109, John H. Reagan Building, 105 West 15th

Street, Austin. According to the agenda, the commission will elect an advisory commission chairman; adopt commission meeting procedures; draw members terms of office; review Article 1432f; consider procedures for implementing 9-1-1 fees and surcharges; establish committees; review commission correspondence; and discuss future meeting schedules.

Contact: Jay G. Stanford, P.O. Box 13206, Austin, Texas 78711, (512) 463-1812.

Filed: December 16, 1987, 10:10 a.m.
TRD-8711379

State Department of Highways and Public Transportation

Monday, December 21, 1987, 10 a.m. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation met in Room 101-A, First Floor, Dewitt C. Greer Building, 11th and Brazos Streets, Austin. According to the agenda, the commission met for an emergency agenda revision to consider promulgation of rules and regulations under Title 43, TAC, pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, for adoption on an emergency basis and proposed permanent adoption on amendments to contested case procedures, amended §§1.21, 1.23, 1.26, 1.41, 1.43, 1.46, 1.48, 1.56, 1.59, 1.60, 1.62, and 1.63. The emergency status was necessary to add additional sections under Item 12.a(3)(a) for legal consistency with scheduled amendments.

Contact: Lois Jean Turner, Room 203, 11th and Brazos Streets, Austin, Texas 78705, (512) 463-8616.

Filed: December 16, 1987, 3:47 p.m.
TRD-8711386

Texas Industrial Accident Board

Friday, December 18, 1987, 11:30 a.m. The Texas Industrial Accident Board met in

Room 107, First Floor, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the board reviewed board files (this portion closed pursuant to workers' compensation statute), and reviewed and discussed board activities.

Contact: Inez "Tippy" Foster, 200 East Riverside Drive, First Floor, Austin, Texas 78704, (512) 448-7960.

Filed: December 15, 1987, 11:18 a.m.
TRD-8711316

State Board of Insurance

The Commissioner's Hearing Section of the State Board of Insurance will meet on Monday, December 28, 1987, at 1110 San Jacinto Street, Austin. Times, rooms, and agendas follow.

8:30 a.m. In Room 342, the section will consider Docket 9738—Acquisition of control of Texas Savings Life Insurance Company, Austin, by Texas Savings Holding Company, a Texas corporation, and R. Kenneth Evans, Shreveport, Louisiana, pursuant to the Texas Insurance Code, Article 21.49-1, §5.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 17, 1987, 8:25 a.m.
TRD-8711398

9 a.m. In Room 353, the section will consider Docket 9782—Request of Gulf States Insurance Company for exemption from the minimum capital and surplus requirements of Article 1.14-2, §8(b), Texas Insurance Code.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 17, 1987, 8:22 a.m.
TRD-8711399

1:30 p.m. In Room 342, the section will consider Docket 9781—Request of Victoria Insurance Company, Ltd., for exemption from

the minimum capital and surplus requirements of Article 1.14-2, §8(b), Texas Insurance Code.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 17, 1987, 8:25 a.m.
TRD-8711396

Texas State Board of Pharmacy

Thursday, January 14, 1988, 9 a.m. The Texas State Board of Pharmacy will meet in the Embassy Suites Hotel, 5901 IH-35 North, Austin. According to the agenda summary, the board will consider comments for adoption of §291.93, regarding labeling and repackaging of prescription drugs for distribution by a Class D pharmacy; §§291.51-291.54, relating to persons or facilities that are exempt from the Class B (nuclear) pharmacy rules; approve business meeting minutes of September 22-23, 1987, and November 17-19, 1987; hear report on Class A & C liaison committee meeting of December 11, 1987; consider proposed amendments to Chapter 309 and §281.4; adoption of §§291.51-291.54, 283.1-283.10, simultaneous repeal of §§283.1-283.14, and 291.6, 295.5, 303.2, 305.1, repeal of §291.10, adoption of §§291.93, 291.12, 291.72. The board will also meet in executive session to discuss pending litigation and personnel matters; consider proposed agreed board orders; hear legal counsel presentation; and discuss informal conference procedures.

Contact: Fred S. Brinkley, Jr., R.Ph, 8505 Cross Park Drive, #110, Austin, Texas 78754-4533, (512) 832-0661.

