

Texas Register

Volume 18, Number 63, August 20, 1993

Page 5529-5629

In This Issue...

Office of the Attorney General

Letter Opinions

LO93-47 (RQ-280)	5539
LO93-48 (ID#-18188)	5539
LO93-49 (RQ-531)	5539
LO93-50 (ID#-16818)	5539
LO93-53 (ID#-19950)	5539
LO93-54 (ID#-20119)	5539
LO93-55 (RQ-472)	5540
LO93-56 (ID#-19594)	5540
LO93-57 (ID#-19816)	5540

Open Records Decision

ORD-615 (RQ-496)	5540
------------------------	------

Opinions

DM-227 (RQ-202)	5540
DM-228 (RQ-204)	5540
DM-229 (RQ-522)	5540
DM-230 (RQ-512)	5540
DM-231 (RQ-408)	5540
DM-232 (RQ-519)	5540
DM-233 (RQ-504)	5541
DM-234 (RQ-516)	5541
DM-235 (RQ-528)	5541

Requests for Opinions

RQ-551	5541
RQ-552	5541
RQ-553	5541

RQ-554	5541
RQ-555	5541
RQ-556	5541
RQ-557	5541
RQ-558	5541
RQ-559	5541
RQ-560	5541
RQ-561	5541
RQ-562	5541
RQ-563	5541
RQ-564	5542
RQ-565	5542
RQ-566	5542
RQ-567	5542
RQ-568	5542
RQ-569	5542
RQ-570	5542
RQ-571	5542
RQ-572	5542
RQ-573	5542
RQ-574	5542
RQ-575	5542
RQ-576	5542

Emergency Sections

Texas Department of Human Services

Purchased Health Services

40 TAC §§29.1104, 29.1126, 29.1127	5543
--	------



The Texas Register is printed on 100% recycled paper.

CONTENTS CONTINUED INSIDE

Texas Register



a section of the
Office of the
Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

Secretary of State
John Hannah, Jr.

Director
Dan Procter

Assistant Director
Dee Wright

Circulation/Marketing
Roberta Knight
Jill S. Ledbetter

TAC Editor
Dana Blanton

TAC Typographer
Madeline Chrisher

Documents Section
Supervisor
Patty Webster

Document Editors
Janiene Allen
Robert Macdonald

Open Meetings Clerk
Jamie Alworth

Production Section
Supervisor
Ann Franklin

Production Editors/
Typographers
Carla Carter
Janice Rhea
Mimi Sanchez

Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except July 30, November 30, December 28, 1993. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$5 per copy.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* Director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director. The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

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

How to Use the Texas Register

Information Available: The 10 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Sections - sections adopted by state agencies on an emergency basis.

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Sections - sections adopted following a 30-day public comment period.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

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

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 18 (1993) is cited as follows: 18 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the official compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*. West Publishing Company, the official publisher of the *TAC*, releases cumulative supplements to each printed volume of the *TAC* twice each year.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The *Official TAC* also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the *TAC* or to inquire about WESTLAW access to the *TAC* call West: 1-800-328-9352.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 22, April 16, July 13, and October 12, 1993). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

Update by FAX: An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the *TAC* number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

Proposed Section

Railroad Commission of Texas

Oil and Gas Division

16 TAC §§3.26, 3.52, 3.66 5545
16 TAC §3.50 5546

Texas Department of Licensing and Regulation

Texas Commission of Licensing and Regulation
16 TAC §60.22, §60.25 5546
16 TAC §§60.68, 60.70, 60.75 5546
16 TAC §§60.104, 60.107, 60.154, 60.156, 60.170, 60.173, 60.176, 60.177, 60.191, 60.194 5548
16 TAC §60.156 5549

Manufactured Housing

16 TAC §69.54, §69.62 5550
16 TAC §69.204 5550

Industrialized Housing and Buildings

§§70.1, 70.10, 70.20, 70.21, 70.60-70.65, 70.70, 70.73, 70.77, 70.80 70.90-70.92 5551
16 TAC §§70.60-70.67, 70.90-70.95 5556

Air Conditioning and Refrigeration Contractor License Law

16 TAC §§75.10, 75.20, 75.21, 75.22, 75.24, 75.70, 75.80 5557
16 TAC §75.70 5559

Talent Agencies

16 TAC §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.60, 78.70-78.76, 78.80-78.82, 78.90-78.94 5559
16 TAC §§78.1, 78.10, 78.20-78.22, 78.30, 78.40, 78.70-78.75, 78.80-78.82, 78.90, 78.91, 78.100 5560

Texas State Board of Public Accountancy

Professional Conduct

22 TAC §501.46 5562
22 TAC §501.49 5562

The Board

22 TAC §505.1 5563

Certification as CPA

22 TAC §511.80 5563

Texas Department of Mental Health and Mental Retardation

Client (Patient) Care

25 TAC §§405.231-405.249 5564

Veterans Land Board

General Rules

40 TAC §175.2 5570

Veterans Housing Assistance Program

40 TAC §177.5 5571

Farm and Ranch Finance Program

40 TAC §§179.1-179.23 5572

Texas Department of Transportation

Division of Motor Vehicle Titles and Registration

43 TAC §17.80 5572

Adopted Sections

Texas Incentive and Productivity Commission

Program Definitions

1 TAC §273.27 5579

Productivity Bonus Program

1 TAC §§275.1, 275.5, 275.11, 275.13, 275.17 5579

Texas Department of Commerce

Smart Jobs Fund Program

10 TAC §§186.101-186.105 5579
10 TAC §§186.201-186.204 5582
10 TAC §§186.301-186.308 5582

Texas State Board of Public Accountancy

Certification as CPA

22 TAC §511.122 5588
22 TAC §511.161 5588

Texas Department of Mental Health and Mental Retardation

Internal Facilities Management

25 TAC §§407.1-407.6, 407.22-407.24 5588

Texas Air Control Board

Procedural Rules

31 TAC §103.46 5592

Employees Retirement System of Texas

Creditable Service

34 TAC §§71.14, 71.19 , 71.21.....5593

Benefits

34 TAC §73.33.....5593

Judicial Retirement

34 TAC §77.15.....5594

Insurance

34 TAC §§81.1, 81.3, 81.7, 81.11.....5594

Flexible Benefits

34 TAC §85.3.....5595

Texas Department of Human Services

Memorandum of Understanding with Other State Agencies

40 TAC §§72.201-72.210.....5596

40 TAC §§72.201-72.212.....5596

Texas Commission on Alcohol and Drug Abuse

Treatment Alternatives to Incarceration Programs

40 TAC §§145.1-145.7.....5604

40 TAC §§145.20-145.30.....5605

Texas Department of Insurance

Notification Pursuant to the Texas Insurance Code, Chapter 5, Subchapter L.....5605

Open Meeting Sections

Texas Air Control Board.....5607

Texas Commission on Alcohol and Drug Abuse...5607

Texas Alcoholic Beverage Commission.....5607

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons.....5607

Coastal Coordination Council.....5607

Credit Union Department.....5608

Interagency Council on Early Childhood Intervention.....5608

Texas Education Agency.....5608

Texas Employment Commission.....5608

Texas Department of Health.....5608

Texas Historical Commission.....5609

Texas Department of Housing and Community Affairs.....5609

Department of Information Resources.....5610

Texas Department of Insurance.....5610

Lamar University System.....5610

Texas National Guard Armory Board.....5611

Texas Board of Pardons and Paroles.....5611

Texas Parks and Wildlife Department.....5611

Texas State Board of Pharmacy.....5612

Texas State Board of Podiatry Examiners.....5613

Texas State Board of Examiners of Psychologists...5613

Public Utility Commission of Texas.....5613

Railroad Commission of Texas.....5614

Texas Savings and Loan Department.....5615

Texas State Soil and Water Conservation Board...5615

Structural Pest Control Board.....5615

Texas Surplus Property Agency.....5615

Board of Tax Professional Examiners.....5615

The Texas A&M University System, Board of Regents.....5616

University of Texas, M.D. Anderson Cancer Center...5616

Texas Water Commission.....5616

Regional Meetings.....5616

In Addition Sections

Texas Air Control Board

Extension of Comment Period.....5621

Texas Commission on Alcohol and Drug Abuse

Correction of Error.....5621

State Banking Board

Notice of Hearing Cancellation.....5621

Texas Department of Banking

Correction of Error.....5621

Texas State Board of Registration for Professional Engineers

Joint Policy Statement Between the Texas Board of Architectural Examiners and the Texas State Board of Registration for Professional Engineers.....5621

State Finance Commission

Correction of Error.....5624

Texas Department of Health

Notices of Emergency and Desist Orders.....5624

Notice of Intent to Revoke Certificates of Registration.....5624

Notice of Intent to Revoke Radioactive Material Licenses.....5625

Statewide Request for Proposal-Case Management Services.....5625

**Texas Health and Human Services
Commission**

Public Notices..... 5626

Texas Department of Human Services

Correction of Error 5626

Notice of Public Hearing..... 5626

Texas Department of Insurance

Company License 5626

**Texas State Board of Examiners of
Psychologists**

Correction of Error 5627

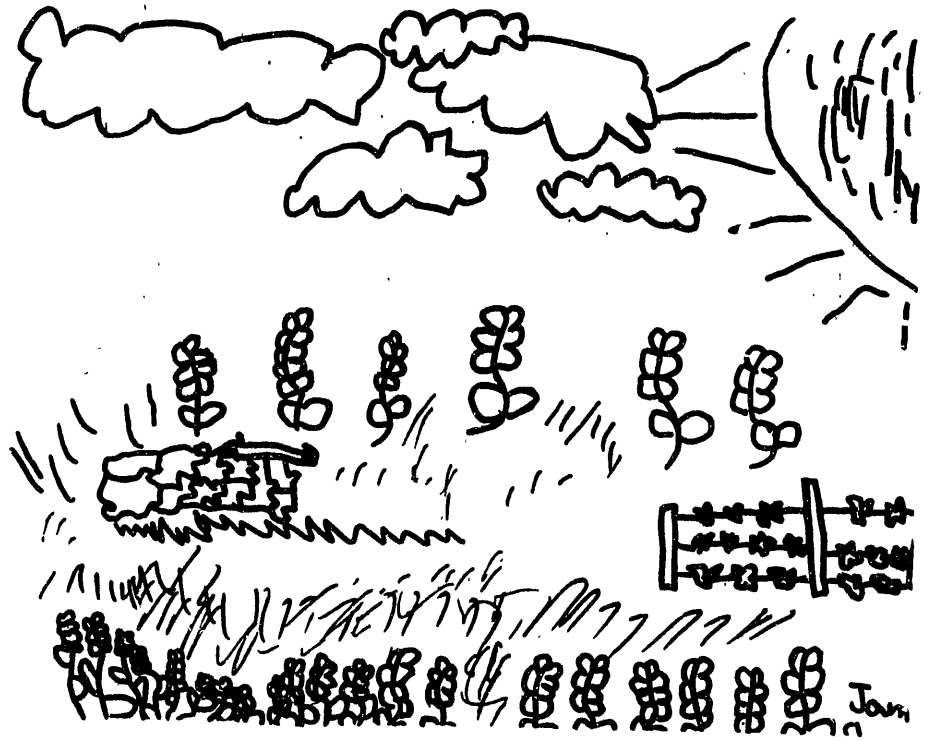
Public Utility Commission of Texas

Notice of Application to Amend Certificates of Convenience and Necessity 5627

Notice of Intent to File Pursuant to PUC Substantive Rule 23.27 5627

Railroad Commission of Texas

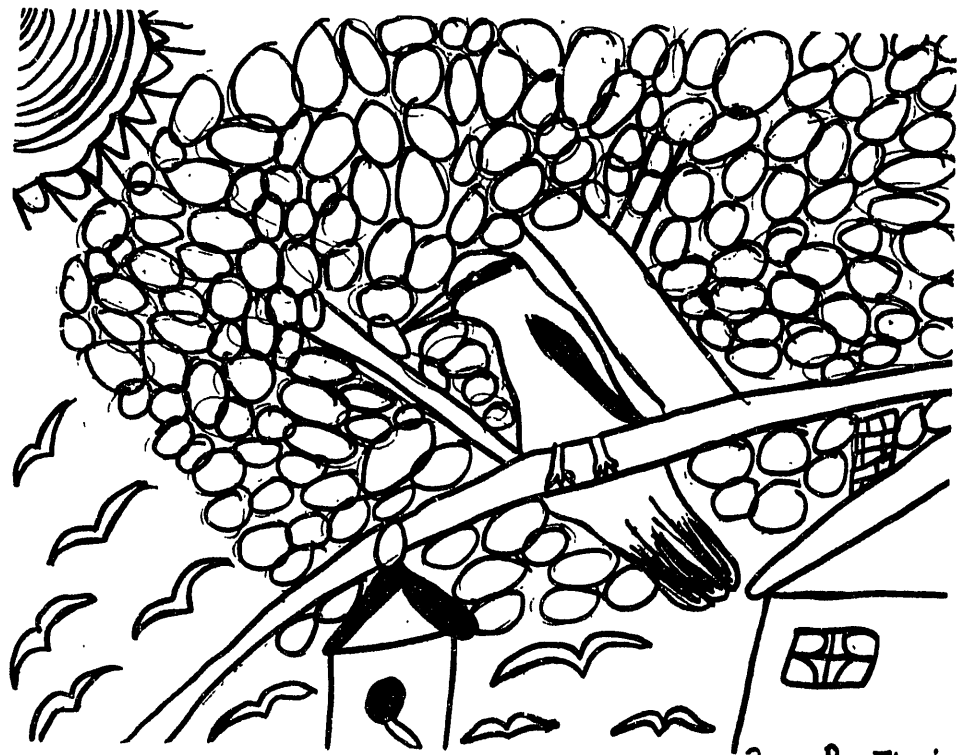
Correction of Error 5629



Name: James Stephens

Grade: 2

School: Montgomery Elementary, Carrollton-Farmers Branch ISD



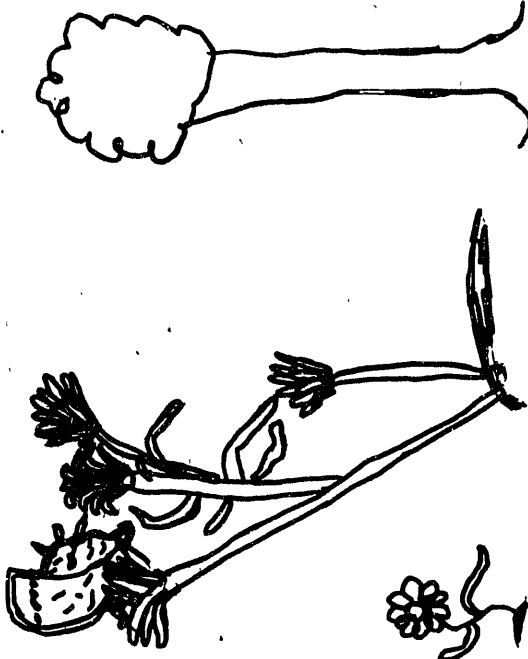
Name: Cassandra Harris

Grade: 2

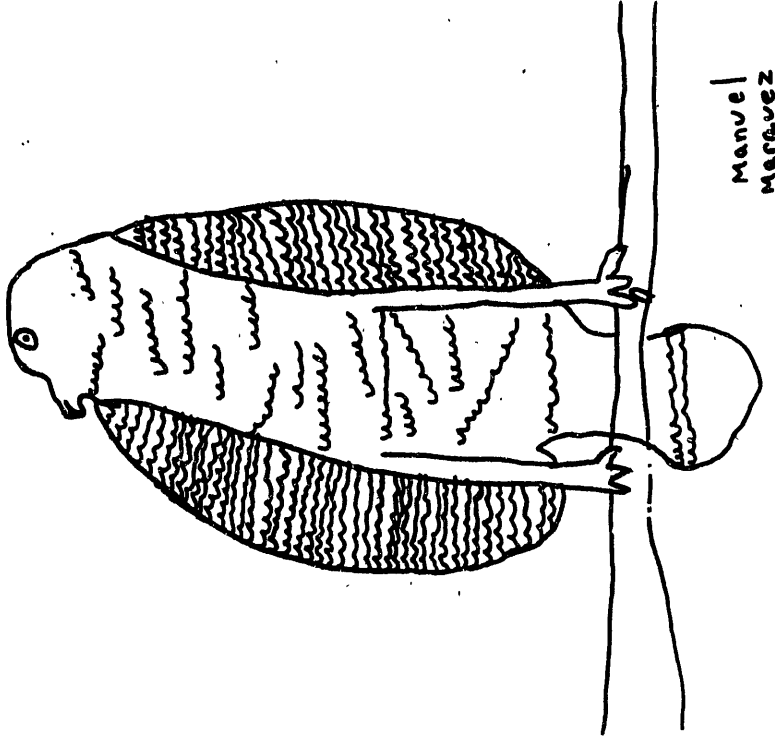
School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Stephanie woolf.



Name: Stephanie Woolf
Grade: 2
School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Manuel
Marquez

Name: Manuel Marquez
Grade: 2
School: Montgomery Elementary, Carrollton-Farmers Branch ISD

Attorney General

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

Letter Opinions

LO-93-47 (RQ-280). Request from Mike Driscoll, Harris County Attorney, Houston, concerning procedures for the sale of county real property acquired by Harris County for road purposes but no longer needed for road purposes.

Summary of Opinion. Under the facts presented, Harris County's sale of a tract of land acquired but never used for a road purposes is governed by §31-E(1) of the Harris County Road Law. Such sale is not subject to §263.001 and §263.002 of the Local Government Code, which require the commissioners court to sell real property at a public auction with notice to the public, subject to certain exceptions. Nor is the sale subject to §263.007 of the Local Government Code, authorizing counties to sell and lease property by a sealed bid procedure, or to §272.001 of the Local Government Code, authorizing political subdivisions to sell land by a sealed bid procedure. The terms "abutting or adjoining landowners" in §31-E(1) of the Harris County Road Law mean landowners whose property touches the unneeded right-of-way that the county wishes to sell. The commissioners court has discretion to adopt a reasonable procedure to sell the unneeded right-of-way to "abutting or adjoining" landowners pursuant to §31-E(1) of the Harris County Road Law.

TRD-9327338

LO-93-48 (ID-18188). Request from Betty Denton, Member, Texas House of Representatives, Austin, concerning regulations governing state funding of retirement programs provided for junior college faculty members.

Summary of Opinion. If provisions allowing a different rate of state contributions to the Teacher Retirement System and the Optional Retirement System were challenged as violating the equal protection clause of the fourteenth amendment of the United States Constitution, a court would probably use the rational basis test to determine the validity of those provisions.

TRD-9327337

LO-93-49 (RQ-531). Request from David Aken, San Patricio County Attorney, San Patricio County Courthouse, Sinton, concerning authority of the San Patricio County Commissioners Court to take certain actions in winding up the Taft Hospital District.

Summary of Opinion. The San Patricio County Commissioners Court, in winding up the Taft Hospital District, is not required to delay declaring the hospital district dissolved until the statute of limitations has run on unknown claims against the hospital district. The commissioners court is not authorized to transfer the assets of the hospital district to another governmental agency.

The term "current year" in §17(h) of the enabling act, which provides for the distribution of the proceeds of the liquidated assets of the hospital district, means the last year in which taxes were levied. Section 17(h) prohibits making the distribution to taxpayers who have failed to pay taxes, but requires that it be made to all taxpayers who have paid taxes prior to the date of distribution, even taxpayers who have paid only part of their tax liability. It is the responsibility of the commissioners court to make the distribution.

Interest earned on assets of the hospital district must be disposed of with the hospital district's other remaining assets. The commissioners court is authorized to liquidate the hospital district's accounts receivable and delinquent taxes by selling them for due compensation, but may not forgive them. The commissioners court should not distribute the proceeds until all the accounts receivable and delinquent taxes are sold or have been collected. The commissioners court is not authorized to recoup any of its expenses in winding up the hospital district.

TRD-9327336

LO-93-50 (ID-16818). Request from C. Thomas Camp, Executive Director, Texas State Board of Dental Examiners, Austin, concerning clarification of Attorney General Opinion DM-136(1992).

Summary of Opinion. The American Dental Association (ADA) is a "health professional association" as that term is used in

§85.204(b)(4) of the Health and Safety Code. The fact that the ADA has issued guidelines that "specifically call for state dental boards to establish and appoint expert review panels," has no bearing on the conclusion in Attorney General Opinion DM-136 (1992) that the board is not authorized to establish an expert review panel. Attorney General Opinion DM-136 does not address whether an expert review panel established in conformance with Subchapter I of Chapter 85 of the Health and Safety Code would be prohibited from releasing information to the board for disciplinary purposes, or whether "infection control" rules generally applicable to all dental health care workers exceed the board's authority.

TRD-9327335

LO-93-53 (ID-19950). Request from Fred Toler, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, Austin, concerning clarification and reconsideration of Attorney General Opinion DM-210 (1993).

Summary of Opinion. Attorney General Opinion DM-210 (1993) construed §415.058 of the Government Code to Provide that an individual who has been convicted of a felony is qualified to be licensed as a peace officer or county jailer if that person subsequently has proven, in a court of law, his or her innocence. The completion of a probationary term, in and of itself, does not prove a defendant's innocence. Thus, §415.058 does not provide that a person who has successfully completed his or her probationary term but who has not subsequently proven his or her innocence is qualified to hold a license as a peace officer or county jailer.

TRD-9327334

LO-93-54 (ID-20119). Request from Albert G. Valadez, District Attorney, Fort Stockton, concerning whether a sheriff may also serve as a volunteer fireman.

Summary of Opinion. Nothing in Texas law prevents a sheriff from also serving as a member of a volunteer fire department.

TRD-9327333

LO-93-55 (RQ-472). Request from Marcos Hernandez, Jr., Criminal District Attorney, Hays County Courthouse, San Marcos, concerning whether the Greater San Marcos Chamber of Commerce, the Greater San Marcos Economic Development Council, and the San Marcos Convention and Visitors Bureau are governmental bodies subject to the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17.