Filed: December 17, 1987, 8:52 a.m.
TRD-8711403

Public Utility Commission of Texas

Wednesday, January 6, 1987, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the division will hold a prehearing conference in Docket 7667 to review the application of Kerrville Telephone Company to unbundle charges and detariff inside wire and CPE.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 15, 1987, 2:56 p.m.
TRD-8711354

Board for Lease of State-owned Lands

Thursday, December 17, 1987, 2 p.m. The Board for Lease of Texas Department of

Corrections for the Board for Lease of State-owned Lands met in emergency session rescheduled from December 16, 1987, at 9:30 a.m., in Room 833, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board approved minutes of the previous board meeting; considered nominations, terms, conditions, and procedures for the April oil, gas, and other minerals lease sale; considered amendment to oil and gas lease form; and discussed litigation concerning Bar N Oil and Gas lease. The emergency status was necessary because a quorum cannot be available on December 16, 1987, at 9:30 a.m.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: December 15, 1987, 3:35 p.m.
TRD-8711355

Texas Water Commission

Tuesday, December 15, 1987, 2 p.m. The Texas Water Commission met in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission met for an emergency agenda revision, regarding the issuance of an emergency order to Celanese Chemical Company, Pampa facility, to waive certain requirements. The emergency status was necessary due to a recent explosion and fire at the plant that necessitated issuance of this emergency order, to allow the applicant to proceed with cleanup and restart of the facility's operation without endangering public health or the environment.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: December 15, 1987, 11:28 a.m.
TRD-8711320

Texas Water Development Board

Thursday, December 17, 1987, 9:30 a.m. The Texas Water Development Board met for an emergency agenda revision in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board was briefed on the progress of Denton County Regional Water Supply and Wastewater Services Planning project. The emergency status is necessary because local sponsors needed to inform the board and receive guidance and direction from the board in order to proceed in an expeditious manner to initiate subsequent phases of the planning and implementation of specific elements of the regional water and sewer plans for parts of Denton County.

Contact: M. Reginald Arnold, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: December 15, 1987, 10:57 a.m.
TRD-8711315

Regional Agencies Meetings Filed December 15

The Central Texas Mental Health and Mental Retardation Center, Board of Trustees met at 408 Mulberry Drive, Brownwood, December 21, 1987, at 1 p.m. Information may be obtained from Nelda Andrews, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574.

The Guadalupe-Blanco River Authority, Board of Directors, met for an emergency agenda revision in the Authority's Offices, 933 East Court Street, Sequin, on December 17, 1987, at 10 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Sequin, Texas 78156, (512) 379-5822.

The Lamar County Appraisal District, Board of Directors, met in the District Office, 1523 Lamar Avenue, Paris, on December 21, 1987, at 5 p.m. Information may be obtained from Rodney Anderson, 1523 Lamar Avenue, Paris, Texas 75460, (214) 785-7822.

The San Antonio River Industrial Development Authority, Board of Directors, met in the General Offices, 100 East Guenther Street, San Antonio, on December 21, 1987, at 10 a.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, San Antonio, Texas 78204, (512) 227-1373.
TRD-8711311

Meetings Filed December 16

The Ellis County Tax Appraisal District, will meet at 406 Sycamore Street, Waxahachie, on December 23, 1987, at 7 p.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75162, (214) 937-3552.

The Lower Rio Grande Valley Development Council, Board of Directors, will meet in the Harlingen Chamber of Commerce, 301 East Tyler, Harlingen, on December 22, 1987, at 1:30 p.m. Information may be obtained from Robert A. Chandler, 4900 North 23rd Street, McAllen, Texas 78504, (512) 682-3481.

TRD-8711372

Meeting Filed December 17

The Hays County Appraisal District, Appraisal Review Board, will meet at the Municipal Building, 632A East Hopkins, San Marcos, on January 6, 1988, at 9 a.m. Information may be obtained from Lynne Sedlar, 632A East Hopkins, San Marcos, Texas 78666, (512) 754-7400.

TRD-8711397

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 Commerce Private Activity Bond Allocation Report

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1987 is \$1,227,750,000.