Summary of Opinion. Neither the Greater San Marcos Chamber of Commerce, the Greater San Marcos Economic Development Council, nor the San Marcos Convention and Visitors Bureau are governmental bodies subject to the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17.

TRD-9327332

LO-93-56 (ID-19594). Request from Joe F. Grubbs, Ellis County and District Attorney, Ellis County Courthouse, Waxahachie, concerning whether a municipality generally must comply with Subchapter C of Chapter 395 (§§395. 041-395.058) of the Local Government Code before enacting or imposing a water tap fee to pay for the installation of a water line to serve new development.

Summary of Opinion. A general-law, home-rule, or special-law municipality generally must comply with Subchapter C of Chapter 395 (§§395. 041-395.058) of the Local Government Code before enacting or imposing a water tap fee to pay for the installation of a water line to serve new development.

TRD-9327331

LO-93-57 (ID-19816). Request from James D. Ross, Midland County Auditor, Midland, concerning whether a commissioners court may award additional compensation to an employee for services already rendered.

Summary of Opinion. The Texas Constitution, Article III, §53, prohibits the grant of supplemental income for contractual employees after commencement of their contracts. However, this prohibition does not preclude a commissioners court from approving the payment of back wages to which an employee was automatically entitled to receive.

TRD-9327330

Open Records Decisions

ORD-615 (RQ-496). Request from Ray Farabee, Vice Chancellor and General Counsel, The University of Texas System, Austin, concerning whether the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(11), exempts from public disclosure correspondence from university professors to the chancellor and the department chair regarding the evaluation of a

certain professor and the method and criteria used for such evaluation.

Summary of Opinion. Under the court's decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex App.-Austin 1992, no writ), section 3(a)(11) of the Texas Open Records Act must be interpreted in accordance with the settled construction of exemption 5 of the federal Freedom of Information Act, 5 United States Code, §552(b)(5), as of the time the Open Records Act was enacted. Consequently, §3(a)(11) exempts from required public disclosure only those internal agency memoranda consisting of advice, recommendations, and opinions that pertain to the policymaking functions of the governmental body at issue. Because the correspondence between university officials at issue here relates solely to an internal personnel matter involving a particular individual, and does not implicate the policymaking functions of the university system, it must be disclosed.

TRD-9327339

Opinions

DM-227 (RQ-202). Request from Kenneth H. Ashworth, Commissioner, Texas Higher Education Coordinating Board, Austin, concerning whether a member of a governmental body subject to the Open Meetings Act, Texas Civil Statutes, Article 6252-17, may review the tape of a closed meeting in which the member participated.

Summary of Opinion. Neither the Open Meetings Act, Texas Civil Statutes, Article 6252-17, nor the Open Records Act, Texas Civil Statutes, Article 6252-17a, precludes a governmental body from releasing to a member of the governmental body the certified agenda or tape recording of a closed meeting in which the member participated. A governmental body may implement a procedure for providing access to the certified agenda by a member of the governmental body, and should do so in an open meeting.

TRD-9327348

DM-228 (RQ-204). Request from Tracey Bright, Ector County Attorney, County Courthouse, Odessa, concerning whether a county commissioner may raise an issue for discussion after the commissioners court has taken final action on it and related questions.

Summary of Opinion. The commissioners court may continue to discuss an issue in a subsequent meeting even though it has previously taken final action on it, provided the topic of discussion has been properly noticed. Authority to prepare the agenda for a meeting is vested in the commissioners court as a whole, and not in the county judge. An individual commissioner may

place items of his choosing on the agenda. The commissioners court may adopt reasonable rules consistent with relevant statutes and constitutional provisions to govern its meetings. If the court wishes its meetings to be governed by the provisions of a treatise that are consistent with law, it must vote to formally adopt those provisions as its controlling authority.

TRD-9327347

DM-229 (RQ-522). Request from Debra Danburg, Chair, Committee on Elections, Texas House of Representatives, Austin, concerning whether a proposed City of Houston ordinance, which would require that condoms be available for sale in "business premises upon which alcoholic beverages are sold for on-premises consumption," is preempted by state law.

Summary of Opinion. A proposed City of Houston ordinance, which would require "business premises upon which alcoholic beverages are sold for on-premises consumption" to make condoms available for sale, would impose "stricter standards on premises or businesses required to have a license or permit...than are imposed on similar premises or businesses that are not required to have such a license or permit," contrary to subsection (a) of section 109.57 of the Alcoholic Beverage Code, and would therefore be preempted by state law.

TRD-9327346

DM-230 (RQ-512). Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether the Code of Criminal Procedure, Article 45.54, permits a justice of the peace to dismiss a complaint against a defendant who has failed to successfully complete a driving safety course.

Summary of Opinion. Article 45.54 of the Code of Criminal Procedure does not permit a justice of the peace to dismiss a complaint against a defendant who has failed to successfully complete a driving safety course.

TRD-9327345

DM-231 (RQ-408). Request from Fred S. Brinkley, Jr., R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, Austin, concerning whether a quorum of a licensing board attending a licensee disciplinary hearing conducted by the State Office of Administrative Hearings may make findings of fact, conclusions of law, and vote on discipline without receiving from the State Office of Administrative Hearings a proposal for decision.

TRD-9327344

DM-232 (RQ-519). Request from Roland Saul, Criminal District Attorney, Deaf Smith County, Hereford, concerning whether the City of Hereford is authorized to convey a city park to the Deaf Smith County Hospital District.

Summary of Opinion. In order to convey a city park to the Deaf Smith County Hospital District, the City of Hereford need not adhere to the procedures set forth in the Local Government Code, §253.001, the Local Government Code, §272.001, however, prohibits the conveyance of the land to the hospital district for less than fair market value. In addition, Chapter 26 of the Parks and Wildlife Code may apply to the proposed conveyance.

TRD-9327343

DM-233 (RQ-504). Request from Jack Herrington, District and County Attorney, Clarksville, concerning whether the Texas Department of Criminal Justice may operate a work program facility that produces goods and services that are marketed for profit or exempted under the Federal Private Industry Enhancement Program and related question.

Summary of Opinion. Section 1761(a) of Title 18, United States Code, excepts from the federal prohibition against the transportation in interstate commerce of prison-made goods those goods inmates or prisoners manufactured in a prison industries program that the Texas Department of Criminal Justice operates pursuant to Chapter 497, Subchapter A of the Government Code. Chapter 497, Subchapter C of the Government Code does not authorize the TDCJ to own and operate a work program facility; such facilities may be owned only by a municipality or county and operated pursuant to a contract between the pardons and paroles division of the TDCJ and the municipality or county in which the work program facility is located.

TRD-9327342

DM-234 (RQ-516). Request from David H. Cain, Chair, Committee on Transportation, Texas House of Representatives, Austin, concerning construction of recent amendments to the Civil Practice and Remedies Code, §106.001(c)(2), regarding a municipality's program to increase participation by minority business enterprises in public contract awards and related questions.

Summary of Opinion. To the extent a conflict exists between two amendments to the Civil Practice and Remedies Code, §106.001(c)(2), enacted by the 72nd Legislature, Acts 1991, 72nd Legislature, Chapter 597, §56, at 2148 and Acts 1991, 72nd Legislature, Chapter 665, §1, at 2423, the latter provision prevails.

The term "in-house audit" as used in subsection (c)(2) of §106.001 of the Civil Practice and Remedies Code means an audit performed by a municipality itself. Subsection (c)(2) does not limit a municipality to establishing a percentage goal for contracts awarded to minority business enterprises only for public construction contracts. It permits a municipality to set different goals for different categories of contracts. Subsec-

tion (c)(2) does not authorize a municipality to take into account minority business enterprises which are not located in the municipality in establishing the goal.

Subsection (c)(4) of the Civil Practice and Remedies Code does not create an exemption from competitive bidding requirements. It does, however, authorize municipalities to refuse to accept bids from prospective bidders that fail to "meet uniform standards designed to assure a reasonable degree of participation by minority business enterprises."

TRD-9327341

DM-235 (RQ-528). Request from Luis V. Saenz, Cameron County District Attorney, Cameron County Courthouse, Brownsville, concerning whether a delinquent tax penalty adopted by the Cameron County Commissioners Court under the Tax Code, §33.07, applies to delinquent taxes subject to installment agreements entered into under the Tax Code, §33.02, prior to July 1 of the year in which the taxes became delinquent.

Summary of Opinion. A delinquent tax penalty adopted under §33.07 of the Tax Code does not apply to delinquent taxes subject to installment agreements entered into under the Tax Code, §33.02, prior to July 1 of the year in which the taxes became delinquent.

TRD-9327340

Requests for Opinions

(RQ-551). Request from Honorable Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, concerning whether copyrighted software documentation acquired by a hospital district pursuant to a licensing agreement is excepted from public disclosure by the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(4) and §3(a)(10).

(RQ-552). Request from Gary W. Smith, City Attorney, Legal Department, P.O. Box 779, Galveston, concerning whether certain social security numbers are excepted from public disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(1), in conjunction with 42 United States Code, §405(c)(2)(B)(vii)(I).

(RQ-553). Request from Honorable Gonzalo Barrientos, Chair, Senate Committee on Nominations, Texas State Senate, P.O. Box 12068, Austin, concerning authority of a municipality to contract with a municipal utility district for funding and construction of wastewater facilities, and related questions.

(RQ-554). Request from Honorable Ken Armbrister, Chair, Committee on Intergovernmental Relations, Texas State Senate, P.O. Box 12068, Austin, concerning

whether attorneys may advertise and provide bail bonds for persons who are not already their clients.

(RQ-555). Request from Neal S. Manne, Member, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, concerning whether the Alcoholic Beverage Code, §5.05, prohibits a member of the Alcoholic Beverage Commission from investing in a mutual fund that may own securities having some connection to an "alcoholic beverage business."

(RQ-556). Request from Honorable David Cain, Chair, House Committee on Transportation, Texas House of Representatives, P.O. Box 2910, Austin, concerning scope of a city's authority to regulate pawnshops, and related questions.

(RQ-557). Request from E. T. Gibson, City Manager of Gonzales, P. O. Drawer 547, Gonzales, concerning whether a city's failure to meet the 10-day deadline for requesting an open records decision under the Texas Open Records Act, §7(a), waives any protection provided to the information by §3(a)(7) (attorney-client privilege).

(RQ-558). Request from Merrill L. Hartman, Chair, Court Reporters Certification Board, P.O. Box 13131, Austin, concerning time at which a deposition becomes a public record.

(RQ-559). Request from Honorable David Motley, Kerr County Attorney, Kerr County Courthouse, 700 East Main Street, Kerrville, concerning fees authorized by Chapter 71, Family Code, regarding application for and issuance of protective orders in cases of family violence.

(RQ-560). Request from Honorable James Warren Smith, Jr., Frio County Attorney, Frio County Courthouse, Pearsall, concerning whether hair length and dress codes may be imposed on adult and juvenile probationers.

(RQ-561). Request from Sandra C. Joseph, Open Records Request/Disclosure Officer, Comptroller of Public Accounts, P.O. Box 13528, Austin, concerning whether names of taxpayers are confidential under §§111.006, 151.027, and 171.026 of the Tax Code, and related questions; reconsideration of Attorney General Opinion H-223 (1974).

(RQ-562). Request from John H. Specht, c/o Mr. Michael J. Tomsu, Vinson and Elkins, 816 Congress Avenue, Floor 17, Austin, concerning availability under the Texas Open Records Act, §3(a)(3), certain information resulting from a rate case when the hearings examiner has denied a request from discovery of information.

(RQ-563). Request from Honorable O. H. "Ike" Harris, Chair, Senate Committee on State Affairs, Texas State Senate, P.O. Box 12068, Austin, concerning whether a teacher termination hearing held pursuant to

Education Code, §13.112, must be public if so requested by the teacher, when the hearing will involve students' allegations of sexual harassment by the teacher.

(RQ-564). Request from Honorable Sandy S. Gately, 52nd Judicial District Attorney, P.O. Box 919, Gatesville, concerning authority of a game warden to establish roadblocks and conduct searches there, and related questions.

(RQ-565). Request from S. E. Seely, El Paso County Auditor, Room 406, County Courthouse Building, 500 East San Antonio Street, El Paso, concerning disposition of bail bond funds by a county.

(RQ-566). Request from Honorable Libby Linebarger, Chair, House Committee on Public Education, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether the spouse of a director of a state conservation district may serve on the city council of a municipality whose geographical boundaries overlap those of the conservation district.

(RQ-567). Request from David Kemp, Assistant County Attorney, Potter County, 303 Courthouse, Amarillo, concerning availability under the Texas Open Records Act of a police "mug shot" of a person currently serving time in the criminal justice system for that offense.

(RQ-569). Request from Honorable John D. Whitlow, Criminal District Attorney, Calhoun County, P.O. Box 1001, Port Lavaca, concerning authority of a statewide retirement system to award additional benefits to its annuitants.

(RQ-570). Request from Honorable John Vance, Dallas County District Attorney, Frank Crowley Courts Building, 133 North Industrial Boulevard-LB 19, Dallas, concerning whether a probated sentence constitutes a "final conviction" under the Penal Code, §46.05, which prohibits, under certain circumstances, the possession of a firearm by a convicted felon.

(RQ-571). Request from Honorable Bill Ratliff, Chair, Committee on Education, Texas State Senate, P.O. Box 12068, Austin, concerning construction of Senate Bill 1342, Acts 1993, 73rd Legislature, which prohibits a school district from contracting with a business entity in which a trustee or his spouse has a "significant interest."

(RQ-572). Request from Honorable Charles D. Johnson, County Attorney, Dimmit County Courthouse, Carrizo Springs, concerning whether the county auditor oath of office provision, the Local Government Code, §84.007(b), prevails over Chapter 171 of the Local Government Code.

(RQ-573). Request from Honorable Travis S. Ware, Criminal District Attorney, Lubbock County, P.O. Box 10536, Lubbock, concerning validity of residence addresses given by signers of a petition for a local option liquor election where the city, stat, and zip code were omitted.

(RQ-574). Request from Honorable Bill Turner, District Attorney, Brazos County, 300 East 26th Street, Suite 310, Brazos County Courthouse, Bryan, concerning whether a municipality may give "local preference" in awarding a contract under Texas Civil Statutes, Article 664-4, the Professional Services Procurement Act.

(RQ-575). Request from Honorable Chris A. Wyatt, Coke County Attorney, P.O. Box 529, Robert Lee, concerning law enforcement authority of agents of a water district who are not peace officers.

(RQ-576). Request from Charles Karakashian, Jr., Assistant General Counsel, Texas Department of Public Safety, 5805 North Lamar Boulevard, Box 4087, Austin, concerning whether notes and evaluations prepared before an employee promotional board are "test items" within the meaning of the Texas Open Records Act, §3(a)(22).

TRD-9327329

◆ ◆ ◆

Emergency Sections

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing, for no more than 120 days. The emergency action is renewable once for no more than 60 days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 40. Social Services and Assistance

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter L. General Administration

• 40 TAC §§29.1104, 29.1126, 27.1127

The Texas Department of Human Services (DHS) adopts on an emergency basis amendments to §29.1104 concerning the Texas Medicaid Reimbursement Methodology, §29.1126 concerning reimbursement for in-home total parenteral hyperalimentation services, and §29.1127 concerning reimbursement for in-home respiratory therapy services for ventilator-dependent persons.

These emergency rules are required to eliminate any cost-of-living adjustment for these services for the 1994-1995 biennium as mandated in the appropriations act effective September 1, 1993. These amendments were proposed in the August 10, 1993, issue of the *Texas Register*.

The amendments are adopted on an emergency basis under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§29.1104. *Texas Medicaid Reimbursement Methodology (TMRM).*

(a) Reimbursement for physicians and certain other practitioners.

(1) (No change.)

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

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

(D) Conversion Factor—The dollar amount by which the sum of the three cost component RVUs is multiplied in order to obtain a reimbursement fee for each individual service. The initial value of the conversion factor is \$26.873 for fiscal year 1992 and 1993. The conversion factor will be updated based on the adjustments described in subparagraph (E) of this paragraph at the beginning of each state fiscal year biennium. Unless the cost savings specified in the Appropriations Act for the 1994-1995 biennium are realized, there will be no adjustment of the conversion factor for the 1994-1995 biennium. DHS may, at its discretion, develop and apply multiple conversion factors for various classes of service such as obstetrics, pediatrics, general surgeries, and/or primary care services.

(E) (No change.)

(3) (No change.)

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

§29.1126. *In-Home Total Parenteral Hyperalimentation Services.*

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

(e) The Texas Department of Human Services (DHS) or its designee reimburses each provider on a monthly basis. Reimbursement is based on one-twelfth of the maximum yearly fee established by DHS. DHS will adjust the allowable fees or rates each state fiscal year by applying the projected rate of change of the implicit price deflator for personal consumption expenditures (IPD-PCE). DHS uses the lowest feasible IPD-PCE forecast consistent with the forecasts of nationally-recognized sources available to DHS at the time rates are prepared. The first adjustment will be effective January 1, 1993. Unless the cost savings specified in the Appropriations Act for the 1994-1995 biennium are realized, there will be no adjustment for the 1994 and 1995 fiscal years. Subsequent adjustments will occur at the beginning of each state fiscal year. DHS or its designee does not reimburse more than a one-week supply of solutions and additives if the solutions and additives are shipped and not used

because of the recipient's loss of eligibility, change in treatment, or inpatient hospitalization. The provider must exclude from its monthly billing any days that the recipient is an inpatient in a hospital or other medical facility or institution. Payment for partial months will be prorated based upon actual days of administration. Hospital outpatient departments furnishing in-home total parenteral nutrition must be separately enrolled as a provider meeting all requirements stipulated in subsection (d) of this section. Reimbursement to hospital outpatient departments furnishing in-home total parenteral nutrition may not exceed the maximum yearly fee established by DHS.

§29.1127. *In-Home Respiratory Therapy Services for Ventilator-Dependent Persons.*

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

(f) The department or its designee reimburses each respiratory therapy provider on a per-visit basis. Reimbursement for the visit is based on the lesser of the provider's customary charge or the maximum allowable fee or rate established by the department or its designee. Reimbursement for supplies furnished by the respiratory care practitioner is the lesser of the provider's customary charges or the maximum allowable fees or rates established by the department or its designee. The department updates its allowable fees or rates each state fiscal year by applying the implicit price deflator for personal consumption expenditures. Unless the cost savings specified in the Appropriations Act for the 1994-1995 biennium are realized, there will be no adjustment for the 1994 and 1995 state fiscal years.

Issued in Austin, Texas, on August 16, 1993.

TRD-9327385

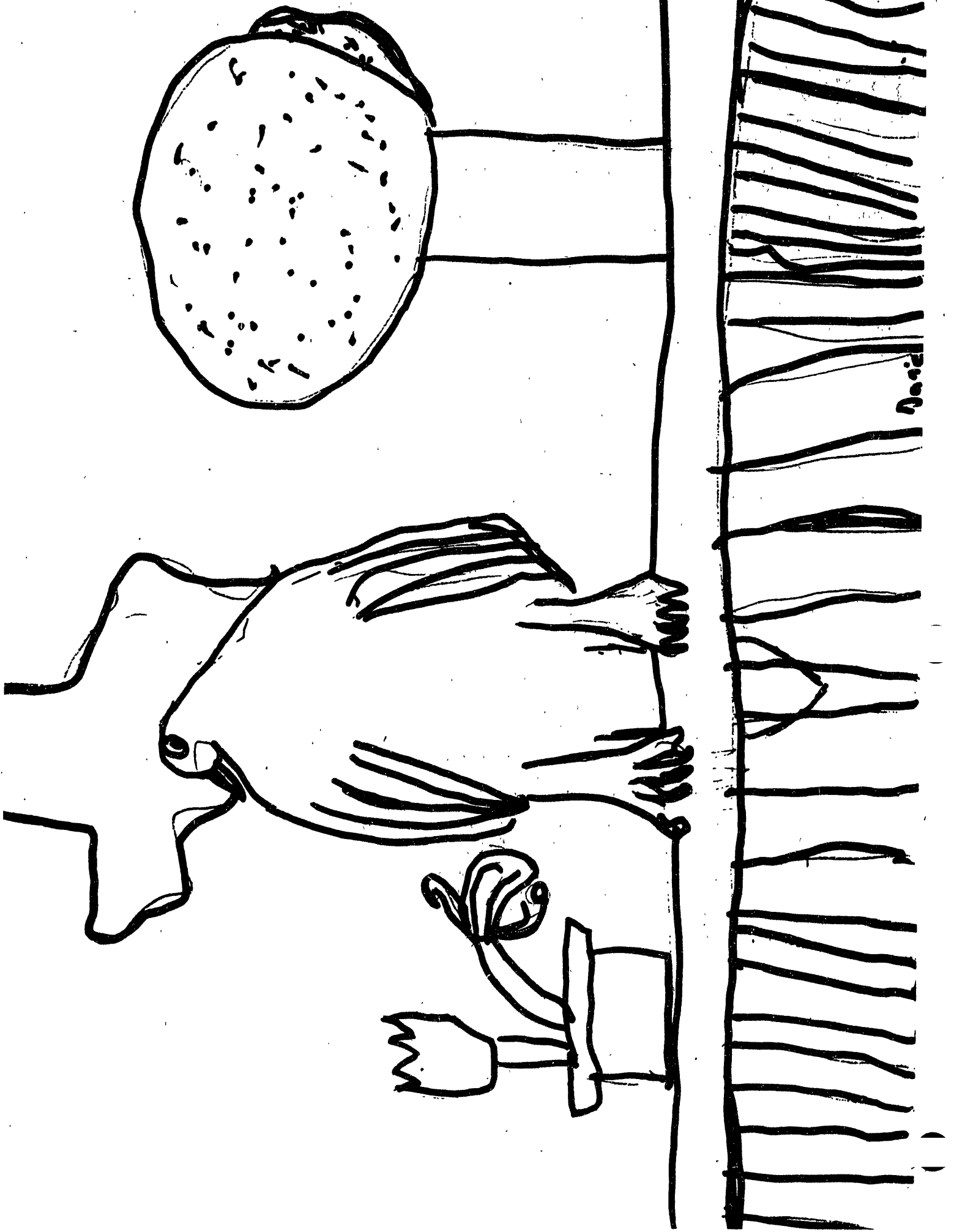
Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Effective date: September 1, 1993

Expiration date: October 17, 1993

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





Proposed Sections

Before an agency may permanently adopt a new or amended section, or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of bold text. [Brackets] indicate deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• 16 TAC §§3.26, 3.52, 3.66

The Railroad Commission of Texas proposes amendments to §§3.52, 3.26, and 3.66, concerning the measuring and testing of crude oil and condensate. Adoption of the proposed amendments will eliminate the need for obtaining exceptions to §3.26 and §3.66 in order to use lease automatic custody transfer (LACT) equipment and other devices to effect custody transfer of oil and condensate. The use of LACT equipment will insure more accurate volume determination before moving oil or condensate off-lease.