State legislation, 70th Legislature, Senate Bill 1382, was passed, effective June 20, 1987, to establish the allocation process. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation. On and after October 1, that portion of the state ceiling available for reservations shall become available to any issuer for any bonds requiring an allocation.

Generally, the state ceiling will be allocated on a first-come, first-served basis within the applicable subceiling, with the Texas Department of Commerce (the department) administering the allocation system.

The information that follows is a summary report of the allocation activity for the period December 7, 1987-December 12, 1987.

Weekly Report on the 1987 Allocation of the State Ceiling on Certain Private Activity Bonds as Pursuant to Senate Bill 1382

Total amount of the \$1,227,750,000 state ceiling remaining unreserved as of December 12, 1987: *\$6,295,101.

Comprehensive listing of bond issues which have received a reservation date per Senate Bill 1382 from December 7, 1987, through December 12, 1987: None.

Comprehensive listing of bonds issued and delivered as per Senate Bill 1382 from December 7, 1987, through December 12, 1987: None.

*The San Antonio Housing Finance Corporation, Mayfield Equities, Inc., reservation was cancelled.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711373 J. W. Lauderback
Executive Director
Texas Department of Commerce

Filed: December 16, 1987
For further information, please call (512) 472-5059.

Governor's Office of Budget and Planning Revision to the Texas Residential Conservation Service Plan

In September, 1987, the Energy Management Center of the Governor's Office of Budget and Planning was designated lead agency for the Texas Residential Conservation Service (RCS) by Governor William P. Clements, Jr. The Texas RCS Program was created in accordance with the mandate contained in the National Energy Conservation Policy Act (NECPA), Public Law 95-619, Title II, as amended.

The Act requires utilities of a stipulated size to offer their residential customers on-site energy conservation surveys. Nineteen Texas utilities are covered by the provisions of the state plan.

In September, 1987, the United States Department of Energy revised the federal rules for the RCS Program. The Energy Management Center proposes to amend the Texas plan to accord with the revised federal standards. A draft of the revised state plan has been prepared and is available to all interested parties for comment and review.

Copies of the revised plan are available from the Governor's Office of Budget and Planning, Sam Houston State Office Building, 211 East 14th Street, Austin, Texas 78701. Further information and copies of the plan may be obtained by writing or contacting Eric Bodenschatz at (512) 463-1881. Public comment is invited through January 8, 1988. Due to requirements contained in NECPA and federal rules governing the RCS Program, these revisions will become effective January 25, 1988.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711310 Robert E. Davis
Director
Governor's Office of Budget and
Planning

Filed: December 15, 1987
For further information, please call (512) 463-1778.

Texas Department of Health Intent to Revoke Radioactive Material Licenses

The Bureau of Radiation Control, Texas Department of Health, filed complaints against the following licensees for failure to pay fees pursuant to *Texas Regulations for Control of Radiation* (TRCR) 13.8:

- (1) Mechanical Systems, ACV Valve Division, 13223 Spencer Road, Houston, Texas 77041, Radioactive Material License Number 11-3311;
- (2) Davis Exploration Services, Incorporated, 306 Bounds Avenue, Rockdale, Texas 76567, Radioactive

Material License Number 6-2264;

(3) Coastal Wireline Services, Incorporated, P.O. Box 5008, Victoria, Texas 77903, Radioactive Material License Number 8-3484;

(4) Sumx Corporation, 2211 Denton Drive, Austin, Texas 78758, Radioactive Material License Number 6-3841;

(5) Edna Hospital, 1013 South Wells Street, Edna, Texas 77957, Radioactive Material License Number 8-2902;

(6) East Texas Oilfield Inspection Service, 34 Palmer, Conroe, Texas 77302, Radioactive Material License Number 11-3080;

(7) Wommack International, Incorporated, 3701 North Grove, Fort Worth, Texas 76106, Radioactive Material License Number 5-2250;

(8) Clinton & Pavay, Incorporated, 14456 Beltwood Parkway West, Dallas, Texas 75234, Radioactive Material License Number 5-2754;

(9) Prairie View A&M College, Department of Physics, Prairie View, Texas 77445, Radioactive Material License Number 11-1510;

(10) W. A. Neel Company, Incorporated, P.O. Box 397, Marshall, Texas 75670, Radioactive Material License Number 7-2741;

(11) Emerald Tubular Inspection, Inc., 1409 Story, Houston, Texas 77066, Radioactive Material License Number 11-3100;

(12) International Testing Laboratories, ESCO Industries, Incorporated, 3401 Montana Avenue, El Paso, Texas 79925, Radioactive Material License Number 3-3279.