Rita E. Percival, systems analyst for the Oil and Gas Division, has determined that for the first five-year period the proposed rules are in effect there will be fiscal implications as a result of enforcing or administering them. The effect on state government for the first five-year period the rules are in effect is an estimated revenue loss of \$2,500 annually (Fiscal Years 1994-1998) and an estimated savings of \$1,724 annually (Fiscal Years 1994-1998). There will be no fiscal implications for local government.

Jeffrey T. Pender, hearing examiner, Legal Division, has determined that the proposed amendments will benefit the public by encouraging the use of more accurate methods of measuring crude oil and condensate volumes before custody transfer. This will further safeguard the property rights of mineral interest owners, producers, and purchasers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposed amendments may be submitted to Jeffrey T. Pender, Legal Division-Oil and Gas Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. The deadline for filing comments is 30 days after publication in the *Texas Register*. The docket number is 20-0202384.

The Railroad Commission proposes the amendments pursuant to the Texas Natural

Resources Code, Title 3, Chapter 81, 85, 88, and 111, which provide the Railroad Commission with authority to regulate the measurement of oil and condensate. The proposed rules do not affect any other rules or statutes.

§3.26. Separating Devices and Tanks.

(a) Where oil and gas are found in the same stratum and it is impossible to separate one from the other, or when a well has been classified as a gas well and such gas well is not connected to a cycling plant and such well is being produced on a lease and the gas is utilized under Texas Natural Resources Code, §§86.181-86.185, the operator shall install a separating device of approved type and sufficient capacity to separate the oil and liquid hydrocarbons from the gas, which separating device shall be kept in place as long as a necessity therefore exists, and after being installed, such device shall not be removed nor the use thereof discontinued without the consent of the commission. All oil and any other liquid hydrocarbons as and when produced shall be adequately measured according to the pipeline rules and regulations of a commission before the same leaves the lease from which they are produced.[,and] Sufficient [sufficient] tankage and separator capacity shall be provided by the producer to adequately take daily gauges of all oil or any other liquid hydrocarbons unless Lease Automatic Custody Transfer (LACT) equipment, installed and operated in accordance with the latest edition of American Petroleum Institute (API) Specification 11N, is being used to effect custody transfer.

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

§3.52. Oil Well Allowable Production.

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

(c) All oil allowable volumes shall be measured in a manner consistent with Rule 71(9) (§3.66(9) [71(9)(A) (§3.66(9)(A))] of this title (relating to Measuring [Gauging] and Testing of Crude Oil Volumes Tendered to a Pipeline)).

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

§3.66. Pipeline Tariffs. Every person owning, operating, or managing any pipe-

line, or any part of any pipeline, for the gathering, receiving, loading, transporting, storing, or delivering of crude petroleum as a common carrier shall be subject to and governed by the following provisions. Common carriers specified in this section shall be referred to as "pipelines," and the owners or shippers of crude petroleum by pipelines shall be referred to as "shippers."

(1)-(8) (No change.)

(9) Measuring [Gauging], testing, and deductions (reference Special Order Number 20-63,098, effective June 18, 1973).

(A) Except as provided in paragraph (B) of this section, all [All] crude oil tendered to a pipeline [for transportation] shall be gauged and tested by a representative of the pipeline prior to its receipt by the pipeline. The shipper may be present or represented at the gauging or [and] testing. Quantities shall be computed from correctly compiled tank tables showing 100% of the full capacity of the tanks [, and adjustments shall be made for temperature from the nearest whole number degree to the basis of 60 Degrees Fahrenheit and to the nearest 5/10 API degree gravity in accordance with the volume correction Tables 5A and 6A contained in API Standard 2540, American Society for Testing Materials 01250, Institute of Petroleum 200, first edition, August 1980. A pipeline may deduct the basic sediment, water, and other impurities as shown by the centrifugal or other test agreed upon; and 1.0% for evaporation and loss during transportation. The net balance shall be the quantity deliverable by the pipeline. In allowing the deductions, it is not the intention of the commission to affect any tax or royalty obligations imposed by the laws of Texas on any producer or shipper of crude oil].

(B) As an alternative to the method of measurement provided in subparagraph (A) of this paragraph, crude oil and condensate may be measured and tested, before transfer of custody to the initial transporter, by:

(i) Lease Automatic Custody Transfer (LACT) equipment, provided such equipment is installed and

operated in accordance with the latest edition of American Petroleum Institute (API) Specification 11N; or

(ii) any device or method, approved by the commission or its delegate, which yields accurate measurements of crude oil or condensate.

(B) The gauging and testing of oil by the pipeline representative is directed toward and intended to require tank measurement of produced crude prior to the transfer of custody to the initial transporter from a producing property. A transfer of custody of crude between transporters is subject to measurement as agreed upon by the transporters.]

(C) Adjustments to the quantities determined by the methods described in subparagraphs (A) or (B) of this paragraph shall be made for temperature from the nearest whole number degree to the basis of 60 Degrees Fahrenheit and to the nearest 5/10 API degree gravity in accordance with the volume correction Tables 5A and 6A contained in API Standard 2540, American Society for Testing Materials 01250, Institute of Petroleum 200, first edition, August 1980. A pipeline may deduct the basic sediment, water, and other impurities as shown by the centrifugal or other test agreed upon by the shipper and pipeline; and 1.0% for evaporation and loss during transportation. The net balance shall be the quantity deliverable by the pipeline. In allowing the deductions, it is not the intention of the commission to affect any tax or royalty obligations imposed by the laws of Texas on any producer or shipper of crude oil.

(D) A transfer of custody of crude between transporters is subject to measurement as agreed upon by the transporters.

(10)-(22) (No change.)

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

Issued in Austin, Texas, on August 10, 1993.

TRD-9327193 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption: August 10, 1993

For further information, please call: (512) 463-6802

• 16 TAC §3.50

The Railroad Commission of Texas proposes an amendment to §3.50, concerning approval and certification of enhanced oil recovery ("EOR") projects. The amendment will provide for an extended time to apply for EOR project approval. Adoption of the proposed amendment will encourage the production of high-cost oil and gas resources.

Rita E. Percival, systems analyst for the Oil and Gas Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Jeffrey T. Pender, hearings examiner, Legal Division, 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 benefit from the increased production of high-cost oil and gas resources. There will be no cost of compliance with the proposed rule for small businesses as a result of enforcing or administering it.

Comments on the proposed amendments may be submitted to Jeffrey T. Pender, Legal Division-Oil and Gas Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. The deadline for filing comments is 30 days after publication in the *Texas Register*.

The commission proposes the amendments pursuant to the Tax Code, §202.054, which provides for Railroad Commission certification of enhanced recovery projects. The Tax Code, §202.054 is affected by this amendment.

§3.50. *Enhanced Oil Recovery Projects-Approval and Certification for Tax Incentive.*

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

(d) Application requirements. To qualify for the recovered oil tax rate the operator must:

(1) for a new EOR project, submit an application for approval on the appropriate form on or after September 1, 1989, and before January 1, 1998 [1994]. For an expansion of an existing EOR project, the operator must submit an application for approval on the appropriate form on or after September 1, 1991 and before January 1, 1998 [1994]. An application may be filed on or after the applicable date (September 1, 1989 or September 1, 1991) in this paragraph, even if a separate application for approval of the project has already been filed prior to that date. All applications must be filed in Austin. The form shall be executed and certified by a person having knowledge of the facts entered on the form. If an application is already on file under the Natural Resources Code, Chapter 101, Subchapter B, or for approval as a tertiary recovery project for purposes of the Internal Revenue Code of 1986, §4993, the operator

may file a new application if the active operation of the project does not begin before the application under this section is approved by the commission;

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

(e)-(h) (No change.)

(i) Reduced or enlarged areas. The operator may apply for reduced or enlarged project area certification if:

(1) the original application for project approval is received before [no later than] January 1, 1998 [1994]; and

(2) (No change.)

(j) (No change.)

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

Issued in Austin, Texas, on August 10, 1993.

TRD-9327192 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-6802

Part IV. Texas Department of Licensing and Regulation

Chapter 60. Texas Commission of Licensing and Regulation

Subchapter B. Organization of the Commission of Licensing and Regulation

• 16 TAC §60.22, §60.25

The Texas Department of Licensing and Regulation proposes amendments to §60.22 and §60.25, concerning organization of the Commission of Licensing and Regulation. Section 60.22 updates field office addresses and §60.25 aligns the language for persons with disabilities.

James D. Brush, II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of existing rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§60.22. Offices.

(a) (No change.)

(b) Regional and field offices for the department are establishment at the following locations:

(1) 400 South Collins, Suite 100, Arlington, Texas 76010;

(2) 3800 Paluxy Square, Suite 420, Tyler, Texas 75703;

(3) 321 Center Street, W-101 [Room 4005], San Antonio, Texas 78202;

(4) 4410 Dillon Lane, Suite 3, Corpus Christi, Texas 78415;

(5) 2002 W. University Drive, Suite 4 [1314 B South Clossner], Edinburg, Texas 78539;

(6) 1220 Broadway, Suite 1105 [608], Lubbock, Texas 79401;

(7) 661 Mesa Hills, Suite 104, El Paso, Texas 79912; [and]

(8) 1414 South Loop West, Suite 140 [2727 Kirby Drive, Suite 301, Houston], Texas 77054 [77098]; and [.]

(9) 6600 Sanger, Suite 6, Waco, Texas 76710.

§60.25. General Powers and Duties of Commission.

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

(h) Citizens who do not speak English or who have a physical, mental, or developmental disability will be provided reasonable access to the Commission itself and to the commission's programs in that:

(1) all commission and department facilities are in compliance with Texas Civil Statutes, Article 9102, concerning architectural barriers, and the policy of the State of Texas to encourage and promote the rehabilitation of persons with disabilities [handicapped or disabled citizens];

(2)-(5) (No change.)

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

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

issued in Austin, Texas, on August 7, 1993.

TRD-9327223

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-3127

Subchapter C. Fees

• 16 TAC §§60.68, 60.70, 60.75

The Texas Department of Licensing and Regulation proposes amendments to §§60.68, 60.70, and 60.75, concerning fees. Section 60.68 is amended to clarify wording; §60.70 and §60.75 aligns the fee schedule with the Industrialized Housing and Buildings and Air Conditioning and Refrigeration Contractor rules.

James D. Brush, II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering §60.75. The effect on state government for the first five-year period the section is in effect will be an estimated increase in revenue of \$2,400 per year for fiscal years 1994-1998. There will be no effect on local government.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of existing rules. The anticipated economic cost increase for small and large businesses as a result of amendments to §60.70 is estimated to range on the average from \$1.06 to \$39.22 per building, depending on the distance of the manufacturing plant from the inspector's office, with an overall average of \$5.77 for each building manufactured. For §60.75 the cost will be a one-time fee of \$15 for rescheduling an exam. The anticipated economic cost increase to persons who are required to comply with the sections as proposed will be the same for small or large businesses.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 9100, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§60.68. Elimination of Architectural Barriers.

(a) Plan Reviews.

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

(11) On state leases [leased buildings] a fee of \$135 shall be paid.

(b) (No change.)

(c) Inspections.

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

(11) On state leases [leased buildings] a fee of \$65 shall be paid.

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

§60.70. Industrialized Housing and Buildings Division Fees.

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

(f) The fee for department personnel for in-plant inspections at a manufacturing facility shall be \$30 per inspector hour and \$40 per engineer hour plus travel and per diem in accordance with the current rate as established in the current Appropriations Act for all inspections, including plant certification inspections, varying interval inspections to monitor the manufacturer's compliance control program, and for increased frequency inspections. The inspector will give a statement to the manufacturer, and it must be paid to the inspector by either a company check, cashier's check or money order at the completion of the inspection.

(g) When the department acts as a design review agency, the fee for such services is \$40 per engineer hour plus travel and per diem in accordance with the current rate as established in the current Appropriations Act. The fee shall be paid by the manufacturer for whom the services are performed prior to the approval of the designs, plans, specifications, compliance control, and installation manuals and the release of the documents to the manufacturer.

(h)-(i) (No change.)

(j) The fee for department monitoring of design review agencies and third party inspection agencies outside headquarters shall be \$30 [\$90] per inspector hour and \$40 [\$100] per engineer hour plus travel and per diem in accordance with the current rate as established in the current Appropriations Act. The department will present the agency a statement at the conclusion of the monitoring trip, and it is payable upon receipt.

(k) The fee for department personnel for inspection of approved alterations to industrialized housing and building and for special inspections shall be \$30 per inspector hour and \$40 per engineer hour plus travel and per diem in accordance with the current rate as established in the current Appropriations Act. The department will present a billing statement at the conclusion of the inspection that is payable upon receipt.

§60.75. Air Conditioning and Refrigeration Fees.

(a) Exam costs. Class A and Class B exam fees are: [All fees should be paid by cashier's check or money order made payable to the Texas Department of Licensing and Regulation.]

(1) registration fee of \$50 (one registration fee for original registration regardless of the number of exams requested; requests for additional exams after the first exam(s) have been taken or rescheduled will require a new registration fee; [Exam costs. Class A and Class B exam fees are: One exam \$100 (either for environmental air conditioning or commercial refrigeration and process cooling and heating); two original exams \$150 (taken during the same examination period); reexam \$50; one reexam and one original exam \$150; two reexams \$100; reschedule \$100 (after second free reschedule, whether consecutive or not).]

(2) exam fee of \$50 for each exam requested;

(3) re-exam fee of \$50 for each exam;

(4) reschedule fee of \$15 for each exam rescheduled.

(5) After having rescheduled twice, whether consecutive or not, the registration fee of \$50 and exam fee of \$50 per exam must be paid.

(b)[(2)] License fees. Class A license for three years-\$300; renewal every three years-\$150; Class B license for three years-\$150; renewal every three years-\$75; late renewal fee-\$50.

(c)[(3)] Lost or revised license. A \$25 fee shall be required and accompany each request for a revised license or to replace a lost or duplicate license.

(d)[(4)] Lost or revised wallet card. A \$10 fee shall be required and accompany each request for a revised or lost wallet card.

(e)[(5)] Addition of an endorsement to an existing license. Reprint of license and wallet card \$25. If license is to be reprinted for renewal or revision at the same time, for which required fees are paid, and the request is received before the license has been reprinted, this fee may be waived.

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

Issued in Austin, Texas, on August 7, 1993.

TRD-9327224

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-3127

◆ ◆ ◆
Subchapter D. Practice and Procedure

• 16 TAC §§60.104, 60.107, 60.154, 60.156, 60.170, 60.173, 60.176, 60.177, 60.191, 60.194

The Texas Department of Licensing and Regulation proposes new §60.156 and amendments to §§60.104, 60.107, 60.154, 60.170, 60.173, 60.176, 60.177, 60.191, and 60.194, concerning practice and procedure. The new section and amendments provide parties in a contested case hearing with a more complete and clear set of procedural rules.

James D. Brush, II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of existing rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The new section and amendments are proposed under Texas Civil Statutes, Article 9100, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§60.104. Hearing Examiner.

(a) Every hearing before the department shall be conducted by a hearing examiner. The hearing examiner shall have the authority to do the following:

(1)-(9) (No change.)

(10) issue subpoenas to compel the attendance of witnesses, or the production of papers and documents relating to the hearing or records for additional evidence on any issue;

(11) commission and require the taking of depositions [for good cause];

(12)-(13) (No change.)

(14) Close the hearing or take other appropriate action to protect information deemed privileged and confidential by statute when such information is

offered or admitted into evidence at a hearing.

(15) [(14)] make proposed findings of fact and conclusions of law; and

(16)[(15)] any and all other things necessary to provide a fair, just, and proper hearing.

(b) (No change.)

§60.107. Parties.

(a) All parties must have a justiciable interest in the proceedings in order to be designated as parties. [All appearances are subject to a motion to strike upon a showing that the person has no justiciable interest in the proceedings.]

(b) (No change.)

(c) Any person/agency who has a justiciable interest and who is not an Applicant or Respondent and who desires to be designated as a party in a contested case before the Commission/Commissioner may file a petition for leave to intervene no later than five days prior to the hearing date.

(d) The Hearings Examiner shall rule on all petitions for leave to intervene. All petitions for intervention shall be subject to a motion to strike.

§60.154. Postponement, Continuance, Withdrawal, or Dismissal.

(a) Motions for postponement, continuance, withdrawal, or dismissal of any contested case which has been set for hearing shall be served on all parties not less than five days prior to the hearing date. The movant shall include a statement that the other party/parties have been contacted and whether they have opposition to a continuance. Movant shall also provide a list of suggested future dates for consideration by the Hearings Examiner.

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

§60.156. Discovery.

(a) A request for issuance of a commission to take deposition shall be filed with the Hearings Examiner with a proposed commission to take deposition only if parties disagree on the scheduling of the deposition. Depositions shall be returned as provided in Texas Civil Statutes, Article 6252-13a, §14.

(b) The Hearings Examiner may issue protective orders, orders compelling discovery responses, and orders imposing sanctions for failure to comply with discovery orders. Requests for such orders shall be considered after reasonable notice and opportunity for hearing. Requests for discovery orders shall contain a statement under

oath or affirmation that, after due diligence, the desired information can not be obtained through informal means.

(c) An Order imposing sanctions may:

(1) disallow any further discovery of any kind or of a particular kind by the disobedient party;

(2) require the party, the party's representative, or both to obey the discovery order;

(3) require the party, the party's representative, or both to pay reasonable expenses, including attorney fees, incurred by reason of the party's noncompliance;

(4) direct that the matters regarding which the discovery order was made shall be deemed established in accordance with the claim of the party obtaining the order;

(5) refuse to allow the disobedient party to support or oppose designated claims or defenses or prohibit the party from introducing designated matters in evidence;

(6) strike pleadings or parts thereof or abate further proceedings until the order is obeyed; or

(7) if entered by the Commission or Commissioner, dismiss the action or proceeding or any part thereof or render a decision by default against the disobedient party.

(d) Any discovery order or subpoena and any order imposing sanctions issued by the examiner are subject to review by filing an appeal to the commissioner within seven days after the order is issued. Such appeal may be carried with the underlying case by agreement of the parties or if the Commissioner fails to act within 14 days after the appeal is filed.

§60.170. Reporters and Transcripts.

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

(c) Any party wishing to provide an independent means of recording any contested case shall file a motion with the Hearings Examiner requesting permission no later than five days before the hearing. If granted, the Hearings Examiner shall prescribe conditions governing such recordings as justice and decorum require.

§60.173. Official Notice. Official notice of facts may be taken as provided in Administrative Procedures and Texas Register Act, §14(g). A party's motion for official notice must be made or filed prior to the conclusion of the evidentiary hearing, and it must state with specificity the

facts, documents, materials, or records encompassed in that motion.

§60.176. Introduction of Exhibits.

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

(d) The hearing examiner may keep the record open or re-open it to receive late exhibits. If the filing of a late-filed exhibit is permitted, copies shall be served on all parties of record who have the opportunity to respond and submit additional relevant response evidence.

§60.177. Offer of Proof.

(a) When testimony on direct examination is excluded by a ruling of the hearing examiner, the party offering the excluded evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the commission and/or commissioner. The hearing examiner may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

(b) The Hearings Examiner may direct that bills of exception be transcribed separately and that the reporter's costs be assessed against the proponent of the bill.

§60.191. Proposals for Decision.

(a) (No change.)

(b) The Hearings Examiner may direct a party to draft and submit proposed Findings or Fact and Conclusions of Law to be considered by the Hearings Examiner in the preparation of the proposal for decision, and the Hearings Examiner may limit the request to any particular issue or issues of fact.

(c)[(b)] Proposed decisions shall be brought before the commissioner and/or the commission for decision under their respective authorities.

§60.194. Final Orders, Motions for Rehearing, and Emergency Orders.

(a)-(j) (No change.)

(k) A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court. This

is considered to be a court cost and may be assessed by the court under Texas Rules of Civil 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 August 7, 1993.

TRD-9327225

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-3127

◆ ◆ ◆ • 16 TAC §60.156

(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 Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Licensing and Regulation proposes the repeal of §60.156, concerning Discovery in a contested case hearing. The section is being repealed to allow for the adoption of a new section.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Brush 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 clarification of existing rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12156, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§60.156. Discovery.

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

Issued in Austin, Texas, on August 7, 1993.

TRD-9327228

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-3127

Chapter 69. Manufactured Housing

Standards and Requirements

• 16 TAC §69.54, §69.62

The Texas Department of Licensing and Regulation proposes amendments to §69.54, and §69.62, concerning the installation of manufactured homes. Section 69.54 is amended to provide options in placement of piers under exterior doors and §69.62 adds a new perimeter pier construction standard.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of existing rules which will allow for more timely inspection reports. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12156, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 5221f, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§69.54. Generic Installation Requirements.

(a) (No change.)

(b) All mobile homes, HUD-code manufactured homes, rebuilt salvaged homes, and used HUD-code manufactured homes shall be supported in accordance with the home manufacturer's installation instructions or the following requirements:

(1) Piers for single section homes are to be placed under each longitudinal main frame member not to exceed 8 feet on-center spacing for homes that are 14 feet wide or less and 6 feet on-center spacing for homes that are over 14 feet wide. Where practical, end piers shall be placed within one foot of the ends of the main frame. When the location and spacing of wheels and axles or other structural members of the home frame or undercarriage prevent spacing of piers on 8 feet or 6 feet

centers, the spacing shall be as near eight or 6 feet maximum spacing as practicable in the area of the obstruction. Exterior doors must have perimeter piers [directly] under the sides of the opening. For homes 12 feet or less in width, this requirement is optional. The minimum footing area shall be 240 square inches.

(2) Piers for multi-section homes are to be placed under each longitudinal main frame member not to exceed 6 feet on-center spacing. Where practical, end piers shall be placed within one foot of the end of the main frame. When the location and spacing of wheels and axles or other structural members of the home frame or under-carriage prevent spacing of piers on 6 feet centers, the spacing shall be 6 feet maximum spacing in all other areas and shall be as near 6 feet maximum spacing as practicable in the area of the obstruction. Piers are to be placed under the center marriage line within one foot at each end, under support columns, and under both sides of openings greater than 12 feet. Exterior doors must have perimeter piers [directly] under the sides of the opening. For homes with 12-foot sections this requirement is optional. The minimum footing area shall be 240 square inches.

§69.62. *Blocking Standards.* Installation of mobile homes and HUD-Code manufactured homes must meet or exceed the following support and blocking requirements:

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

(8) Perimeter pier construction:

(A) Piers shall be installed to provide support at designated locations.

(B) The long dimension of concrete blocks may be placed in any direction at the support locations.

(C) The piers must support the intersection of the interior joist and perimeter joist of a 4 inches by 4 inches wood brace must be provided across two or more transverse (interior) joist intervals supported by two piers. The brace shall be within one foot of the perimeter joist.

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

Issued in Austin, Texas, on August 7, 1993.

TRD-9327227

Jack W. Carlson
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-3127

Titling

• 16 TAC §69.204

The Texas Department of Licensing and Regulation proposes an amendment §69.204, concerning Titling of Manufactured Homes. The amendment requires manufacturers to use a form provided by the department for the manufacturer's certificate of origin.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Brush 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 efficient title processing. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 5221f, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§69.204. *Titling Forms.*

(a) Manufacturer's certificate of origin.

(1) The manufacturer shall issue a manufacturer's certificate of origin for each new home, which is consigned, transferred, or sold to a retailer in this state. The certificate of origin information shall be on a form provided by the department. [shall contain, at a minimum, but is not limited to, the following information:

[(A) the manufacturer's name and registration number, (as recorded on the manufacturer's bond) on file with the department, the address of the manufacturer, and signature and title of the manufacturer's authorized representative.

[(B) the name, address, and registration number of the transferee, as recorded on the retailer's bond on file with the department, transfer date, model designation, number of sections, and total square feet of the home. If no model designation

exists, "none" shall be entered in the space for model designation. The size of each transportable section of each home shall be the length and width of the outside dimensions (exclusive of the tongue, hitch or other towing device) measured to the nearest 1/2 foot at the base or lower part of the exterior wall of the section. The square footage of the home shall be determined by multiplying the outside dimensions of the living area of the home when installed at the homesite for occupancy.

[(C) the HUD label and/or Texas decal number, the serial number, the weight and size (excluding hitch) of each transportable section of the home;

[(D) a warranty by the manufacturer that good and marketable title is being transferred and that no other valid manufacturer's certificate or origin has been issued on the home;

[(E) a statement by the manufacturer that title may pass on assignment by retailer only to another retailer registered with the Texas Department of Licensing and Regulation, and that transfer of title to a retail purchaser must be accompanied by a properly executed affidavit of disposition along with the surrender of the manufacturer's certificate of origin;

[(F) a provision for first and second assignment of title from retailer to retailer. Assignment information shall include the date, name, registration number, address, and name and signature of the transferring retailer's authorized representative.]

(2) (No change.)

(3) If the manufacturer's certificate of origin (MCO) surrendered with the initial title application is not on the form provided by the department, title issuance shall be delayed pending proof of state sales/use tax payment.

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

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

Issued in Austin, Texas, on August 7, 1993.

TRD-9327228

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-3127

Chapter 70. Industrialized Housing and Buildings

- 16 TAC §§70.1, 70.10, 70.20, 70.21, 70.60-70.65, 70.70, 70.73, 70.77, 70.80, 70.90-70.92

The Texas Department of Licensing and Regulation proposes new §§70. 60-70.65 and 70.90-70.92 and amendments to §§70.1, 70.10, 70.20, 70.21, 70.70, 70.73, 70.77, and 70.80, concerning industrialized housing and buildings. The sections are being proposed to clarify, edit, renumber, and reorganize existing rules. The only significant change is the addition of reimbursement of travel expenses to §70.80(f), (g), (i), and (k).

James D. Brush, II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of existing rules. The anticipated economic cost increase for small and large businesses is estimated to range on the average from \$1.06 to \$39.22 per building, depending on the distance of the manufacturing plant from the inspector's office, with an overall average of \$5.77 for each building manufactured. The anticipated economic cost increase to persons who are required to comply with the sections proposed will be the same for small or large businesses.

Comments on the as proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The new and amended sections are proposed under Texas Civil Statutes, Article 5221f-1, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Industrialized Housing and Buildings Act.

§70.1. Authority. These rules [The sections in this chapter] are promulgated under the authority of the Texas Industrialized Housing and Buildings Act, [provisions of] Texas Civil Statutes, Article 5221f-1 [(the Act), relating to industrialized housing and buildings] and Texas Civil Statutes, Article 9100 [, to conform to the legislative mandate in the Act, to assure compliance and to provide for uniform enforcement. In addition, it is the intent of these sections to recognize the vital role of municipalities in this state in the regulation of on-site construction and erection of industrialized housing and buildings within their jurisdictions and in coordinating properly the public interests of both the local political subdivisions and the state].

§70.10. Definitions.

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

(1)-(6) (No change.)

[(7) Commission—The Texas Commission of Licensing and Regulation.]

[(8) Commissioner—Commissioner of the Texas Department of Licensing and Regulation.]

[(7) [(9)] Commissioner's designee—A person appointed by the commissioner to act in a capacity of authority.

[(8) [(10)] Compliance Control Program—The manufacturer's system, documentation, and methods of assuring that industrialized housing, buildings, and modular components, including their manufacture, storage, handling, and transportation conform with the Act and this chapter.

[(9) [(11)] Component—A sub-assembly, subsystem, or combination of elements for use as a part of a building system or part of a modular component that is not structurally independent, but may be part of structural, plumbing, mechanical, electrical, fire protection, or other systems affecting life safety.

[(12) Council—The Texas Industrialized Building Code Council.]

[(10) [(13)] Decal—The approved form of certification issued by the department to the manufacturer to be permanently affixed to the module indicating that it has been constructed to meet or exceed the code requirements and in compliance with these sections.

[(14) Department—Texas Department of Licensing and Regulation.]

[(11) [(15)] Design package—The aggregate of all plans, designs, specifications, and documentation required by these sections to be submitted to the design review agency, or required by the design review agency for compliance review, including the compliance control manual and the on-site construction documentation. Unique or site specific foundation drawings and special on-site construction details prepared for specific projects are not a part of the design package except as expressly set forth in §70.74 of this title (relating to Alterations and Deviations).

[(12) [(16)] Design review agency—An approved organization, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability to review designs, plans, specifications, and building systems documentation, and to certify compliance to these sections evidenced

by affixing the council's stamp. The Act designates the department as a design review agency.

(13) [(17)] ICBO-International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(14) [(18)] Industrialized builder-A person who is engaged in the assembly, connection, and on-site construction and erection of modules or modular components at the building site or who is engaged in the purchase of industrialized housing or buildings or of modules or modular components from a manufacturer for sale or lease to the public; a subcontractor of an industrialized builder is not a builder for purposes of these sections.

[(19)] Industrialized building-A commercial structure that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent commercial site, and that is designed to be used as a commercial building when the modules or modular components are transported to the permanent commercial site and are erected on or affixed to a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems.]

[(20)] Industrialized housing-A residential structure that is designed for the use and occupancy of one or more families, that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected on or affixed to a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems.]

(15) [(21)] Insignia-The approved form of certification issued by the department to the manufacturer to be permanently affixed to the modular component indicating that it has been constructed to meet or exceed the code requirements and in compliance with the sections in this chapter.

(16) [(22)] Installation-On-site construction (see paragraph (32) of this section).

(17) [(23)] Lease, or offer to lease-A contract or other instrument by which a person grants to another the right to possess and use for a specified period of time in exchange for payment of a stipulated price.

(18) [(24)] Local building official-The agency or department of a municipality or other local political subdivision

with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of residential and commercial structures.

(19) [(25)] Manufacturer-A person who constructs or assembles modules or modular components at a manufacturing facility which are offered for sale or lease, sold or leased, or otherwise used.

(20) [(26)] Manufacturing facility-The place other than the building site, at which machinery, equipment, and other capital goods are assembled and operated for the purpose of making, fabricating, constructing, forming, or assembly of industrialized housing, buildings, modules, or modular components.

(21) [(27)] Model-A specific design of an industrialized house, building, or modular component which is based on size, room arrangement, method of construction, location, arrangement, or size of plumbing, mechanical, or electrical equipment and systems therein in accordance with an approved design package.

[(28)] Modular component-A structural portion of any dwelling or building that is constructed at a location other than the site in such a manner that its construction cannot be adequately inspected for code compliance at the site without damage or without removal of a part thereof and reconstruction.]

(22) [(29)] Module-A three-dimensional section of industrialized housing or buildings, designed and approved to be transported as a single section independent of other sections, to a site for on-site construction with or without other modules or modular components.

(23) [(30)] NFPA-National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(24) [(31)] Nonsite specific building-An industrialized house or building for which the permanent site location is unknown at the time of construction.

(25) [(32)] On-site construction-Preparation of the site, foundation construction, assembly, and connection of the modules or modular components, affixing the structure to the permanent foundation, connecting the structures together, completing all site-related construction in accordance with designs, plans, specifications, and on-site construction documentation.

(26) [(33)] Open construction-That condition where any house, building, or portion thereof is constructed in such a manner that all parts or processes of manufacture can be readily inspected at the building site without disassembly, damage to, or destruction thereof.

(27) [(34)] Permanent foundation system-A foundation system for industrialized housing or buildings designed to meet the applicable building code as set forth in §70.100 of this title (relating to Mandatory State Codes) and §70.102 of this title (relating to Use and Construction of Codes).

(28) [(35)] Person-An individual, partnership, company, corporation, association, or any other legal entity, however organized.

(29) [(36)] Price-The quantity of an item that is exchanged or demanded in the sale or lease for another.

(30) [(37)] Public-The people of the state as a whole to include individuals, companies, corporations, associations, or other groups, however organized, and governmental agencies.

(31) [(38)] Registrant-A person who, or which, is registered with the department pursuant to the rules of this chapter as a manufacturer, builder, design-review agency, third-party inspection agency, or third-party inspector.

(32) [(39)] Residential structure-Industrialized housing designed for occupancy and use as a residence by one or more families.

(33) [(40)] Sale, sell, offer to sell, or offer for sale-Includes any contract of sale or other instrument of transfer of ownership of property, or solicitation to offer to sell or otherwise transfer ownership of property for an established price.

(34) [(41)] SBCCI-Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213.

(35) [(42)] Site or building site-A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(36) [(43)] Special conditions and/or limitations-On-site construction documentation which alerts the local building official of items, such as handicapped accessibility or placement of the building on the property, which may need to be verified by the local building official for conformance to the mandatory state codes.

(37) [(44)] Structure-An industrialized house or building which results from the complete assemblage of the modules, modular components, or components designed to be used together to form a completed unit.

(38) [(45)] Third party inspector-An approved person or agency, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability, and independence of judgement to inspect indus-

trialized housing, buildings, and portions thereof for compliance with the approved plans, documentation, compliance control program, and applicable code.

(b) Other definitions may be set forth in the text of the sections in this chapter. For purposes of these sections, the singular means the plural, and the plural means the singular.

§70.20. Registration of Manufacturers and Industrialized Builders. Manufacturers and industrialized builders shall not engage in any business activity relating to the construction or location of industrialized housing or buildings without being registered with the department.

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

(5) An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect. The certificate of registration may be revoked or suspended or a penalty or fine may be imposed for any violation of the Act, violation of the rules and regulations in this chapter or administrative orders of the department, or violations of the instructions and determinations of the council in accordance with §70.90 of this title (relating to Sanctions-Administrative Sanctions/Penalties), and §70.91 of this title [(relating to Sanctions-Administrative Penalty/Fine), §70.92 of this title (relating to Sanctions-Injunctive Relief and Civil Penalty), §70.93 of this title (relating to Sanctions-Criminal Penalty), and §70.94 of this title] (relating to Sanctions-Revocation or Suspension because of a Criminal Conviction).

§70.21. Registration of Design Review Agencies and Third Party Inspection Agencies and Inspectors.

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

(d) An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect. The certificate of registration may be revoked or suspended or a penalty or fine may be imposed for any violation of the Industrialized Housing and Buildings Act (Act), violation of the rules and regulations in this chapter or administrative orders of the commissioner, or violations of the instructions and determinations of the council in accordance with §70.90 of this title (relating to Sanctions-Administrative Sanctions/Penalties), and §70.91 of this title [(relating to Sanctions-Administrative Penalty/Fine), §70.92 of this title (relating to Sanctions-Injunctive Relief and Civil Penalty), §70.93 of this title (relating to Sanctions-Criminal Penalty), §70.94 of this title] (relating to Sanctions-Revocation or Suspension because of

a Criminal Conviction) and §70.92 [70.95] of this title (relating to Sanctions for Failure to Comply by Design-Review Agencies, Third-Party Inspection Agencies, and Third-Party Inspectors).

(e) (No change.)

§70.60. Responsibilities of the Department-Plant Certification.

(a) Prior to being issued decals or insignia, each manufacturing facility will undergo a certification inspection. A representative of the design review agency must be present during the manufacturer's certification inspection. The plant certification will be conducted by a department team normally consisting of an engineer and one or more department inspectors or, when designated by the department, third-party inspectors. The purpose of the plant certification inspection will be to assure that the compliance control program in the manufacturing facility is capable of producing structures in compliance with the approved design package. The team will become familiar with all aspects of the manufacturer's approved design package. Structures on the production line will be checked to assure that failures to conform located by the inspection team are being located by the plant compliance control program and are being corrected by the plant personnel. The inspection team will work closely with the plant compliance control personnel to assure that the approved design package and compliance control manuals for the facility are clearly understood and are being followed. The plant certification inspection will terminate when the inspection team has fully evaluated all aspects of the manufacturing facility. At least one module or modular component containing all systems, or a combination of modules or modular components containing all systems, shall be observed during all phases of construction. The team must inspect all modules or modular components in the production line during the certification.

(b) Following completion of the plant certification inspection, the team will issue a plant certification report. The manufacturer must keep a copy of this report in their permanent records. The plant certification report will contain:

(1) the name and address of the manufacturer;

(2) the names and titles of personnel performing the certification inspection;

(3) the serial or identification numbers of the modules or modular components inspected;

(4) a list of nonconformances observed on the modules or modular components inspected (with appropriate design

package references) and corrective action taken in each case;

(5) a list of deviations from the approved compliance control procedures (with section or manual references) observed during the certification inspection with the corrective action taken in each case;

(6) the date of certification;

(7) the following statement: "This report concludes that (name of agency), after evaluating the facility, certifies that (name of factory) of (city) is capable of producing (industrialized housing and buildings or modular components) in accordance with the approved building system and compliance control manuals on file in the manufacturing facility and in compliance with the requirements of the Texas Industrialized Building Code Council"; and

(8) the signature of the inspection team leader.

(c) If during the certification inspection, the manufacturer is judged not capable of building structures in compliance with the approved design package and compliance control manual, the agency will issue a deviation report. The deviation report will detail the specific areas in which the manufacturer was found to be deficient and will make recommendations for improvement.

(d) A manufacturing facility which was registered with the department for the construction of modular homes on September 1, 1985, and which had previously been issued a plant certification report, shall not be required to have an additional certification inspection in order to receive decals and insignia.

§70.61. Responsibilities of the Department-In-plant Inspection.

(a) The department or TPIA/TPI shall conduct announced and unannounced inspections at the manufacturing facility at reasonable, but varying, intervals to review any and all aspects of the manufacturer's production and compliance control program. In order to determine if the compliance control program is working as set forth in the compliance control manual, inspection of every visible aspect of every module shall normally be made at least at one point during the manufacturing process. It is the manufacturer's responsibility to assure that the inspections are accomplished as outlined in this subsection. The department will determine the frequency of modular component inspections.

(b) Inspections at the manufacturing facility shall be increased in frequency as necessary to assure that the manufacturer is performing in accordance with the approved compliance control manual.

(c) The commissioner, at his discretion, may require, or may authorize upon written request by the manufacturer, the use of council-approved third-party inspectors to perform in-plant inspections. Third-party inspection agencies must provide the department a written schedule of inspections a minimum of seven days prior to the inspection. If the inspection must be rescheduled for any reason, the TPIA must immediately inform the department of the schedule change. If an approved third-party inspector is utilized, fees may be paid directly to the third-party inspector.

(d) The department shall monitor and evaluate the performance of third-party inspectors and design-review agencies and make performance reports and recommendations to the council as may be necessary.

(e) The manufacturer shall reimburse the department an hourly monitoring fee for expenses incurred outside headquarters in monitoring the performance of the third-party inspection agency.

(f) The department or TPI shall furnish the manufacturer a copy of the inspection report upon completion of the in-plant inspection. The report must be kept in the manufacturer's file at least five years.

§70.62. Responsibilities of the Local Building Official—Building Site Inspections. When the building site is within a municipality which has a building inspection agency or department, the local building official will inspect all on-site construction and the attachment of the structure to the permanent foundation to assure completion and attachment in accordance with the approved design package and any unique foundation system or on-site details. As a minimum the local building official shall:

(1) perform an overall visual inspection for obvious nonconformity to the applicable code, require final inspections along with any tests which are required by the approved installation instructions, on-site construction documentation, and/or the applicable code, and require the correction of deficiencies identified by the tests or discovered in final inspections;

(2) notify the commissioner of any damage to a module or modular component resulting from transportation to, or handling at, the building site which is not corrected by the industrialized builder; notify the commissioner of any noncompliance to, or deviation from, the approved building system or applicable code; and report to the commissioner any violation of these rules and regulations. These notices and reports shall be submitted by certified mail.

§70.63. Council's Responsibilities—Compliance Disputes.

(a) The council shall resolve any dispute, disagreement, or difference of opinion between the design-review agency (or department when acting as a design review agency) and a local building official as to whether the approved design package meets or exceeds the requirements of the mandatory building codes set forth in this chapter. The council's decision shall be timely made and shall be binding on all parties.

(b) If the local building official thinks the approved design package or unique on-site construction documentation does not meet the code requirements of this chapter, this opinion shall be forwarded in writing to the commissioner at the department's Austin office within seven working days following the filing of an application for a building permit and prior to issuance of the building permit. This written opinion shall set forth specifically those code sections for which the noncompliance allegedly exists and the specific reasons the local building official thinks the design package or unique on-site construction documentation fails to meet the code requirements. The local building official shall submit 15 copies of the written opinion. The commissioner will submit the local building official's opinion and reasons to the council within three working days following receipt. The council shall determine at the next scheduled meeting, not to exceed 45 days, whether or not the design package or unique on-site construction documentation meets the mandatory state code requirements and shall notify the local building official and the commissioner in writing. If the design package or on-site construction documentation is determined by the council to meet the code requirements, the local building official shall issue a building permit. Questions concerning the code compliance of a design package or on-site construction documentation must be raised prior to the issuance of a building permit and, once a local building permit is issued, the local building official shall not stop any on-site construction due to questions about the approved design package or on-site construction documentation.

(c) If a dispute or difference of opinion arises between the manufacturer and the third-party inspector during an in-plant inspection as to whether the construction meets or exceeds the approved design package, the dispute or differences shall be resolved by the commissioner. If the commissioner is unable to resolve the dispute, then he will forward it to the council for resolution.

(d) If a dispute or difference of opinion arises between the industrialized builder and a local building official or third-

party inspector as to whether the on-site construction meets or exceeds the approved design package or unique on-site construction documentation, the dispute or difference of opinion shall be resolved by the commissioner. If the commissioner is unable to resolve the dispute, then he will forward it to the council for resolution.

§70.64. Responsibilities of the Department—Proprietary Information Protected.

(a) All designs, plans, specifications, compliance control programs, manuals, on-site construction instructions and documentation, information relating to alternate methods or materials, or any other documents submitted by a manufacturer to the council, the department, or local building official are proprietary information and shall only be used for purposes of assuring compliance with the provisions of the Industrialized Housing and Buildings Act (the Act) and this chapter.

(b) The items and information set forth in subsection (a) of this section furnished by the manufacturer to the council, the department, or local building official, shall not be copied or distributed to any other person except with the manufacturer's written permission or under the direction of the Texas Attorney General pursuant to applicable law relating to public records as set forth in Texas Civil Statutes, Article 6252-17a.

§70.65. Responsibilities of the Commissioner—Reciprocity.

(a) If the commissioner finds that the standards prescribed by the statute or rules and regulations of another state meet the objectives of Texas Civil Statutes, Article 5221f-1 and are satisfactorily enforced by that state or its agents, then the commissioner may enter a reciprocal agreement with that state to authorize building inspections of industrialized houses or buildings constructed in that state to be performed by an inspector of the equivalent regulatory agency of that state. The standards of another state shall not be deemed to be adequately enforced unless the other state provides for immediate written notification to the commissioner of suspensions or revocations of approvals of manufacturers by the other state.