The agency intends to revoke the radioactive material licenses, order the licensees to cease and desist use of such radioactive materials, and order the licensees to divest themselves of such radioactive material, presenting evidence satisfactory to the Bureau of Radiation Control that they have complied with the order and the provisions of Texas Civil Statutes, Article 4590f. If the fee is paid within 30 days of the date of each complaint, no order will be issued.

This notice affords the opportunity for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Texas, from 8 a.m. to 5 p.m., Monday-Friday (except holidays).

Issued in Austin, Texas, on December 15, 1987.

TRD-8711298 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: December 15, 1987

For further information, please call (512) 835-7000.

Public Hearing

In the December 15, 1987, issue of the *Texas Register* (12 TexReg 4676), the department of health proposed new §295.21, concerning fees for asbestos services. The new

section will cover fees for the analysis of materials and airborne samples for the presence or concentration of asbestos. A public hearing on the proposed section was held on Monday, December 21, 1987, at the Texas Department of Health in Austin.

The department has decided to hold an additional hearing concerning the proposed new section. The hearing will be held on Thursday, January 7, 1988, at 9 a.m. in the Texas Department of Health Auditorium, 1100 West 49th Street, Austin. For further information, call Jerry Lauderdale, P.E., director, Division of Occupational Health and Safety, Texas Department of Health at (512) 458-7254.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711299 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: December 15, 1987

For further information, please call (512) 458-7254.

Radioactive Material License Amendments

Notice is given by the Texas Department of Health that it has granted an amendment to the following radioactive material license: Radioactive Material License Number L01654, issued to GNI Inc., for their facility located in Odessa (mailing address: GNI Inc., 2717 West 81st Street, Odessa, Texas 79764).

The amendment of this license is summarized as follows: grants exemptions from TRCR 44.30(c) concerning liability insurance by authorizing a minimum aggregate per occurrence of \$1,000,000 and a 10-day prior notification period before the insurance policy can be cancelled, terminated, or not renewed. These exemptions shall expire on December 31, 1988.

The Division of Licensing, Registration, and Standards has determined that the amendment has no significant impact on the human environment; the licensee is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to minimize danger to public health safety, and the environment; the licensee's equipment, facilities, and procedures are adequate to minimize danger to public health and safety, and the environment; the issuance of the license amendment will not be inimical to public health and safety, or have a detrimental impact on the environment; and the licensee satisfies any applicable special requirements in Part 44 of the TRCR.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Civil Statutes, Article 4590f, §11B(b), as amended, and as set out in TRCR 13.6. A person affected is defined as a person who is resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage.

A person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must con-

tain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the amendment will remain in effect.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin. Information relative to the amendment of this specific radioactive material license may be obtained by contacting David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. For further information, please call (512) 835-7000.

Issued in Austin, Texas, on December 11, 1987.

TRD-8711347 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: December 15, 1987

For further information, please call (512) 835-7000.



Notice is given by the Texas Department of Health that it has granted an amendment to the following radioactive material license: Radioactive Material License Number L03903, issued to Syncor International Corporation, for their facility located in San Antonio (mailing address: Syncor International Corporation, Creekview Garden Offices, Suite 602, 8600 Wurzbach, San Antonio, Texas 78240).

The amendment of this license is summarized as follows: changes the location where radioactive waste is stored and processed.

The Division of Licensing, Registration, and Standards has determined that the amendment has no significant impact on the human environment; the licensee is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to minimize danger to public health and safety, and the environment; the licensee's equipment, facilities, and procedures are adequate to minimize danger to public health and safety, and the environment; the issuance of the license amendment will not be inimical to public health and safety, or have a detrimental impact on the environment; and the licensee satisfies any applicable special requirements in Part 44 of the TRCR.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Civil Statutes, Article 4590f, §11B(b), as amended, and as set out in TRCR 13.6. A person affected is defined as a person who is resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street,

Austin, Texas 78756. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the amendment will remain in effect.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin. Information relative to the amendment of this specific radioactive material license may be obtained by contacting David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. For further information, please call (512) 835-7000.

Issued in Austin, Texas, on December 11, 1987.

TRD-8711346 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: December 15, 1987

For further information, please call (512) 835-7000.



Texas Housing Agency Invitation for Offers for Consulting Services

The Texas Housing Agency gives notice of its intention to engage a private consultant to establish a program of intergovernmental cooperation and information exchange between the Texas Housing Agency and other state agencies, federal departments, legislative bodies, public instrumentalities, and other groups whose activities affect the provision of housing for those of low and moderate income. The consultant will act as intergovernmental liaison for the Texas Housing Agency to assist in the legislative and rulemaking processes at the state and federal levels in connection with laws affecting the agency's housing programs and related financing initiatives; to develop a plan under which the agency could initiate joint undertakings with other housing advocates (such as nonprofit entities, public housing authorities, local housing finance corporations, lenders, and homebuilders) and with banks, retirement funds, and other potential investors in housing finance programs, to stimulate economic activity in the area of affordable housing; to identify potential sources of funding, including grant and investment moneys available in the public and private sectors for housing programs and studies; to assist in the approval process of housing proposals that require approval at the state or federal level; and to develop a program under which the Texas Housing Agency could provide technical assistance to other housing bond issuers at the state or local level.

The agency will consider offers to perform these consulting services from interested persons with the following qualifications: at least two years' experience in a responsible position with a state governmental agency, which included responsibilities in the areas of policy and program development; a working knowledge of housing-related programs administered by the state and federal governments; and demonstrated skills in establishing cooperative endeavors in legislative and political arenas. Experience in public relations, marketing, or fund raising for public or private sector organizations is desirable. Active prior

involvement in policymaking of public boards or committees will be considered as an asset.

Any private consultant who wants to make an offer to perform the requested services may submit a written proposal, including qualifications of the offeror, scope of services offered, and an estimate of fees and expenses for services to be performed, to Dan A. McNeil, Texas Housing Agency, P.O. Box 13941, Austin, Texas 78704, or 811 Barton Springs Road, Suite 300, Austin, Texas 78704, for receipt prior to 5 p.m. January 4, 1988.

The Finance and Audit Committee of the Board of Directors of the Texas Housing Agency will review proposals timely submitted and will select a private consultant based upon an evaluation of the proposals and, if the committee deems it necessary to its selection, personal interviews with final candidates. Offerors will be notified of the committee's selection by no later than February 1, 1988.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711321 Dan A. McNeil
Executive Administrator
Texas Housing Agency

Filed: December 15, 1987
For further information, please call (512) 474-2974.

Texas Department of Human Services Requests for Proposals

The Texas Department of Human Services (TDHS) is requesting proposals for family planning services.

Description. TDHS uses competitive procurement to purchase family planning services to ensure that the services are the highest quality, lowest price, and best meet client needs. At this time, TDHS is announcing its intent to purchase family planning services for eligible clients during state fiscal year 1989 (September 1, 1988-August 31, 1989) in Region 04. The following counties are in Region 04: Archer, Baylor, Brown, Callahan, Childress, Clay, Coke, Coleman, Comanche, Concho, Cottle, Crockett, Eastland, Fisher, Foard, Hardeman, Haskell, Irion, Jack, Jones, Kent, Kimble, Knox, Mason, McCulloch, Menard, Mitchell, Montague, Nolan, Reagan, Runnels, Schleicher, Scurry, Shackelford, Stephens, Sterling, Stonewall, Sutton, Taylor, Throckmorton, Tom Green, Wichita, Wilbarger, and Young.

Family planning includes medical, educational, and counseling services, primarily provided in an out-patient setting, that enable clients, including minors, to voluntarily limit family size or space children. Contracts must provide outreach, reproductive, and contraceptive information and education, counseling, referral, and medical services. Medical services include examinations, diagnosis, treatment, continuing supervision, necessary laboratory tests, drugs, supplies, birth control devices, sterilization, and related counseling. Every contractor must have a medical director licensed to practice medicine in Texas. Medical services must be furnished, prescribed, or supervised by a physician or osteopath.