(b) If the commissioner enters a reciprocity agreement with another state, then the commissioner will accept industrialized housing and buildings which have been inspected by the reciprocal state and which have the appropriate decal, label, or insignia of the reciprocal state. Manufacturers in the reciprocal state who construct industrialized housing and buildings for Texas will be subject to the following.

(1) Manufacturers must be registered in Texas in accordance with §70.20 of this title (relating to the Registration of Manufacturers and Industrialized Builders). The manufacturer must submit evidence that its building system and compliance control program have been approved by the reciprocal state. The commissioner shall verify the approval and maintain a list of manufacturers approved under the terms of the reciprocity agreement.

(2) Industrialized housing, buildings, modules, and modular components will be constructed in accordance with the codes referenced in §70.100 of this title (relating to Mandatory State Codes) and any amendments to those codes in accordance with §70.101 of this title (relating to Amendments to Mandatory State Codes). The code used will be determined in accordance with §70.102 of this title (relating to Use and Construction of Codes).

(3) Review and approval of the manufacturer's design package will be in accordance with §70.70 of this title (relating to Responsibilities of the Registrants-Manufacturer's Design Package), except that the reciprocity agreement with the reciprocal state will accept the compliance control program approved by the reciprocal state for that manufacturer. All inspections performed by the reciprocal state must be in accordance with documents reviewed and approved by a council-approved design-review agency or the department when acting as a design-review agency.

(4) The manufacturer will assign a Texas decal or insignia to each module or modular component for Texas in accordance with §70.77 of this title (relating to Responsibilities of the Registrants-Decals and Insignia). The Texas decal or insignia will be placed in the vicinity of the decal, label, or insignia of the reciprocal state.

(5) The manufacturer will permanently attach a data plate to each industrialized house or building in accordance with §70.71 of this title (relating to the Responsibilities of the Registrants-Manufacturer's Data Plate).

(6) The manufacturer will submit a monthly report to the commissioner in accordance with §70.50 of this title (relating to Manufacturer and Builder Monthly Reports).

(c) If the commissioner determines that the standards for the manufacture and inspection of industrialized housing and buildings in a reciprocal state, with which the commissioner has entered a reciprocal agreement, do not meet the objectives of Texas Civil Statutes, Article 5221f-1 or are not being enforced by the reciprocal state, then the commissioner shall suspend or revoke the reciprocal agreement. The reciprocal state and affected manufacturers will

receive written notification of the reasons for the suspension or revocation of the agreement.

(d) Written notification of suspension or revocation of a manufacturer by another state with which the commissioner has entered a reciprocal agreement will be cause to suspend or revoke the approval of that manufacturer to construct industrialized housing and buildings for Texas.

§70.70. Responsibilities of the Registrants-Manufacturer's Design Package.

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

(c) Compliance Control Program. The utilization of mass production techniques and assembly line methods in the construction of industrialized housing, buildings, modules, and modular components along with the fact that a large part of such construction cannot be inspected at the ultimate building site, requires manufacturers to develop an adequate compliance control program to assure that these structures meet or exceed mandatory code requirements and are in compliance with the rules and regulations of this chapter. The compliance control program shall be documented in the form of a manual which must be approved by the design review agency or the department. The council may waive the compliance control program as set forth in the rules upon written request from the manufacturer. Waiver of the compliance control program shall require that each module or modular component be individually inspected at each and every stage of the manufacturing process. The manufacturer shall provide the design review agency a compliance control manual which must, at the minimum, contain the following:

(1)-(8) (No change.)

(9) step by step test procedures [when electrical, gas supply, or plumbing systems are installed and] , a description of the station at which each production test is [will be] performed, a description of required testing equipment, and procedures for periodic checking, recalibration, and readjustment of test equipment. [including:] Procedures shall be included for, but not limited to, electrical tests as specified in the National Electrical Code, Article 550-12, gas-supply pressure tests, water-supply pressure tests, drain-waste-vent system tests, concrete slump tests, and concrete strength tests:

[(A) electrical tests as specified in the National Electrical Code, Article 550-12, gas-supply pressure tests, water supply-pressure tests, and drain-waste-vent system tests;

[(B) description of required testing equipment; and

[(C) procedures for periodic checking, recalibration, and readjustment of test equipment;]

(10)-(14) (No change.)

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

§70.73. Responsibilities of the Registrants-Building Site Inspections.

(a) (No change.)

(b) When the building site is outside a municipality, or within a municipality which has no building department or agency, the department or third-party inspectors will perform the required inspections. The on-site inspection is normally accomplished in three phases: site preparation, set inspection, and final inspection. The builder is responsible for scheduling each phase of the inspection with the inspecting agency. Additional inspections will be scheduled as required for larger structures and to correct discrepancies. When the department performs the inspection, the builder is responsible for assuring that the request for an on-site inspection, on the form supplied by the department, and the fee in accordance with §70.80 (relating to Commission Fees) arrive at the department's Austin office at least 10 working days prior to the first requested inspection date. If a council-approved third-party inspector is approved by the department and completes the inspection, fees may be paid directly to the third-party inspector. The third-party inspector must notify the department of the time, date, and location of the inspection, at least three working days prior to the inspection. The industrialized builder may utilize the services of the department on one or more projects and utilize third party inspectors on other projects; however, the election may not be changed once made for a particular project at the building site except with written approval of the department.

(c) Destructive disassembly shall not be performed at the site in order to conduct tests or inspections, nor shall there be imposed standards or test criteria different from those required by the approved installation instructions, on-site construction documentation, and the applicable mandatory code. Nondestructive disassembly may be performed only to the extent of opening access panels and cover plates.

(d) If an inspector finds a structure, or any part thereof, at the building site to be in violation of the approved design package and/or the unique on-site plans and specifications, the inspector shall immediately post a deviation notice

and notify the industrialized builder. The industrialized builder, after making corrections as necessary to bring the unit into compliance, shall request an inspection, either by the commissioner or the on-site inspector. If the deviation is not corrected, a certificate of occupancy shall not be issued.

(e)[(c)] If a structure, or any part thereof, is found by the inspector at the building site to be in violation of the approved design package or the on-site construction documentation, the inspector shall immediately post a deviation notice and notify the industrialized builder. The industrialized builder, after making corrections as necessary to bring the unit into compliance, shall request an inspection[, either by the department or the on-site inspector]. If the deviation is not corrected, a certificate of occupancy shall not be issued.

(f)[(d)] The builder shall not permit occupancy of a structure until a successful final inspection has been completed and a certificate of occupancy issued. The department will issue certificates of occupancy for buildings located outside a municipality that regulates on-site construction.

(g)[(e)] The owner shall post the certificate of occupancy in a conspicuous place on the premises of an industrialized building. The certificate of occupancy may be suspended or revoked, in writing, whenever the certificate is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of the mandatory codes, the Industrialized Housing and Buildings Act (the Act) or any rule, regulation, or administrative order made or issued by the commissioner in, or pursuant to this chapter, or any decisions, actions, or interpretations of the council.

§70.77. Responsibilities of the Registrants<->Decals and Insignia.

(a) Decals are used for module certification and insignia are used for modular component certification. The department will issue decals and insignia to the manufacturer on application and payment of the fee following certification of the manufacturing facility in accordance with §70.60 [70.61] of this title (relating to Responsibilities of the Department-Plant Certifications). Each module or modular component of industrialized housing or buildings shall have the decal or insignia affixed thereto before leaving the manufacturing facility. The decal or insignia shall be placed in a visible location as set forth in the approved design package and in the on-site construction documentation and shall be permanently attached so that it cannot be removed without destruction.

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

§70.80. Commission Fees.

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

(f) The fee for department personnel for in-plant inspections at a manufacturing facility shall be \$30 per inspector hour and \$40 per engineer hour plus travel and per diem in accordance with the current rate as established in the current Appropriations Act for all inspections, including plant certification inspections, varying interval inspections to monitor the manufacturer's compliance control program, and for increased frequency inspections. The inspector will give a statement to the manufacturer and it must be paid to the inspector by either a company check, cashier's check, or money order at the completion of the inspection.

(g) When the department acts as a design review agency, the fee for such services is \$40 per engineer hour plus travel and per diem in accordance with the current rate as established in the current Appropriations Act. The manufacturer for whom the services are performed shall pay the fee before approval of the designs, plans, specifications, compliance control documents, and installation manuals and before the release of the documents to the manufacturer.

(h)-(i) (No change.)

(j) The fee for department monitoring of design review agencies and third party inspection agencies outside headquarters shall be \$30 [\$90] per inspector hour and \$40 [\$100] per engineer hour plus travel and per diem in accordance with the current rate as established in the current Appropriations Act. The department will present the agency a statement at the conclusion of the monitoring trip, and it is payable upon receipt.

(k) The fee for department personnel for inspection of approved alterations to industrialized housing and buildings and for special inspections shall be \$30 per inspector hour and \$40 per engineer hour plus travel and per diem in accordance with the current rate as established in the current Appropriations Act. The department will present a billing statement at the conclusion of the inspection that is payable upon receipt.

§70.90. Sanctions-Administrative Sanctions/Penalties. If a person violates the Industrialized Housing and Buildings Act, or a rule or order adopted or issued by the Commissioner relating to the Act, the Commissioner may institute proceedings to impose administrative sanctions and/or recommend administrative penalties in accordance with Texas Civil Statutes, Article 9100, and Chapter 60 of this title (relating

to Texas Commission of Licensing and Regulation).

§70.91. Sanctions-Revocation, Suspension, or Denial. Because of a Criminal Record. Pursuant to Texas Civil Statutes, Article 6252-13c, the Commissioner, after a hearing, may suspend, revoke, or deny an existing license, or disqualify a person from receiving a license, because the person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in the area in which the applicant will be registered. The Commissioner may also, after hearing, suspend, revoke, or deny a registration because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

§70.92. Sanctions for Failure to Comply by Design Review Agencies, Third Party Inspection Agencies, and Third Party Inspectors. The department shall monitor the performance of design review agencies (DRA), third-party inspection agencies (TPIA), and third-party inspectors (TPI) and may recommend disapproval of any agency or inspector that violates provisions of the act or rules, regulations, or administrative orders issued by the commissioner in, or pursuant to, this chapter, or any decisions, actions, or interpretations of the council. If the council feels that a failure to comply has been shown, then the council will recommend that the Commissioner take appropriate action. Sanctions shall be administered pursuant to the provisions of Texas Civil Statutes, Article 5221f-1, §9.

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

Issued in Austin, Texas, on August 7, 1993.

TRD-9327229

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-3127

◆ ◆ ◆
• 16 TAC §§70.60-70.67,
70.90-70.95

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

The Texas Department of Licensing and Regulation proposes the repeals of §§70.60-

70.67, and 70.90-70.95, concerning Industrialized Housing and Buildings. These sections are being repealed to allow for the adoption of an edited, renumbered, and reorganized sections.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Brush 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 clarification of existing rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5221f-1, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Industrialized Housing and Buildings Act.

§70.60. Division Responsibilities.

§70.61. Responsibilities of the Department-Plant Certification.

§70.62. Responsibilities of the Department-In Plant Inspection.

§70.63. Responsibilities of the Department-Building Site Inspections.

§70.64. Council's Responsibilities-Compliance Disputes.

§70.65. Responsibilities of the Department-Proprietary Information Protected.

§70.66. Responsibilities of the Department-Decals and Insigna.

§70.67. Responsibilities of the Commissioner-Reciprocity.

§70.90. Sanctions-Administrative Sanctions.

§70.91. Sanctions-Administrative Penalty/Fine.

§70.92. Sanctions-Injunctive Relief and Civil Penalty.

§70.93. Sanctions-Criminal Penalty.

§70.94. Sanctions-Revocation or Suspension because of a Criminal Conviction.

§70.95. Sanctions of Failure to Comply by Design Review Agencies, Third Party Inspection Agencies, and Third Party Inspectors.

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

Issued in Austin, Texas, on August 7, 1993.

TRD-9327230

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-3127

◆ ◆ ◆
**Chapter 75. Air Conditioning
and Refrigeration Contractor
License Law**

- 16 TAC §§ 75.10, 75.20, 75.21, 75.22, 75.24, 75.70, 75.80

The Texas Department of Licensing and Regulation proposes new §75.70 and amendments to §§75.10, 75.20, 75.21, 75.22, 75.24, and 75.80, concerning air conditioning and refrigeration contractors. Section 75.10 deletes an unnecessary definition, §75.20 clarifies requirements for applications, §75.21 adds a requirement for a rescheduling fee and simplifies the language of the §75.22 deletes a provision now in the statute and a provision that is being moved to another §75.24 changes the lead time for renewal notices, §75.70 clarifies the language and adds a requirement to provide addresses of non-permanent offices, and §75.80 specifies the reschedule fee.

James D. Brush, II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated increase in revenue of \$2,400 per year for fiscal years 1994-1998. There will be no effect on local government.

Mr. Brush 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 easier enforcement which will allow for greater consumer protection. The cost of compliance for small businesses will be a one-time fee of \$15 for rescheduling an exam. The anticipated economic cost to individuals who are required to comply with the sections as pro-

posed is a one-time \$15 fee for rescheduling an exam.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The new section and amendments are proposed under Texas Civil Statutes, Article 8861, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§75.10. Definitions. [Heating capacity-British thermal units per hour (Btu/h) input.]

§75.20. Licensing Requirements-Applications.

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

(c) The registration fee and examination fee(s) must accompany the application. The application must be complete and meet all requirements and must be post-marked [received by the department] not less than 45 days prior to the examination date. Those received later will be scheduled for the next quarterly examination period.

§75.21. Licensing Requirements-Examinations.

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

(d) The department shall notify the applicant of the time and place the applicant [he] is scheduled for examination(s) at least three weeks before the examination [a reasonable amount of time before an examination]. Applicants who are scheduled for an examination but do not [fail to] appear, and do not request rescheduling [fail to notify the department not less than 72 hours before the exam] must reapply and pay the registration and examination fees. [An applicant who has notified the department more than 72 hours before an exam may receive a free reschedule which may be used no more than two years after the date of the exam which was rescheduled. Two free reschedules are allowed for each requested exam.]

(e) An applicant who wishes to be rescheduled must send a rescheduling fee and a written request to reschedule, post-marked no later than five days before the examination. No registration or exam fee will be required. An applicant may reschedule each exam only two times without paying the registration and exam fees.

(f)[(e)] An applicant may cancel an examination [reschedule] one time for an unforeseen emergency without paying re-

schedule, registration, or exam fees without using a [free] reschedule. The circumstances are subject to approval by the department. The reason for emergency cancellation [rescheduling] must be submitted in writing no later than ten working days after the exam for which the applicant [he] was scheduled. [Emergency reschedules may be used no more than two years after the date of the exam which was rescheduled.]

(g) Rescheduled and cancelled exams must be used within two years after the date of the rescheduled or cancelled exam.

(h)(f) An analysis of performance on an exam will consist of a statement of the number of questions missed in each category of the exam. No actual questions will be sent to the applicant.

(i)(g) An applicant may request special accommodations for an exam based on disability or language problems. The request must be in writing and must be post-marked [received] at least 45 days before the exam date. Requests must specify the type of special accommodation requested and the basis for the request. Proof of disability may be required. The department will make reasonable accommodation in accordance with the Federal Americans With Disabilities Act.

(j)(h) Reciprocal agreements with other states to waive exam requirements must be based on exam requirements judged by the department to be equal to or more stringent than those of the department.

§75.22. Licensing Requirements—General.

[(a) Any work requiring a license under the Act must be performed by a person or company licensed in accordance with the Act.]

(a)(b) Unless licensed under the provisions of the Act, it shall be unlawful for any person, partnership, firm, or corporation to display a sign or use any advertising that such person, partnership, firm, or corporation engages in the business of an air conditioning and refrigeration contracting.

(b)(c) Each Class A and Class B air conditioning and refrigeration contractor's license shall expire three years after the date of issuance.

(c) [(d)] A license number that has been relinquished, revoked, or expired without meeting reissuance requirements shall not be reassigned to any licensee. License numbers shall have the following form: Title/Class/Number/Endorsement code-TACLAOOOOOOC.

(d)(e) Endorsement Codes are as follows: Environmental Air Condition-

ing-E; Commercial Refrigeration and Process Cooling and Heating-R; Combined Endorsements-C.

(e)(f) A Class-B licensed contractor may design, install, construct, maintain, service, repair, alter, or modify any unit of 25 tons or less of cooling capacity or 1.5 million Btu/h or less of heating capacity. In a building or a complex of buildings having more than one air conditioning or heating unit, a Class-B license holder may work on a combination of units where the combination total is more than 25 tons cooling capacity or more than 1.5 million Btu/h, as long as each complete individual unit has a cooling capacity of 25 tons or less and a heating capacity of 1.5 million Btu/h or less.

(f)(g) Any contractor who has a Class B license with either or both endorsements may upgrade either endorsement by passing the Class A examination for that endorsement. Class B commercial refrigeration/process cooling and heating endorsements that were granted by grandfathering, without examination, cannot be upgraded without passing a Class-A examination for that endorsement.

(g)(h) A contractor who wishes to have endorsements of different classes must have a separate license for each endorsement. The licenses will not have concurrent expiration dates unless both are issued on the same date.

(h)(i) A contractor may have only one endorsement per license when he has two licenses. Both licenses must have the same business affiliation and permanent and business addresses.

(i)(j) The insurance requirement for separate licenses can be met with a single policy with limits at least as high as those required for Class A license. A waiver of insurance for one license automatically applies to both licenses.

(j)(k) Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for other license.

[(1) Licensed air conditioning and refrigeration contractors shall not be simultaneously employed by, or work for, more than one business entity for which he is the only licensee.]

§75.24. Licensing Requirements—Renewal.

(a) The department shall send a renewal notice/application to each license holder approximately sixty days [three months] prior to the expiration date. A license holder is responsible for the timely filing of the renewal application.

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

§75.70. Responsibilities of the Licensee.

(a) The license holder shall choose the business affiliation that will use the license holder's license, and shall furnish the department with the name and permanent mailing address of the holder, and the name and address of the business affiliation. If the business affiliation uses an assumed name(s), the name(s) must be legally registered as being owned by the business affiliation. The company name and assumed name(s) must be shown on the license and on the certificate of insurance.

(b) Each license shall be used only by the business shown as the business affiliation on the license. If the license holder for the business, whether the owner or an employee, works also for another air conditioning or refrigeration contracting company, the license holder must work under the license of that other company.

(c) A licensed contractor who works as a subcontractor for another air conditioning and refrigeration company must work under the license of the other air conditioning and refrigeration business. The work must be scheduled and billed by the other air conditioning and refrigeration company, and the license holder working as a subcontractor must be paid by the other company. The licensed contractor who is acting as contractor, not subcontractor, is responsible for all subcontracting work.

(d) Each air conditioning and refrigeration company shall have a license holder employed full time in each permanent office operated in Texas. All work requiring a license under the Act shall be under the direct personal supervision of the license holder for that office. The license holder's license number shall appear in all proposals and invoices for that office.

(e) If an air conditioning and refrigeration company uses locations other than a permanent office, these locations shall only be used to receive instructions from the permanent office on scheduling of work, to store parts and supplies, and to park vehicles. The air conditioning and refrigeration company shall provide address(es) of these other locations to the department no later than 30 days after the locations are established.

(f) A license holder may not permit any person or company to use the license holder's license for any purpose unless the person is a bona fide employee or subcontractor in accordance with subsections (b) and (c) of this section.

(g) Each license shall be displayed at the contractor's place of business as listed with the department.

(h) Each licensed contractor shall display the license number and company

name in letters not less than two inches high on both sides of all trucks used in conjunction with air conditioning and refrigeration contracting. Job sites not identified by a marked truck shall be identified by a posted sign visible and readable from the nearest public street, containing the Texas air conditioning and refrigeration license number and company name.

(i) All advertising by contractors requiring a license under the Act designed to solicit business shall include the contractor's license number. Advertising which requires the license number shall include printed material, television ads, newspaper ads, yellow pages, business cards, billboards, solicitations, proposals, quotations, and invoices. Other items for the purpose of attracting business, other than promotional items of value such as ball caps, tee shirts, and other gifts, must include the license number. Yellow page listings that do not contain any information except the name, address, and telephone number are not required to contain the contractor's license number. Letterheads and printed forms for office use are not required to have the license number included. Signs located at the contractor's permanent business location are not required to have the license number displayed.

(j) A license holder is required to notify the department in writing within 30 days of any change in permanent mailing address, business affiliation, change of business location, or business telephone number. A license revision is required for any change to information printed on the license. The permanent address shall be considered the license holder's permanent mailing address. All correspondence will be mailed to that address.

(k) A license holder wishing to revise a license shall make the request in writing. He shall return the current original license, pay the appropriate fee required in §75.80 of this title (relating to Fees), and provide a revised insurance certificate if the business affiliation name or address has changed.

§75.80. Fees.

(a) Exam Fees. Class A and Class-B exam fees are:

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

(4) Reschedule fee of \$15 for each exam rescheduled.

(5)[(4)] After having rescheduled twice, [to reschedule after second free reschedule] whether consecutive or not, the registration fee of \$50 and exam fee of \$50 per exam must be paid.

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

This agency hereby certifies that the proposal

has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 7, 1993.

TRD-9327231

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-3127

• 16 TAC §75.70

(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 Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Licensing and Regulation proposes the repeal of §75.70, concerning Air Conditioning and Refrigeration Contractors. The section is being repealed to allow for the adoption of a new section which will clarify existing language.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Brush 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 clarification of existing rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 1215, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 8861, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§75.70. Responsibilities of the Licensee.

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

Issued in Austin, Texas, on August 7, 1993.

TRD-9327232

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September

20, 1993

For further information, please call: (512) 463-3127

Chapter 78. Talent Agencies

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

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

The Texas Department of Licensing and Regulation proposes the repeal of §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.60, 78.70-78.76, 78.80-78.82, and 78.90-78.94, concerning Talent Agencies. These sections are being repealed to allow for the adoption of edited, renumbered and reorganized sections.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Brush 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 clarification of existing rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, P.O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5221a-9, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Talent Agency Act.

§78.1. Authority.

§78.10. Definitions.

§78.20. Registration Requirements.

§78.21. Certificate of Registration Application Process.

§78.30. Exemptions.

§78.40. Security Requirements.

§78.60. Responsibilities of the Department.

78.91, 78.100

§78.70. Responsibilities of the Registrant-General.

§78.71. Responsibilities of the Registrant-Schedules of Commissions and Fees.

§78.72. Responsibilities of the Registrant-Treatment of Monies.

§78.73. Responsibilities of the Registrant-Financial Recordkeeping.

§78.74. Responsibilities of the Registrant-Inspection of Records.

§78.75. Responsibilities of the Registrant-Registration Statement.

§78.76. Responsibilities of the Registrant-Prohibited Acts.

§78.80. Fees-Original Registration.

§78.81. Fees-Renewal Registration.

§78.82. Fees-Duplicate Registration.

§78.90. Sections-Administrative Sanctions.

§78.91. Sanctions-Administrative Penalty/Fine.

§78.92. Sanctions-Injunctive Relief and Civil Penalty.

§78.93. Sanctions-Criminal Penalty.

§78.94. Sanctions-Revocation or Suspension Because of a Criminal Conviction.

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

Issued in Austin, Texas, on August 7, 1993.

TRD-8327234

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-3127

◆ ◆ ◆
• 16 TAC §§78.1, 78.10,
78.20-78.22, 78.30, 78.40,
78.70-78.75, 78.80-78.82, 78.90,

The Texas Department of Licensing and Regulation proposes new §§78.1, 78.10, 78.20-78.22, 78.30, 78.40, 78.70-78.75, 78.80-78.82, 78.90, 78.91, and 78.100, concerning talent agencies. The new sections are being proposed to clarify, edit, renumber, and reorganize existing rules. All fees remain the same as those currently in effect.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of existing rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 5221a-9, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Talent Agency Act.

§78.1. Authority. These rules are promulgated under the authority of the Texas Talent Agency Act (Texas Civil Statutes, Article 5221a-9) and the Texas Department of Licensing and Regulations Act (Texas Civil Statutes, Article 9100).

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

Artist—an actor who performs or seeks to perform in a motion picture, theatrical, radio, television, or other entertainment production, or a model who renders comparable professional services in a motion picture, theatrical, radio, television, or other entertainment production.

§78.20. Registration Requirements-General.

(a) Unless exempted in §78.30 of this title (relating to Exemptions), all talent agencies that have a place of business in Texas, or advertise in Texas, and obtain or attempt to obtain employment for artists in Texas, or recruit artists from a temporary location in Texas, must obtain a certificate of registration in order to operate a talent agency. "Personal agents," or any persons under any name or title, who perform the

services as described in Texas Civil Statutes, Article 5221a-9 as any part of the services they provide, are talent agents under the Act.

(b) A certificate of registration is not assignable or transferable.

(c) All applications shall include a statement that all owners, partners, or associates have read and are familiar with the provisions of the Act.

(d) Any talent agency using an assumed name(s) must comply with the Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 36.

(e) Any incorporated talent agency must comply with the Texas Business Corporation Act, §2.05.

(f) The talent agency must furnish a copy of all registrations filed with the clerk of the county in which the talent agency is located, or the registration filed with the Secretary of State. A copy of any changed or revised registrations must be furnished to the department within 30 days of filing.

§78.21. Registration Requirements-New Certificates.

(a) The application must be signed by the applicant. If the applicant is a corporation, the application must be signed by each officer. If the applicant is an association or partnership, the application must be signed by each associate or partner.

(b) An initial application must contain:

(1) the complete names, social security numbers, dates of birth, addresses, and phone numbers of all persons owning at least 10% of the talent agency. If the talent agency is a partnership, the names of all partners must be included. If the talent agency is a limited partnership, the names of all general and limited partners must be included, along with the name and address of the registered agent. If the talent agency is a corporation, the names of the corporate president, vice-president, secretary, and treasurer must be included. The percent ownership interest must be stated in all cases;

(2) the names of any talent agency owners who have a financial interest in any company involved in the casting, production or distribution of motion pictures or television motion pictures, independent video production companies, recording studios, photography studios, or any other companies or firms which would hire artists from time to time. This disclosure shall include the company or companies in which he has a financial interest, and the percent of ownership in each company listed. Such an interest shall not, in and of

itself, be grounds for registration denial, suspension or revocation;

(3) the names of any talent agency owners who have a financial interest in any school or course of instruction which is primarily intended for the professional study of acting or modeling. This disclosure shall include the school or course name and the percent of ownership held. Any person owning and/or operating a modeling or acting school must comply with the provisions of the Texas Proprietary School Act, Texas Education Code, Chapter 32, and the State Board of Education Rules for proprietary schools as they appear in 19 Texas Administrative Code, Chapter 69; and

(4) a schedule of commissions and/or fees charged.

§78.22. Registration Requirements—Renewal.

(a) A renewal application must contain any change in information submitted in the initial or subsequent renewal applications.

(b) If a renewal application is postmarked before midnight of the 30th day after a certificate of registration expires, it may be renewed on payment of the renewal fee and a late fee.

(c) If a renewal application is not postmarked before midnight of the 30th day after a certificate of registration expires, the certificate will not be renewed. Reapplication may be made through the original application process.

§78.30. Exemptions.

(a) The term "talent agency" does not apply to:

(1) a person who obtains or attempts to obtain employment for himself;

(2) an organized labor union that represents artists and whose efforts to obtain or attempt to obtain employment for its members is incidental to representing its members;

(3) a person who, without assessing a fee, operates a talent agency in conjunction with the person's own business, or as the authorized representative for a bona fide employer, for the exclusive purpose of employing artists for use in or for that business, or by that employer; or

(4) attorneys licensed to practice who represent artists, strictly as legal advisors and not as managers.

(b) The term "talent agency" applies only to persons who obtain or attempt to obtain employment for an actor who performs in a motion picture, theatrical, radio, television, or other entertainment

production; and/or a model, as that term is defined herein. Based upon a review of the specific language throughout the entire statute, it is the department's interpretation that the legislation was intended to apply only to talent agencies dealing with those types of artists as described herein. While there is a reference to other types of artists in the statute, the department finds application of the statute to those other artists in conflict with the apparent legislative intent as it is expressed in specific provisions throughout the statute. In the alternative, and without waiving the position stated, there is insufficient legislative guidance to promulgate administrative rules regarding those other types of artists. Therefore, talent agencies representing such artists are not required to comply with the requirements of the Act.

§78.40. Security Requirements.

(a) Surety bonds furnished in compliance with the Act shall be continuous and shall provide for the issuing company to give the department 30 days written notice of cancellation.

(b) The surety bond shall be issued by a company authorized to do business in the State of Texas, conform to the Texas Insurance Code, and be on a form provided by the department.

(c) An owner may deposit a cash performance alternative of \$10,000 in lieu of the bond. The cash performance alternative shall be an irrevocable assignment of security issued by a national or state bank, or savings and loan association, subject to the express approval of the commissioner. Each assignment or cash deposit shall remain in effect for a period of three years, beginning with the date of issuance of the certificate of registration. Forms for filing an assignment of security shall be provided by the department upon request.

(d) Failure to maintain the bond or assignment for the period required by the Act will be cause for the commissioner to call an administrative hearing to suspend or revoke the talent agency's certificate of registration.

§78.70. Responsibilities of the Registrant-General. All talent agency publications or advertisements, including but not limited to, circulars, newspapers, periodicals, yellow page ads, brochures, business cards, and receipts shall contain the registered name, address, and registration number of the talent agency.

§78.71. Responsibilities of the Registrant-Schedules of Commissions and Fees.

(a) Each talent agency shall file with the department a schedule of all commissions or fees they charge and collect

from artists or clients employing those artists. Fees include anything of value, including money or other valuable consideration or services, or the promise of any of the foregoing, received by a talent agency from or on behalf of any person seeking employment or employees, in payment for any service rendered, either directly or indirectly.

(b) If any information on the schedule changes, the talent agency must forward a new schedule to the department within five working days of the change. A change in fees or commissions shall not be effective until it has been forwarded as required.

(c) Each talent agency shall keep a current copy of its fee and commission schedule available in its place of business. The talent agency shall allow an artist who uses the services of the talent agency, or is considering using the services of the talent agency, to inspect the fee and commission schedule on request.

(d) A talent agency must disclose in writing to the artist the existence and terms of all other agreements, if any, between the agency and any other client involved which relate to the services to be provided by the artist. Such disclosure shall take place within 48 hours of the talent agency entering into such agreement. It is the intent of this subsection to require disclosure of agents' fees received in connection with the employment of an artist.

§78.72. Responsibilities of Registrant-Treatment of Monies.

(a) A talent agency that receives any payment of monies on behalf of an artist shall, within five banking days, deposit that amount in an account maintained by the talent agency in a federally insured financial institution. This subsection does not prohibit the practice of "check swapping" as that term is commonly used in the talent agency industry.

(b) Unless a written contract to the contrary exists, all monies received on behalf of an artist must be disbursed to that artist no later than 10 banking days after receipt by the talent agency.

§78.73. Responsibilities of the Registrant-Financial Recordkeeping.

(a) Each talent agency shall keep the following information on file for each artist and each client:

(1) name, address, and phone number;

(2) a copy of each contract or agreement; and

(3) a record of all receipts and disbursements sufficient to track disposition

of all amounts.

(b) A talent agency shall maintain records of all funds received. These records shall include the date of receipt, the remitter's name, on whose behalf the funds were received, dates when funds were disbursed and names of all persons, including the talent agency itself, to whom those funds were disbursed.

(c) A talent agency shall keep all records for a period of at least two years. Records required under this section must be kept at the business location for at least one year. After the first year they must be kept at a location which provides access to them within one working day of a request by the department.

§78.74. Responsibilities of the Registrant-Registration Statement.

(a) A talent agency shall notify the department of any change of information on its registration statement no later than 30 days after any change.

(b) If any information that appears on the face of the certificate of registration changes, the talent agency must obtain a revised certificate of registration by returning the old certificate and paying the fee.

§78.75. Responsibilities of the Registrant-Prohibited Acts.

(a) Regardless of its refund policy, a talent agency may not charge an artist any fee or charge, other than reimbursement of amounts actually paid by the talent agency on behalf of the artist, before the artist has accepted an offer of employment obtained through a referral made by the talent agency.

(b) A talent agency may not split or share fees with any person who is required to be but is not registered under the Act as a talent agency.

(c) A talent agency may require an artist to reimburse it for legitimate expenses owed to third parties if:

(1) the expenses were incurred as a result of efforts made on the behalf of the artist by the talent agency; and

(2) the talent agency has obtained, in advance, in writing the express permission of the artist to incur such expenses.

(d) When the talent agency bills the artist it must provide the artist an itemized statement of the nature of the charges and a copy of the invoice or receipt. The talent agency must permit the artist to make payment directly to the third party billing the talent agency.

(e) Expenses such as utility costs, local telephone service, and other similar indirect costs shall not be recovered under this section.

§78.80. Fees-Original Registration. The fee for an original talent agency certificate of registration is \$100.

§78.81. Fees-Renewal Registration

(a) The annual renewal fee for a talent agency certificate of registration is \$100.

(b) A late fee of \$50 will be charged for renewal applications post-marked between midnight of the day the current certificate of registration expires and midnight of the 30th day after the expiration.

§78.82. Fees-Revised or Duplicate Registration. A \$25 fee will be charged for issuing a revised or duplicate certificate of registration.

§78.90. Sanctions-Administrative Sanctions/Penalties. If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may institute proceedings to impose administrative sanctions and/or recommend administrative penalties in accordance with Texas Civil Statutes, Article 9100, and Chapter 60 of this title (relating to Texas Commission of Licensing and Regulation).

§78.91. Sanctions-Revocation, Suspension, or Denial because of a Criminal Conviction. Pursuant to Texas Civil Statutes, Article 6252-13c, the commissioner, after a hearing, may suspend, revoke, or deny an existing registration, or disqualify a person from receiving a registration, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in operating a talent agency. The commissioner may also, after hearing, suspend, revoke, or deny a registration because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

§78.100. Technical Requirements. Once services called for under a contract have been delivered by the talent agency, a contract may not be cancelled by an artist under the Act, §12. This does not in any way inhibit, restrict, reduce or otherwise limit alternative civil remedies available to parties to a contract.

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

Issued in Austin, Texas, on August 7, 1993.

TRD-9327233

Jack W. Garison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-3127

**TITLE 22. EXAMINING
BOARDS**

**Part XXII. Texas State
Board of Public
Accountancy**

**Chapter 501. Professional
Conduct**

**Other Responsibilities and
Practices**

• 22 TAC §501.46

The Texas State Board of Public Accountancy proposes an amendment to §501.46 concerning form of practice. The proposed amendment to §501.46 sets forth citations to other statutes which govern proprietorships, corporations, partnerships, limited liability companies, registered limited liability partnerships, and professional corporations.

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

Mr. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an administrative rule that is more accurate and precise because it sets forth additional references to other relevant statutes. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas 78701.

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

§501.46. Form of Practice. A certificate or registration holder may practice public accountancy only in a proprietorship, a partnership, a limited liability company, a registered limited liability partnership, a professional public accounting corporation organized under the Texas Business [Professional] Corporation Act [, as amended]

(Texas Civil Statutes, Article 1528e), the Texas Limited Liability Company Act (Texas Civil Statutes, Article 1528n), and the Texas Uniform Partnership Act (Texas Civil Statutes, Article 6132b, §45) or other corporation authorized by applicable statutes, or an equivalent law of another state, territory, or foreign country, or as an employee of one of these entities.

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

Issued in Austin, Texas, on August 12, 1993.

TRD-9327237 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 505-5566

◆ ◆ ◆
• 22 TAC §501.49

The Texas State Board of Public Accountancy proposes an amendment to §501.49 concerning the complaint notice. The proposed amendment to §501.49 sets forth the Board's new address.

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

Mr. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an administrative rule that reflects the Board's new address. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to J. Fandel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding other responsibilities and practices of licensees and registrants.

§501.49. Complaint Notice. When a firm receives a complaint [is made to a firm] that a probable violation of the Act or Rules of Professional Conduct [has] occurred, a licensee or registrant shall provide to the probable complainant a statement to the effect that: "Complaints and possible ethics violations of certified public accountants should be addressed in writing to the Texas State Board of Public Accountancy at 333 Guadalupe Street, Tower III, Suite 900,

[1033 La Posada, Suite 340] Austin, Texas 78701-3942, 78759-3892, telephone (512) 505-5500 [(512) 450-7011]."

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

Issued in Austin, Texas, on August 12, 1993.

TRD-9327235 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 505-5566

◆ ◆ ◆
Chapter 505. The Board

The Board

• 22 TAC §505.1

The Texas State Board of Public Accountancy proposes an amendment to §505.1 concerning headquarters of the Board. The proposed amendment to §505.1 sets forth the Board's new address.

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

Mr. Treacy 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 administrative rules that reflect the Board's new address. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Fandel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas 78701-3942.

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

§505.1. Headquarters of the Board. The headquarters and administrative offices of the board shall be at 333 Guadalupe, Tower III, Suite 900, [1033 La Posada, Suite 340,] Austin, Texas 78701-3942 [78752-3892].

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

Issued in Austin, Texas, on August 12, 1993.

TRD-9327236 William Treacy

Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 505-5566

◆ ◆ ◆
Chapter 511. Certification as
CPA

CPA Examination

• 22 TAC §511.80

The Texas State Board of Public Accountancy proposes an amendment to §511.80, concerning granting of credit to a CPA candidate for the satisfactory completion of the written examination.

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

Mr. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an administrative rule that is grammatically correct by changing the word "conditioning" to "conditional." There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Fandel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas 78701.

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

§511.80. Granting of Credit.

(a) The board shall grant conditional [conditioning] credit to a candidate for the satisfactory completion of the written examination under the following conditions:

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

(b) The board shall grant credit after the establishment of conditional [conditioning] credit to a candidate for the satisfactory completion of any subject under the following conditions:

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

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

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

Issued in Austin, Texas, on August 12, 1993.

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 505-5566

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 405. Client (Patient) Care

Subchapter J. Surrogate Decision-making for Community-based ICF/MR and ICF/MR/RC Facilities

• 25 TAC §§405.231-405.249

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§405.231-405.249 of Chapter 405, Subchapter J, governing surrogate decision-making for community-based ICF/MR and ICF/MR/RC facilities. The sections would enact provisions of Senate Bill 1142 of the 73rd Legislature which added new Chapter 597 to the Texas Health and Safety Code, Title 7, Subtitle D, otherwise known as the Persons with Mental Retardation Act.

The proposed sections, as mandated by SB 1142, gives community-based providers in the intermediate care facility for persons with mental retardation or related conditions (ICF/MR and ICF/MR/RC) program a means of obtaining legally recognized consent on behalf of facility residents who lack the capacity to give consent and have no legally appointed guardian. This consent alternative was mandated by the legislature in order to prevent the loss of certification by ICF/MR and ICF/MR/RC facilities serving such individuals.

Leilani Rose, director, Financial Services Department, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of implementing and enforcing the sections as proposed.

Jaylon Fincannon, deputy commissioner, Mental Retardation Services, 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 presence of a alternative consent process for those community-based ICF/MR and ICF/MR/RC residents who lack the capacity to consent to certain treatment recommendations and do not have a guardian. The department does not have sufficient information to estimate the effect on small businesses, but notes that increased expenses to providers should be reimbursable through the cost re-

port and rate-setting process. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments on the proposal may be sent to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

A public hearing will be held to accept testimony on the sections as proposed. The hearing will be Monday, September 13, 1993, at 2:00 p.m., in the TXMHMR Central Office Auditorium at 909 West 45th Street, Austin, Texas 78756. If interpreters for the hearing impaired are required, please notify Ms. Logan 72 hours prior to the hearing by calling 512/465-4670.

These sections are proposed under the Texas Health and Safety Code, Title 7, Subtitle D, §597.002, which provides that the Texas Mental Health and Mental Retardation Board may adopt rules necessary to implement new Chapter 597 not later than 180 days after the effective date of the chapter, and under Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking authority.

§405.231. Purpose. The purpose of this subchapter is to:

(1) establish a meaningful and non-intrusive alternative to guardianship for individuals receiving services in the Intermediate Care Facility for Persons with Mental Retardation or Related Conditions (ICF/MR and ICF/MR/RC) program who have been assessed to lack the capacity to provide consent for specific treatment issues and have no guardian to act on their behalf;

(2) ensure the rights of individuals residing in ICF/MR and ICF/MR/RC facilities are protected in the least intrusive manner available; and

(3) allow for timely and appropriate delivery of services and treatment.

§405.232. Exclusions.

(a) As mandated by the Texas Health and Safety Code, Chapter 597, the provisions of this subchapter do not apply to state schools and state centers providing campus-based mental retardation services which are operated by the Texas Department of Mental Health and Mental Retardation.

(b) These sections are not applicable to individuals who have a guardian or have the capacity to consent to the specific treatments allowed under this subchapter or when the consent being sought pertains to one or more of the following procedures:

- (1) experimental research;
- (2) sterilization;

- (3) management of funds;
 - (4) electroconvulsive treatment;
- and
- (5) abortion.

§405.233. Application.

(a) The provisions of this subchapter apply to community-based ICF/MR and ICF/MR/RC facilities operated by designated providers who contract with the State of Texas to provide ICF/MR or ICF/MR/RC services including facilities operated by community MHMR centers and by outreach services of the department.

(b) The sections shall be used by all community-based ICF/MR and ICF/MR/RC personnel in determining an individual's need for assistance with consent decisions and in the subsequent determination of the surrogate decision-maker as appropriate.

(c) These sections are applicable when the need for consent has been identified and the individual lacks the capacity to, and has no legal guardian authorized to, provide consent for the following decisions:

(1) administration of psychoactive medication;

(2) use of highly restrictive procedures;

(3) performance of major medical and dental treatment;

(4) the release of records and other information relevant to the individual's treatment or condition necessary to facilitate the process of obtaining consent for treatment; and

(5) other consent decisions which the interdisciplinary team (IDT) concurs may involve risk to individual protection and rights and which are not specifically reserved to the surrogate decision-maker or surrogate consent committee specified in this subchapter.

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

Actively involved—Involvement with the individual which the IDT deems to be of a quality nature based on the following:

(A) observed interactions of the person with the individual;

(B) advocacy for the best interests of the individual;

(C) knowledge of and sensitivity to the individual's preferences, values

and beliefs;

(D) ability to communicate with the individual; and

(E) availability to the individual for assistance or support when needed.

Department—The Texas Department of Mental Health and Mental Retardation.

Health care professional—A doctor of medicine or osteopathy, registered nurse, pharmacist, licensed psychologist, or certified psychological associate, who is licensed, certified, or registered to provide services by the State of Texas.

Highly restrictive procedure—The application of aversive stimuli, exclusionary time-out, physical restraint, or a requirement to engage in an effortful task.

(A) Application of aversive stimuli—Application of any stimulus which may be unpleasant or noxious, startling, or painful such that its intended effect is the suppression of the specific behavior upon which it is immediately contingent. For purposes of these rules such stimuli include olfactory, auditory, gustatory, tactile, and other stimuli which may result in physical discomfort or pain. Included in this category is low-level electric shock applied to the extremities (legs or arms) contingent on behavior dangerous to self or others.