Contract Period. A contract period is usually 12 months. TDHS, at its option, may renew or extend a contract for three additional periods on a noncompetitive basis.

Closing Date. The closing date for receipt of proposals is 5 p.m., May 2, 1988.

Selection. Final selection will be made by Barbara Prince, program director, Family Self-Support Contracts, TDHS,

based upon submitted qualifications.

Contact Person. To obtain more information or a request for proposal package, contact Barbara Prince, Program Director, Family Self-Support Contracts, TDHS, P.O. Box 6635, Abilene, Texas 79608, (915) 695-5750.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711312 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: December 15, 1987
For further information, please call (512) 450-3765.

The Texas Department of Human Services (TDHS) is requesting proposals for day care services.

Description. TDHS uses competitive procurement to purchase day care services to ensure that the services are the highest quality, lowest price, and best meet client needs. At this time, TDHS is announcing its intent to purchase day care services for eligible clients during state fiscal year 1989 (September 1, 1988-August 31, 1989) in Region 04. The department will be procuring day care services in the following areas: Abilene, Breckenridge, Brownwood, Colorado City, Crowell, Hamlin, Quanah, Snyder, Sweetwater, San Angelo, Vernon, and Wichita Falls.

TDHS, through the Family Self-Support Program, provides day care services to protect children from abuse and neglect and to enable parents to work or receive training.

Day care services is care of a child outside the child's own home in family day homes, group day homes, or day care centers. These facilities must comply with applicable state minimum standards and be licensed, certified, or registered, as appropriate. All facilities, from which the department purchases day care services, must also comply with the department's day care purchase criteria. TDHS purchases day care services for children from birth through 10 years of age who need protective services; are recipients of AFDC, SSI, refugee/entrant cash assistance or food stamps; or have a family income below the established income eligibility level for purchased services. The department also purchases day care services for children from age 11 years through 13 years who are in priority one, or who have a documented handicap and are in priority two, three or four.

The goals of the day care program are: achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency; achieving or maintaining self-sufficiency, including reduction or prevention of dependency; and preventing or remedying neglect, abuse, or exploitation of children unable to protect their own interests, or preserving, rehabilitating, or reuniting families.

Each day care contract is given an allocation of state, federal, and local funds. The contract's allocation comes from the region's allocation. The federal funds for day care are part of the State of Texas allotment of funds under Title XX of the Social Security Act, the state funds are appropriated by the state legislature, and the local funds are certified by the contractor.

Contract Period. A contract period is usually 12 months. TDHS, at its option, may renew or extend a contract for three additional periods on a noncompetitive basis.

Closing Date. The closing date for receipt of proposals is 5 p.m., May 10, 1988.

Selection. Final selection will be made by Barbara Prince, program director, Family Self-Support Contracts, TDHS, based upon submitted qualifications.

Contact Person. To obtain more information or a request for proposal package, contact Barbara Prince, Program Director, Family Self-Support Contracts, TDHS, P.O. Box 6635, Abilene, Texas 79608, (915) 695-5750.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711313 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: December 15, 1987
For further information, please call (512) 450-3785.

State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

(1) Application for admission to do business in Texas of Rollins Burdick Hunter of Illinois, Inc., a foreign third party administrator. The home office is in Chicago, Illinois.

(2) Application for admission to do business in Texas of American Institute of Management Services, Inc., a foreign third party administrator. The home office is in Winston-Salem, North Carolina.

(3) Application for admission to do business in Texas of National Benefits Corporation, a foreign third party administrator. The home office is in Horsham, Pennsylvania.

(4) Application for admission to do business in Texas of International Benefit Services Corporation, a foreign third party administrator. The home office is in Wilmington, Delaware.

(5) Application for admission to do business in Texas of Brokerage Services, Inc., a foreign third party administrator. The home office is in Albuquerque, New Mexico.

(6) Application for admission to do business in Texas of Financial Planning, Inc., a foreign third party administrator. The home office is in Elm Grove, Wisconsin.

(7) Application for admission to do business in Texas of Professional Services Group, Inc., a foreign third party administrator. The home office is in Trevoze, Pennsylvania.

(8) Application for admission to do business in Texas of Administrative Concepts, Inc., a foreign third party administrator. The home office is in Kansas City, Missouri.

(9) Application for admission to do business in Texas of Benefit Administrators of America, Inc., a foreign third party administrator. The home office is in Des Moines, Iowa.

(10) Application for admission to do business in Texas of Health Plans, Inc., a foreign third party administrator. The home office is in Worcester, Massachusetts.

(11) Application for admission to do business in Texas of The Lower Agency, Inc., a foreign third party administrator. The home office is in Kansas City, Missouri.

(12) Application for admission to do business in Texas of Consolidated Group, Inc., a foreign third party administrator. The home office is in Framingham, Massachusetts.

Issued in Austin, Texas, on December 10, 1987.

TRD-8711348 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: December 15, 1987
For further information, please call (512) 463-6326.

Texas Department of Mental Health and Mental Retardation Consultant Contract Award

The award of consulting services is being filed pursuant to Texas Civil Statutes, Article 6252-11c.

On October 19, 1987, the central office of the Texas Department of Mental Health and Mental Retardation filed a request for proposals which appeared in the October 27, 1987, issue of the *Texas Register* (12 TexReg 3974). The consultant is to provide the following services.

The consultant will be responsible for performing comprehensive recruitment services for the position of commissioner (chief executive officer) of the Texas Department of Mental Health and Mental Retardation on the basis of best qualified person in compliance with federal and state statutes. The consultant will also provide written documentation of activities conducted in providing these recruitment services. Major components of the task are research and identification of candidates including reference development; introduction of candidate; assistance in negotiation of offer and acceptance; appropriate travel and lodging arrangements; communication during the recruitment process to ensure coordination and formal written progress reports on a monthly basis.

The central office of the Texas Department of Mental Health and Mental Retardation has contracted with Jensen-Oldani & Associates, Inc., Suite 570, One Bellvue Center, 411 108th Avenue N.E., Bellvue, Washington 98004, to provide these services. The contract was entered into on December 2, 1987, and will be in effect until April 15, 1987.

The total value of the contract is \$16,500 plus expenses directly related to the services, up to a maximum of \$6,000.

Recommendations pursuant to this contract shall be completed on or before April 15, 1987.

Issued in Austin, Texas, on December 15, 1987.

TRD-8711365 Gary E. Miller
Commissioner
Texas Department of Mental Health
and Mental Retardation

Filed: December 15, 1987
For further information, please call (512) 465-4591.

Texas Water Commission Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to ARCO Chemical Company, on December 11 1987, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle A. McFaddin, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on December 14, 1987.

TRD-8711271 Karen A. Phillips
Chief Clerk
Texas Water Commission

Filed: December 14, 1987
For further information, please call (512) 463-7898.



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 Safety-Kleen Corporation, on December 11, 1987, assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William W. Thompson, III, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on December 14, 1987.

TRD-8711269 Karen A. Phillips
Chief Clerk
Texas Water Commission

Filed: December 14, 1987
For further information, please call (512) 463-7898.



Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Bells, on December 11 1987, assessing \$1,000 in administrative penalties, and imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Wendall Corrigan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on December 14, 1987.

TRD-8711272 Karen A. Phillips
Chief Clerk
Texas Water Commission

Filed: December 14, 1987
For further information, please call (512) 463-7898.



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 Kenneth Jackson and Phillip Mischel, doing business as Pelican Bay Joint Venture, on December 11 1987, assessing \$8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Keven McCalla, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on December 14, 1987.

TRD-8711270 Karen A. Phillips
Chief Clerk
Texas Water Commission

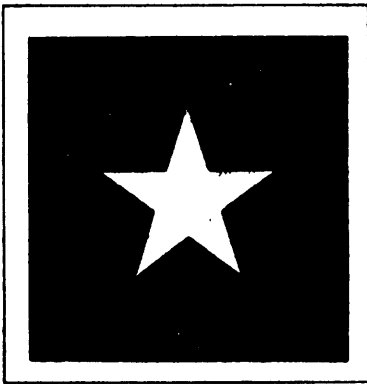
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