(B) Exclusionary time-out—A procedure by which an individual is placed alone in an enclosed area in accordance with an approved systematic behavior intervention program contingent upon the exhibition of a maladaptive behavior, in which positive reinforcement is not available and from which egress is physically denied, including prevention by staff, until appropriate behavior is exhibited.

(C) Physical restraint—The use of personal or mechanical restraint to restrict the movement or routine functioning of a portion of an individual's body. Physical restraint includes contingent restraint, and protective restraint as defined herein.

(i) Contingent restraint—An intervention within a behavior intervention program involving the systematic application of any physical device, or the application of physical resistance by another person, to the body of an individual in such a way as to limit or control the physical activity of the individual following a previously identified response targeted for reduction or elimination.

(ii) Protective restraint—The use of any physical or mechanical device to limit or prevent severe self-

injurious behavior that if left uncontrolled could result in serious tissue damage, medical complications or death (e.g., life-threatening pica, self-mutilative biting).

(iii) Personal restraint—The application of physical pressure to the body of an individual in such a way as to restrict the movement of the whole or a portion of the body except as part of a routine medical or dental procedure. Excluded also are physical guidance, prompting procedures, and emergency use to prevent injury to self or others.

(iv) Mechanical restraint—The application of a physical device to restrict the movement of the whole or a portion of an individual's body except as part of a routine medical or dental procedure and for bodily support and positioning.

(D) Effortful task—A task requiring physical effort by an individual following an undesirable response and in which the completion of the task is directed and may be manually guided by staff. Examples of effortful tasks include, but are not limited to:

(i) Required exercise—A procedure in which an individual performs and may be guided by staff to perform a series of physical movements which are incompatible with the undesirable response which they systematically follow. An example would be the guided movement of a self-abusive individual's arms through a series of positions away from the body.

(ii) Negative practice—A procedure in which an individual is required to repeatedly engage in an effortful task which is topographically similar to the undesirable response which the procedure systematically follows. An example is a program in which an individual who strikes others is required to repeatedly strike a punching bag following each occurrence of striking behavior.

(iii) Restitutive overcorrection—A procedure in which an individual is required to correct the consequences of a disruptive response by performing a task which restores the environment to a state even more improved than existed before the disruptive behavior. An example would be the requirement that a disruptive individual polish all the tables in the residence as a consequence of knocking one of them over.

Individual—A person residing in and receiving services from a provider of the ICF/MR or ICF/MR/RC program. (The term individual as used throughout this subchapter has been substituted for the term client as used in House Bill 1142 upon which the subchapter is based, in keeping with current departmental usage.)

Interdisciplinary team (IDT)—An in-

terdisciplinary team is a group of mental retardation professionals, paraprofessionals, and other concerned persons who review the individual's treatment, training, and habilitation needs and make recommendations for services. These group members function as a team and include:

(A) the individual, unless their participation is unobtainable or inappropriate;

(B) the parent of the individual who is a minor, the legal guardian, or managing or possessory conservator, as appropriate;

(C) as specified by the provider and as defined in the Code of Federal Regulations for participation in the ICF/MR program, persons who are professionally qualified, certified, or both, in various professions with special training and experience in the diagnosis, management, needs, and treatment of individuals with mental retardation;

(D) persons who are directly involved in the delivery of mental retardation services to the individual;

(E) representative(s) of other agencies serving the individual as indicated; and

(F) any other actively involved adult not excluded by the individual from participation.

Intermediate Care Facility for Persons with Mental Retardation or Related Conditions (ICF/MR or ICF/MR/RC)—A community-based facility which has been licensed and/or certified by, and has a current contract with the State of Texas to provide ICF/MR or ICF/MR/RC services to individuals with mental retardation or related condition(s).

Major medical and dental treatment—A medical, surgical, dental, or diagnostic procedure or intervention that:

(A) has a significant recovery period;

(B) presents a significant risk;

(C) employs a general anesthetic; or

(D) in the opinion of the primary physician, involves a significant invasion of bodily integrity that requires the extraction of bodily fluids or an incision or

that produces substantial pain, discomfort, or debilitation.

Provider—An organization, corporation, Community MHMR Center, departmental Community Services outreach division or any entity, except campus-based facilities of the department, which has a current contract with the State of Texas to provide ICF/MR or ICF/MR/RC services in the state of Texas.

Psychoactive medication—Any medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exert an effect upon the central nervous system for the purposes of influencing and modifying behavior, cognition, or affective state.

Surrogate consent committee—A group of three to five persons who meet the criteria set forth in §405.240 of this subchapter (relating to Appointment and Qualifications of a Surrogate Consent Committee), which is designated to provide consent for specific treatments and services to eligible individuals in ICF/MR and ICF/MR/RC facilities.

Surrogate decision-maker—An actively involved spouse, adult child, parent or stepparent, adult sibling, or adult relative who has decision-making capacity and is willing to consent on behalf of an individual as described in §405.237 of this subchapter (relating to Appointment and Qualifications of a Surrogate Decision-Maker).

§405.235. Guiding Principles.

(a) Each individual receiving services through the ICF/MR and ICF/MR/RC program is entitled to choice and decision-making authority about all aspects of daily living. To make choice possible and relevant, the individual requires supports, experiences, and options. If an individual cannot communicate preferences related to activities and expectations or does not choose to communicate, the questions are asked of those people (actively involved family members, guardians, friends, and/or those who provide personal support) who spend time with the individual and are sensitive to and aware of how the individual expresses likes and dislikes, choices, preference, and desires.

(b) The following principles support choice and decision-making by the individual. Each provider is required to put these principles into practice as they determine the need for assistance with providing consent.

(1) The choices, preferences, expectations, likes, and dislikes of the individual are the dominant forces behind all decisions.

(2) Individuals making choices are entitled to training, counseling, and op-

portunities to experience and to try the options involved in making choices.

(3) The same range of options for services that are available to all people should be available for individuals receiving services through the ICF/MR or ICF/MR/RC program.

(4) Visits and interviews with the individual and others, as well as observations, are the primary basis for collecting data and information to determine if the individual's wants and needs are being addressed.

(c) In determining an individual's need for assisted decision-making, an abiding concern for what is in the best interest of the individual must take precedence. Any form of assisted decision-making could be viewed as intrusive and as nullifying or suppressing the individual's right to dignity of risk.

§405.236. Assessment of Capacity to Consent to Treatment.

(a) Unless an individual already has a legal guardian empowered by the court to make such decisions or managing or possessory conservator, capacity must be presumed for all individuals residing in ICF/MR or ICF/MR/RC facilities. As a result, when a consent allowed under this subchapter is required, the IDT must ensure that the individual is afforded the opportunity for providing consent before surrogate decision-making processes are utilized. This requires minimally, that:

(1) the individual is informed of the risks and potential benefits associated with the consent decision which needs to be made;

(2) alternative treatments or courses of action are presented and discussed;

(3) individual choice, preference, values, and beliefs are promoted;

(4) the individual is informed of the timeframes involved such as immediacy of treatment and length of time that consent will be valid; and

(5) as needed, appropriate training is provided in the areas of problem-solving, decision-making, and/or the subject of the decision.

(b) If there is evidence which raises a question about the individual's capacity to give consent about the particular treatment or service, an assessment of the individual's capacity to give consent about the particular treatment shall be made. The assessment conducted shall, minimally, take into consideration the following:

(1) the results of the processes outlined in subsection (a)(1)-(5) of this sec-

tion;

(2) discussions with and/or observations of the individual;

(3) review and discussion with close family members and friends identified by the individual, appropriate staff (including direct care, program and professional staff) and any other person who plays a significant role in the individual's life;

(4) review of current functional assessments; and

(5) results of any other evaluation or assessment conducted and/or information obtained which is relevant in determining the individual's capacity to give consent.

(c) If the results of the assessment of capacity indicate that the individual:

(1) has the capacity to consent, the individual will make the decision regarding the specific treatment needed.

(2) lacks the capacity to provide consent regarding the specific treatment needed as allowed under law, either:

(A) a surrogate decision-maker will be appointed, or

(B) a surrogate consent committee will be convened, or

(C) the interdisciplinary team will provide the consent.

(d) The results of the assessment and resultant action shall be documented and maintained in the individual's record. The documentation shall, minimally, contain the following information:

(1) the content offered and results obtained through the process described in subsection (a)(1)-(5) of this subsection;

(2) a description of the methods utilized and persons interviewed to obtain the information for the assessment as required in subsection (b)(2)-(5) of this section; and

(3) a description of the evidence obtained which supports one of the following choices:

(A) consent was given by the individual;

(B) a referral for the appointment of a surrogate decision-maker or an application to the surrogate consent committee was necessary; or

(C) the nature of the decision was such that consent could be given by the

IDT.

(e) This process must be completed for each type of consent decision needed and allowed under §405.233(c)(1)-(4) of this subchapter (relating to Application) and, minimally on an annual basis, for decisions needed and allowed under §405.233(c)(5).

§405.237. Appointment and Qualifications of a Surrogate Decision-Maker.

(a) A surrogate decision-maker may provide consent only for:

(1) major medical or dental treatment as defined in §405.234 of this subchapter (relating to Definitions);

(2) release of records or other information relevant to the individual's treatment or condition necessary to facilitate the process of obtaining consent for treatment or determining the individual's best interest; and/or

(3) other decisions which involve possible risk to individual protection and rights not specifically reserved for a surrogate consent committee as described in §405.240(a) of this subchapter (relating to Appointment and Qualifications of a Surrogate Consent Committee.)

(b) Each provider shall develop procedures for facilitating the appointment of surrogate decision makers in accordance with the provisions of this subchapter.

(c) If the results of the assessment of capacity indicate that the individual lacks the capacity to provide consent, the IDT shall determine whether one of the persons described in subsection (d) of this section is willing to be authorized as the surrogate decision-maker to provide consent on behalf of the individual.

(d) The IDT must investigate the availability and willingness of the persons noted below, in the order listed, to act as the surrogate decision-maker:

- (1) actively involved spouse,
- (2) actively involved adult child,
- (3) actively involved parent or stepparent,
- (4) actively involved adult sibling, or
- (5) actively involved adult relative.

(e) Should there be more than one person in subsection (c)(2), (4), or (5), willing and qualified to provide consent as the surrogate decision-maker, the provider shall obtain a waiver and consent from each eligible person in the subsection in question which designates who the sole surrogate decision-maker shall be. In the event there

is a dispute as to the right of a person to act as a surrogate decision maker, the provider shall:

(1) inform the persons involved that the dispute may be resolved only by a court of record under Texas Probate Code, Chapter XIII; and

(2) proceed with an application to the surrogate consent committee within six working days of the above notification.

(f) The identity of the person designated to be the surrogate decision-maker shall be documented in the individual's folder.

§405.238. Surrogate Decision-Maker Rights and Responsibilities.

(a) A person appointed as a surrogate decision-maker for the purpose of providing consent:

(1) is not criminally or civilly liable for any action resulting from a consent decision made, providing the person acted in good faith, reasonably and without malice;

(2) shall be fully informed of the following:

(A) the nature of the proposed treatment or procedure;

(B) the possible risks, including side effects, and potential benefits of the proposed treatment, procedure, or course of action;

(C) the alternative treatments or courses of actions and their attendant risks and potential benefits;

(D) the timeframes involved such as the immediacy of the need for treatment and the length of time the consent will remain valid; and

(E) the right to additional information and to withdraw consent.

(3) may decide not to serve as the surrogate decision maker for a specific decision.

(b) Consent given by a surrogate decision-maker is valid and competent to the same extent as though the individual had the capacity to consent and had consented.

(c) Consent given by a surrogate decision-maker is specific to each major medical or dental treatment for which it is requested.

(d) In the event there is no person willing or qualified to serve in the capacity

of surrogate decision-maker, the provider shall document its efforts to obtain a surrogate decision-maker and include this information in the application for a consent committee review.

§405.239. Interdisciplinary Team Rights and Responsibilities As A Decision-Maker.

(a) The IDT may provide consent on behalf of an individual:

(1) when the decision needed pertains to a treatment or service not reserved to the surrogate decision-maker or surrogate consent committee.

(2) following initial consent for the administration of psychoactive medication by a surrogate consent committee. In this instance the ongoing consent by the IDT for the use of the medication is limited to the following situations:

(A) The individual is under the ongoing care of a doctor of medicine or osteopathy for the specific diagnosis for which the medication is prescribed.

(B) The quarterly pharmacist's drug regimen review identifies no apparent irregularities or potential problems (as described in Appendix N of the Surveyors Procedures for Pharmaceutical Service Requirements in Long-Term Care Facilities).

(C) Proposed changes in medication regimen, such as type of drug or dosage, which pose no significant increase in risk to the individual, based on the judgement of the prescribing physician and other health care professionals involved in the individual's care.

(D) The consent is reviewed until its expiration date, on a quarterly basis following the quarterly pharmacist's review, with documentation of the review noted in the individual's folder.

(b) All consent decisions made by the IDT on behalf of the individual shall take into consideration the individual's likes/dislikes, preferences, values, and beliefs as indicated through the assessment process.

(c) Should the IDT determine at any time that the consent process needs to be referred to the surrogate consent committee, an application shall be initiated as described in §405.242 of this subchapter (relating to Review of an Application for a Treatment Decision).

(d) Deliberations of the IDT during the consent and decision-making processes are documented and maintained in the indi-

vidual's folder.

§405.240. Appointment and Qualifications of a Surrogate Consent Committee.

(a) A surrogate consent committee may provide consent for:

(1) treatment with psychoactive medication(s);

(2) implementation of a highly restrictive procedure;

(3) major medical or dental treatment in the event there is no surrogate decision-maker as described in §405.237 of this subchapter (relating to Appointment and Qualifications of a Surrogate Decision-Maker);

(4) release of records or other information relevant to the individual's treatment or condition necessary to facilitate the process of obtaining consent for treatment or determining the individual's best interest; and/or

(5) other treatment or programmatic decisions which involve possible risk to individual protection and rights as requested by the IDT.

(b) If the results of the assessment of capacity indicate that the individual needs assistance in providing consent and there is no surrogate decision-maker to provide the consent or the consent is reserved to the surrogate consent committee, the provider shall request the appointment of a surrogate consent committee to act on behalf of the individual.

(c) A surrogate consent committee shall:

(1) be appointed by the department,

(2) be composed of at least three but not more than five individuals who:

(A) are not employees of the provider;

(B) do not provide contractual services to the provider;

(C) do not manage or exercise supervisory control over:

(i) the provider or the employees of the provider; or

(ii) any company, corporation, or other legal entity that manages or exercises control over the provider or the employees of the provider;

(D) do not have a financial interest in the provider or in any company, corporation, or other legal entity that has a

financial interest in the provider; and

(E) are not related to the individual.

(3) include at least one member listed in subsection (d)(2)(A) or (E) of this section.

(d) Other eligibility criteria for consent committee membership include the following:

(1) Each member shall participate in education and training programs sponsored by the department as follows:

(A) initial education and training shall be completed within three months of the first appointment to a surrogate consent committee; and

(B) review course shall be completed during each consecutive term of service as a member of a surrogate consent committee.

(2) The list of qualified individuals from which consent committee members are drawn shall include:

(A) health care professionals;

(B) individuals with mental retardation or parents, siblings, spouses, or children of an individual with mental retardation;

(C) attorneys licensed in Texas who have knowledge of legal issues of concern to individuals with mental retardation or to the families of individuals with mental retardation;

(D) members of private organizations that advocate on behalf of individuals with mental retardation; and

(E) persons with demonstrated expertise or interest in the care and treatment of individuals with mental disabilities.

(e) Verification of qualifications and eligibility to serve on a surrogate consent committee must be conducted by the department.

§405.241. Surrogate Consent Committee Responsibilities and Operating Guidelines.

(a) The department shall develop Operating Guidelines for the surrogate consent committees.

(b) A surrogate consent committee is not subject to the:

(1) Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a;

(2) Texas Civil Statutes, Article 6252-17 (Open Meetings Law); or

(3) Texas Civil Statutes, Article 6252-17a (Open Records Law).

(c) Individuals serving on a consent committee who consent or refuse to consent on behalf of a individual and who act in good faith, reasonably, and without malice are not criminally liable or civilly liable for that action.

(d) Surrogate consent committee members shall be appointed for a period of one year but may serve consecutive terms upon department approval.

(e) Each committee must designate a committee chair as described in the Operating Guidelines.

(f) The department's Operating Guidelines shall include:

(1) policy and procedures concerning the investigation of complaints filed against a member of a surrogate consent committee; and

(2) policy and procedures for the evaluation of the quality and effectiveness of the surrogate consent committees.

(g) The department may terminate the participation of a member of a surrogate consent committee at will.

§405.242. Review of an Application for a Treatment Decision.

(a) An application for a treatment decision must be submitted to the department by an ICF/MR or ICF/MR/RC facility when a decision regarding the administration of psychoactive medication, the use of highly restrictive procedures, or the performance of a major medical and/or dental treatment or procedure is needed and there is no guardian or surrogate decision maker available to provide the needed consent.

(b) The application submitted shall be signed by a duly authorized representative of the ICF/MR or ICF/MR/RC facility and minimally include the following information:

(1) the reason the applicant believes that the individual has a need for major medical or dental treatment, psychoactive medication, or a highly restrictive procedure;

(2) the condition proposed to be treated;

(3) a description of other less restrictive treatments or procedures attempted or considered but which were not continued or selected, including the reason

for rejection;

(4) a description of the proposed treatment, including the possible risks and potential benefits to the individual of the proposed treatment;

(5) the individual's opinion about the proposed treatment, if known;

(6) the applicant's opinion on whether the proposed treatment promotes the individual's best interest and the grounds for the opinion;

(7) any other information necessary to determine the individual's best interests regarding the treatment;

(8) a statement that the individual does not have a guardian of the person and does not have a parent, spouse, child, or other person with demonstrated interest in the care and welfare of the individual who is able and willing to become the individual's guardian or surrogate decision-maker; and

(9) documentation of any special conditions or circumstances which may require urgent consideration of the application for a treatment decision.

(c) The department may request additional information from the provider if an application for review by a surrogate consent committee is incomplete.

§405.243. Consent Committee Coordination.

(a) Each ICF/MR or ICF/MR/RC facility shall develop procedures for facilitating the surrogate consent committees in accordance with the provisions of this subchapter.

(b) Within five working days of receipt and review of an application for a treatment decision, the department shall appoint a surrogate consent committee to meet on behalf of the individual.

(c) The consent committee members appointed must meet the qualifications as described in §405.240 of this subchapter (relating to Appointment and Qualifications of a Surrogate Consent Committee).

(1) If the decision needed pertains to the administration of psychoactive medication, the committee shall include one member who is a health care professional.

(2) If a health care professional is not available to serve, then written consultation from a health care professional must be made available to the committee chair for inclusion in the application review materials.

(d) Upon appointment of the surrogate consent committee, the department shall notify the provider and assist the provider in the coordination of the consent

committee meeting date.

(1) The date set for the committee application review meeting must occur within 15 working days of the receipt of the application by the department.

(2) The ICF/MR or ICF/MR/RC facility shall be responsible for determining the location for the meeting and notifying the department and the committee members of the arrangements.

(e) The department shall notify a pro bono attorney program, if available, in the area in which the individual resides of the committee's intent to review an application for treatment decision as described in the Operating Guidelines.

§405.244. Pre-Review of Application.

(a) Upon approval of the application for a treatment decision, the department will forward a copy of the application to the consent committee chair for review and identification of any additional information the committee may need in order to determine the best interest of the individual.

(b) As needed, the department will coordinate with the provider a request for additional information from a committee chair.

(c) The provider shall facilitate consultation, at the request of committee members, with persons who may assist them in determining the best interest, opinions, values, and beliefs of the individual.

(d) In the event a committee or its chair requests an independent evaluation of the individual and/or the proposed treatment or procedure, the department shall provide information concerning available resources.

§405.245. Notice of Application Review Meeting.

(a) Upon scheduling the time, date, and location for the consent committee meeting, the provider shall furnish notice of the meeting to:

(1) all members of the consent committee;

(2) the individual;

(3) as available, the individual's actively involved spouse, adult child, adult sibling, parent(s), stepparent(s), or other adult relative;

(4) a local pro bono attorney program, if available, in the area in which the individual resides; and

(5) any person known to have a demonstrated interest in the care and welfare of the individual such as an advocate or a friend identified by the individual.

(b) The notice sent must minimally

include:

(1) the date, place, and time of the consent committee meeting;

(2) a copy of the application and a statement of the committee's procedures for consideration of an application; and

(3) a statement concerning the opportunity to:

(A) be heard and to present evidence and/or additional information;

(B) appeal the committee's decision in accordance with Texas Health and Safety Code, §597.053; and

(C) the right to designate a representative to attend the committee meeting.

(c) The provider shall furnish to the surrogate consent committee a copy of the notice, the names and addresses of the persons to whom it was sent, and evidence the notices were sent. This information will become part of the committee record.

(d) The provider shall maintain in the consent committee folder a copy of the notices sent, a list of the persons to whom it was sent and evidence of receipt, if applicable.

§405.246. Surrogate Consent Committee Meeting Proceedings.

(a) The surrogate consent committee must review the application for a treatment decision at the time, date, and place specified in the notice.

(b) Formal rules of evidence do not apply to consent committee proceedings, although committee members shall adhere to department Operating Guidelines.

(c) Committee member(s) shall meet and, if practicable, interview the individual before making a determination of the individual's best interest.

(1) Impressions and recommendations of the committee member(s) based on the interview and/or observation shall be documented and maintained in the committee record.

(2) In cases where the individual is not interviewed, the reason shall be documented in the individual's folder and the committee record.

(d) During the review of the application for a treatment decision, the committee may take testimony or review evidence from any:

(1) person who might assist the committee in determining an individual's best interest;

(2) person notified of and present at the meeting;

(3) representative of a person notified of the meeting; and

(4) expert or consultant from whom additional information has been obtained.

(e) Notwithstanding any other state law, a person licensed or certified by this state to provide services related to health care or to the treatment or care of a person with mental retardation, a developmental disability, or a mental illness shall provide to the committee members any information the committee requests that is relevant to the individual's need for proposed treatment.

(f) If, during receipt of testimony or prior to the consent committee's final determination, the committee is notified that a person has applied for appointment as the individual's guardian of the person, in accordance with the Texas Probate Code, Chapter XIII, proceedings shall be suspended by the chair.

(1) If the person has not been appointed guardian by the end of the fifth day following suspension of deliberations, the committee shall resume deliberations.

(2) The consent committee may make a determination about the proposed treatment during the period in which guardianship is being pursued if there is clear and convincing evidence of a medical necessity to do so.

(3) All documentation concerning the committee proceedings and the evidence supporting the actions taken shall be maintained in the consent committee record.

(g) Testimony taken during the committee proceedings shall be given under oath as administered by the committee's chair.

(1) Representatives of persons notified shall state, under oath, the identity and relationship of the person they represent.

(2) Testimony shall be obtained, documented, and maintained as described in department Operating Guidelines.

(h) Following receipt of testimony, the consent committee may enter into closed deliberations for determining the best interest of the individual and making the treatment decision.

(1) In its deliberations and determination of the best interest of the individual, the committee must consider the preference of the individual.

(2) Decisions made shall be based on consensus of the consent committee members and on clear and convincing

evidence that the proposed treatment promotes the individual's best interest.

(3) The committee shall consent or refuse the treatment on the individual's behalf.

(4) The committee shall determine the date on which the consent becomes effective and the duration of the consent.

§405.247. Notice of Determination.

(a) A copy of the committee's written opinion containing each of its determinations and a summary of the findings of fact must be sent to:

(1) each person notified under §405.245 of this subchapter (relating to Notice of Application Review Meeting); and

(2) the authorized representative of the individual's provider.

(b) A statement concerning the right to appeal the decision through the probate courts in accordance with the Texas Health and Safety Code, §597.053 shall accompany the opinion and summary upon distribution.

(c) The complete record of the consent committee's deliberations, all evidence or testimony presented, findings of fact and the final decision shall be forwarded to the department and shall be maintained as described in the Operating Guidelines.

§405.248. References. Reference is made in this subchapter to the following statutes, department rules, rules of other agencies, and other documents:

(1) Code of Federal Regulations (relating to participation in ICF/MR programs);

(2) Appendix N of the Surveyors Procedures for Pharmaceutical Service Requirements in Long-Term Care Facilities;

(3) Texas Health and Safety Code, Chapter 597;

(4) Texas Probate Code, Chapter XIII;

(5) Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a,

(6) Texas Civil Statutes, Article 6252-17 (Open Meetings Law);

(7) Texas Civil Statutes, Article 6252-17a (Open Records Law); and

(8) Operating Guidelines.

§405.249. Distribution.

(a) This subchapter shall be distributed to:

(1) all ICF/MR and ICF/MR/RC facilities;

(2) members of the Texas Mental Health and Mental Retardation Board;

(2) deputy commissioners, associate deputy commissioners, and assistant deputy commissioners;

(3) program and management staff in Central Office;

(4) superintendents and directors of state schools and state centers; and

(5) board chairpersons and executive directors of all community mental health and mental retardation centers.

(b) A copy of this subchapter shall be made available upon request to any staff member of an ICF/MR or ICF/MR/RC facility; any individual with mental retardation; the individual's parent or guardian; counsel of record of any individual with mental retardation; or to any interested party.

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

Issued in Austin, Texas, on August 2, 1993.

TRD-9327127

Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 465-4670

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part V. Veterans Land Board

Chapter 175. General Rules

• 40 TAC §175.2

The Veterans Land Board proposes an amendment to §175.2, concerning Application/Eligibility. The proposed amendment reduces the five-year residency requirement from five years to two years, and provides for the eligibility of the spouses of veterans who are missing in action.

David Gloier, deputy commissioner for the Veterans Land Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this amendment.

Mr. Gloier also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the class

of eligible veterans will expand to include those who have resided in Texas for two years, as well as the spouses of veterans who are missing in action. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Robert Moreland, Legal Services Division, Texas General Land Office, 1700 North Congress Avenue, Austin, Texas 78701.

This amendment is proposed under the provisions of the Natural Resources Code, §161.061 and §161.063, which provides the Veterans Land Board with the authority to adopt rules that it considers necessary or advisable to ensure the proper administration of the Veterans Land Program.

§175.2. Application/Eligibility.

(a) Applications material to participate in the Veterans Land program must be made on forms furnished by the Board. These forms and other materials may be obtained from the Veterans Land Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

(b) For purposes of this program, a Veteran is someone who [To participate in the program the veteran must meet the following eligibility requirements]:

(1) is at least 18 years of age;

(2) is [be] a citizen of the United States;

(3) has served not less than 90 continuous [have served at least 90 consecutive] days in the Army, Navy, Air Force, Coast Guard, Marine Corps, or United States Public Health Service, unless discharged earlier because of a service-connected disability, which service must have been after September 16, 1940, or have completed at least 20 years of active or reserve military service in any of the above branches of service, as computed when determining the person's eligibility to receive retired pay, or have enlisted or received an appointment in the Texas National Guard after completing all initial active duty training required as a condition of enlistment or appointment, and who has not been dishonorably discharged from the Texas National Guard [which is creditable for retirement under applicable federal laws, or have completed all initial active duty training required as a condition of enlistment or appointment in the Texas National Guard. This service must have been after September 16, 1940].

(4) has [must] not have been dishonorably discharged;

(5) has [must] not have previously participated in the land or housing program as a veteran. For purposes of this chapter one may have participated in the

Veterans Housing Assistance Program, including its home improvement loan improvement loan component, and still be eligible for participation in the Veterans Land Program. However, an eligible veteran is entitled to no more than one of each kind of loan as a veteran purchaser/borrower.

(6) was [have been] a bona fide resident of the State of Texas at the time of his or her enlistment, induction, commissioning, appointment or drafting, or have been a legal resident of Texas at least two [five] years immediately prior to the date of filing his or her application; and,

(7) is [be] a bona fide resident of Texas at the time the application is filed.

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

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

(e) If an eligible Texas veteran dies after he has filed an application and contract of sale with the Board, but before the purchase has been completed, the surviving spouse may complete the transaction. In addition, the unmarried surviving spouse of a veteran who dies in the line of duty or is missing in action shall be eligible to participate in the program if the following requirements are satisfied:

(1) the surviving spouse has not remarried and is a bona fide resident of Texas at the time of filing the application with the Board;

(2) at the time of enlistment, induction, commissioning, appointment or drafting, the deceased veteran was a bona fide resident of Texas (the two [five] years residence alternative is not available);

(3) the deceased veteran was a citizen of the United States at time of death;

(4) the deceased veteran had served on active duty in the Army, navy, Air Force, Coast Guard, Marine Corps, or Public Health Service after September 16, 1940, or had completed 20 years of reserve military service in any of the above branches of service, which is creditable for retirement under applicable federal laws, or enlisted or received an appointment [had served] in the Texas National Guard. The deceased veteran need not have served at least 90 continuous days of active duty;

(5) neither the deceased veteran nor the unmarried surviving spouse previously participated in the Veterans Housing Assistance Program or the Veterans Land Program; and

(6) the Board must be furnished certification from the United States Veterans Administration that the unmarried surviving spouse is currently entitled to benefits as the spouse of a veteran who died

in the line of duty. The Board may also determine that the line of duty requirement is satisfied upon presentation of other evidence.

(f)-(k) (No change.)

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

Issued in Austin, Texas, on August 12, 1993.

TRD-9327282

Garry Mauro
Chairman
Veterans Land Board

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-5007

Chapter 177. Veterans Housing Assistance Program

• 40 TAC §177.5

The Veterans Land Board proposes an amendment to §177.5, concerning Loan Eligibility Requirements. The proposed amendment reduces the five year residency requirement from five years to two years.

David Gloier, deputy commissioner for the Veterans Land Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Gloier also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the class of eligible veterans will expand to include those who have resided in Texas for two years. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Robert Moreland, Legal Services Division, Texas General Land Office, 1700 North Congress Avenue, Austin, Texas 78701.

The amendment is proposed under the provisions of the Natural Resources Code, §162.003(b), which provides that the Veterans Land Board shall adopt rules governing the administration and the fund and program.

§175.5. Loan Eligibility Requirements.

(a) (No change.)

(b) A veteran loan applicant is eligible to participate in the program if he or she:

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

(5) was a bona fide resident of Texas at the time of enlistment, induction, commissioning, or drafting; or, has resided in Texas continuously for at least two [five] years immediately before the date of appli-

cation for a loan;

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

(6) (No change.)

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

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

Issued in Austin, Texas, on August 13, 1993.

TRD-9327280

Garry Mauro
Chairman
Veterans Land Board

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-5007

Chapter 179. Farm and Ranch Finance Program

• 40 TAC §§179.1-179.23

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

The Veterans Land Board of the State of Texas proposes the repeal of §§179.1-179.23, concerning The Farm and Ranch Finance Program. Under recent legislation, the Farm and Ranch Finance Program has been transferred to the Texas Department of Agriculture. This repeal is proposed to allow for the adoption of new rules governing the Farm and Ranch Finance Program by the Texas Department of Agriculture.

David Gloier, deputy commissioner of the Veterans Land Board, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Gloier also has determined that the public benefit of this adoption will be the repeal of rules which are no longer necessary. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Robert Moreland, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Austin, Texas 78701.

This repeal is proposed under §163.037, Texas Natural Resources Code, which provide the Veterans Land Board with the authority to adopt rules that it considers necessary.

§179.1. Definitions.

§179.2. Bonds.

§179.3. Application/Eligibility.

§179.4. Land Selection.

§179.5. Change in Use.

§179.6. Land Description.

§179.7. Appraisal of Land.

§179.8. Commitment by the Board.

§179.9. Title Examination and Closing Requirements.

§179.10. Contract of Sale and Purchase.

§179.11. Death of a Purchaser.

§179.12. Insurance Losses.

§179.13. Transfer of Contract of Sale and Purchase.

§179.14. Severances.

§179.15. Sale of a Material Asset.

§179.16. Mineral Leases.

§179.17. Approval of Easements.

§179.18. Payment in Full.

§179.19. Fees and Deposits.

§179.20. Resale of Forfeited Land.

§179.21. Delinquencies and Forfeiture Procedures.

§179.22. Prizes and Inducements.

§179.23. Loan Guarantees.

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

Issued in Austin, Texas, on August 12, 1993.

TRD-9327281

Garry Mauro
Chairman
Veterans Land Board

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-5007

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 17. Division of Motor Vehicle Titles and Registration

Vehicle Emissions Verification System

• 43 TAC §17.80

The Texas Department of Transportation proposes new §17.80 concerning the vehicle emissions verification system. The new rule is proposed as a part of a revision to the State Implementation Plan. The revision is necessary under the 1990 Federal Clean Air Act Amendments and the subsequent November 5, 1992, inspection/maintenance program rulemaking by the United States Environmental Protection Agency which require the establishment of inspection/maintenance programs in moderate, serious, and severe ozone nonattainment areas and carbon monoxide nonattainment areas. The Texas Air Control Board proposed the revised State Implementation Plan in the *Texas Register* on July 27, 1993, (18 TexReg 4957).

Pursuant to the registration laws, Texas Civil Statutes, Article 6675a-1, et seq, the department registers vehicles operating on the road, streets, and highways of this state. House Bill 1969, 73rd Legislature, 1993, amended the Health and Safety Code, §382.037, specifying that the department implement a system requiring verification that a vehicle complies with vehicle emissions inspection/maintenance programs when the vehicle is registered in a county included in a vehicle emissions inspection/maintenance program under the Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, §142; that the department by rule require the owner of a vehicle to be registered in a county covered by an emissions inspection/maintenance program to submit an inspection certificate issued for that vehicle; and that the department collect and record data concerning those vehicles registered in a county covered by a vehicle emissions inspection/maintenance program.

House Bill 1969 also amended Texas Civil Statutes, Article 6675a-2(a), specifying that the department, through the county tax assessor-collector, shall require an applicant for registration of a vehicle in a county that is not covered by an emissions inspection/maintenance program to provide evidence that the applicant is a resident of that county, and further requires the department to promulgate rules to prescribe acceptable forms and types of evidence of county residency.

In order to comply with the provisions of House Bill 1969 and implement a system that is consistent with the legislative intent and federal law, it is necessary to propose a new undesignated head entitled Vehicle Emis-

sions Verification System and new TM17.80 which provides as follows: Subsection (a), Purpose, describes the statutory role of the department concerning the issuance of vehicle registration; Subsection (b), Definitions, defines words and terms used in the section; Subsection (c), Conditions to vehicle registration, requires an applicant for vehicle registration or renewal of registration to submit a vehicle emissions certificate if the vehicle is registered in a county covered by an inspection/maintenance program, provides for certain conditions under which a vehicle emissions inspection certificate is not required, and specifies forms acceptable as evidence of county residency when a vehicle is registered in a county not covered by a vehicle emissions program; and Subsection (d), County reporting, provides for the county to report to the department and the Texas Natural Resources Conservation Commission: the number of vehicle registrations denied because of the applicant's failure to provide proof of residency in the county; the number of vehicle registrations denied because of the applicant's failure to provide the original vehicle emissions inspection certificate; and an itemized accounting of the costs to the county for administering the provisions of the section.

Jerry L. Dike, director, Division of Motor Vehicle Titles and Registration, has determined that there will be fiscal implications as a result of enforcing or administering the provisions of House Bill 1969 as implemented by this section. The effect on state government for the first five-year period the section will be in effect will be an estimated \$1,000,000 cost.

The cost to local county government to administer the provisions of House Bill 1969 as implemented by this section, for the first five-year period the section will in effect, will be an estimated \$7.5 million. House Bill 1969 provided additional revenue for the counties to administer the legislation. This revenue is estimated to be \$12.5 million for the first five-year period the section will be in effect.

There will be no fiscal impact on large businesses and there will be no significant impact on local economies or overall employment as a result of administering the proposed new section.

Mr. Dike also has determined that for each year of the first five years, the section as proposed is in effect the public benefit anticipated as a result of implementing the vehicle emissions verification system will be an efficient and effective method for verifying compliance with vehicle emissions inspection/maintenance programs that is compatible with vehicle registration services provided by the department to the motoring public of this state. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive public comments concerning the proposed new section. The public hearing will be held at 9:00 a.m. on Wednesday, September 22, 1993, in the first floor hearing room of

the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, and will be conducted in accordance with 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held view, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearings may contact Al Zucha, public information officer, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588.

Written comments on the proposal may also be submitted to Jerry Dike, Director, Division of Motor Vehicle Titles and Registration, 40th and Jackson Avenue, Austin, Texas 78779-0001, no later than 5:00 p.m. on October 1, 1991.

The new section is proposed under Texas Civil Statutes, Articles 6666, and 6675a-1, et seq, and the Health and Safety Code, §382.037, which provides the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation and for the orderly administration of statutory provisions relating to the department's issuance of vehicle registration, and require the department by rule to require the owner of a vehicle to be registered in a county covered by an emission inspection/maintenance program to submit an inspection certificate issued for that vehicle. The new section is also required by the 1990 Federal Clean Air Act Amendments and the November 5, 1992, rulemaking by the United States Environmental Protection Agency.

§17.80. Vehicle Emissions Verification System.

(a) Purpose. Texas Civil Statutes, Article 6675a-1, et seq, charges the department with the responsibility of registering vehicles operating upon the public roads, streets, and highways of this state. The Health and Safety Code, §382.037, requires the department to implement a system requiring verification that a vehicle complies

with vehicle emissions inspection/maintenance programs when the vehicle is registered in a county included in a vehicle emissions inspection/maintenance program under the Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, §142. This section prescribes the procedures and policies necessary to implement such a system.

(b) Definitions. The following words and terms, when used under this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department—The Texas Department of Transportation.

(2) First sale—The bargain, sale, transfer, or delivery with intent to pass an interest therein, other than a lien, of a motor vehicle which has not been previously registered or licensed in this state or elsewhere, shall constitute the first sale of said vehicle, irrespective of where such bargain, sale, transfer, or delivery occurred.

(3) Program area—A county or counties in which the TNRCC, in coordination with the department, administers the vehicle emission inspection/maintenance program contained in the revised Texas State Implementation Plan.

(4) Revised State Implementation Plan—The Texas State Implementation Plan as revised in accordance with United States Environmental Protection Agency, 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992, including procedures and requirements of the vehicle emission inspection/maintenance program.

(5) TNRCC—The Texas Natural Resource Conservation Commission.

(6) Vehicle—Every motor driven or propelled vehicle required to be registered in this state and subject to vehicle emissions inspection under TNRCC rules.

(7) Vehicle emissions certificate—A unique inspection certificate in a form prescribed by the TNRCC which verifies a vehicle has been inspected in accordance with the provisions of its vehicle inspection/maintenance program.

(c) Conditions to vehicle registration.

(1) In a county included in a vehicle emissions inspection/maintenance program, an applicant for vehicle registration or renewal of registration must submit a valid emissions inspection certificate issued by an authorized inspection station within 90 days preceding the date on which the vehicle is registered in accordance with the following requirements.

(A) A vehicle registered in a county covered by an annual vehicle emissions testing program must be inspected annually.

(B) A vehicle registered in a county covered by a biennial vehicle emissions testing program must be inspected every even numbered calendar year if the vehicle has an even numbered year model and every odd calendar year if the vehicle has an odd numbered year model.

(2) The provisions of paragraph (1) of this subsection do not apply to:

(A) the registration of a vehicle in conjunction with the vehicle's first sale;

(B) the transfer of ownership if the vehicle is currently registered under the emissions verification specifications required in this subsection; or

(C) the transfer of ownership of an unregistered vehicle if the vehicle will be subsequently registered in a county not included in a vehicle emissions inspection/maintenance program, provided that the

purchaser furnishes evidence of county residency required by paragraph (3) of this subsection.

(3) When registering a vehicle in a county that is not included in a vehicle emissions inspection/maintenance program, the applicant for registration must provide evidence of residency in that county. Such evidence may consist of any one of the following:

(A) a voter registration card;

(B) a driver's license;

(C) a utility or telephone bill;

(D) a property tax payment statement or receipt for payment of property tax;

(E) a school tuition receipt;

(F) evidence of compliance with the Texas Motor Vehicle Safety Responsibility Act, Texas Civil Statutes, Article 6701h.

(d) County reporting. Each county tax assessor-collector shall submit by March

1 of each year, in a form and manner prescribed by the department, an annual report to the department and the TNRCC that shows for the previous calendar year:

(1) the number of vehicle registrations denied because of the applicant's failure to provide proof of residency in the county;

(2) the number of vehicle registrations denied because the applicant's failure to provide the original vehicle emissions inspection certificate; and

(3) an itemized accounting of the costs to the county for administering the provisions of this section.

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

Issued in Austin, Texas, on August 13, 1993.

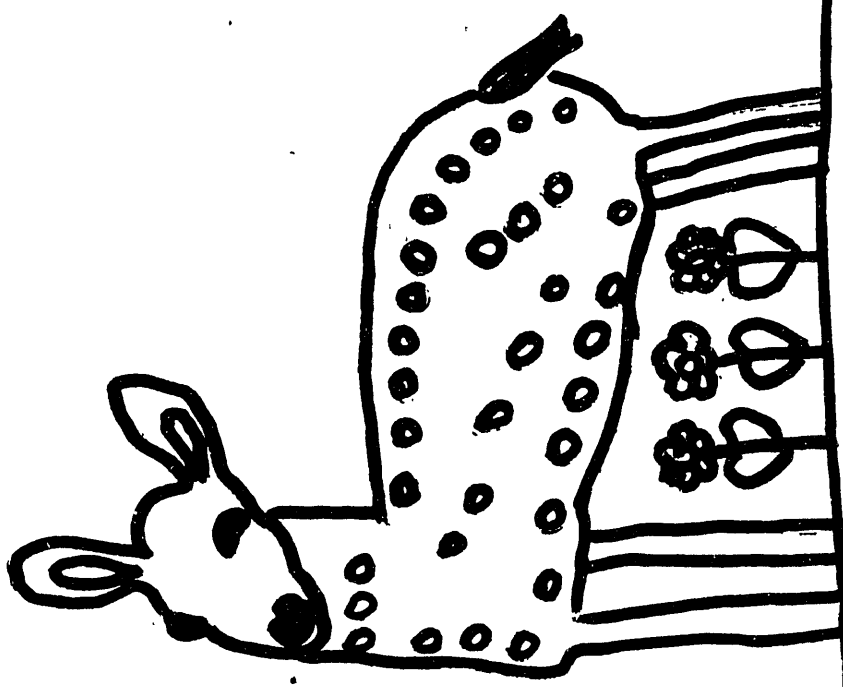
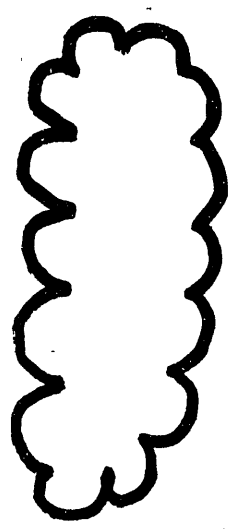
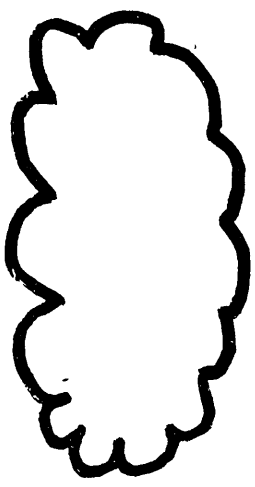
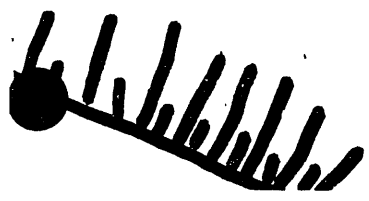
TRD-9327372

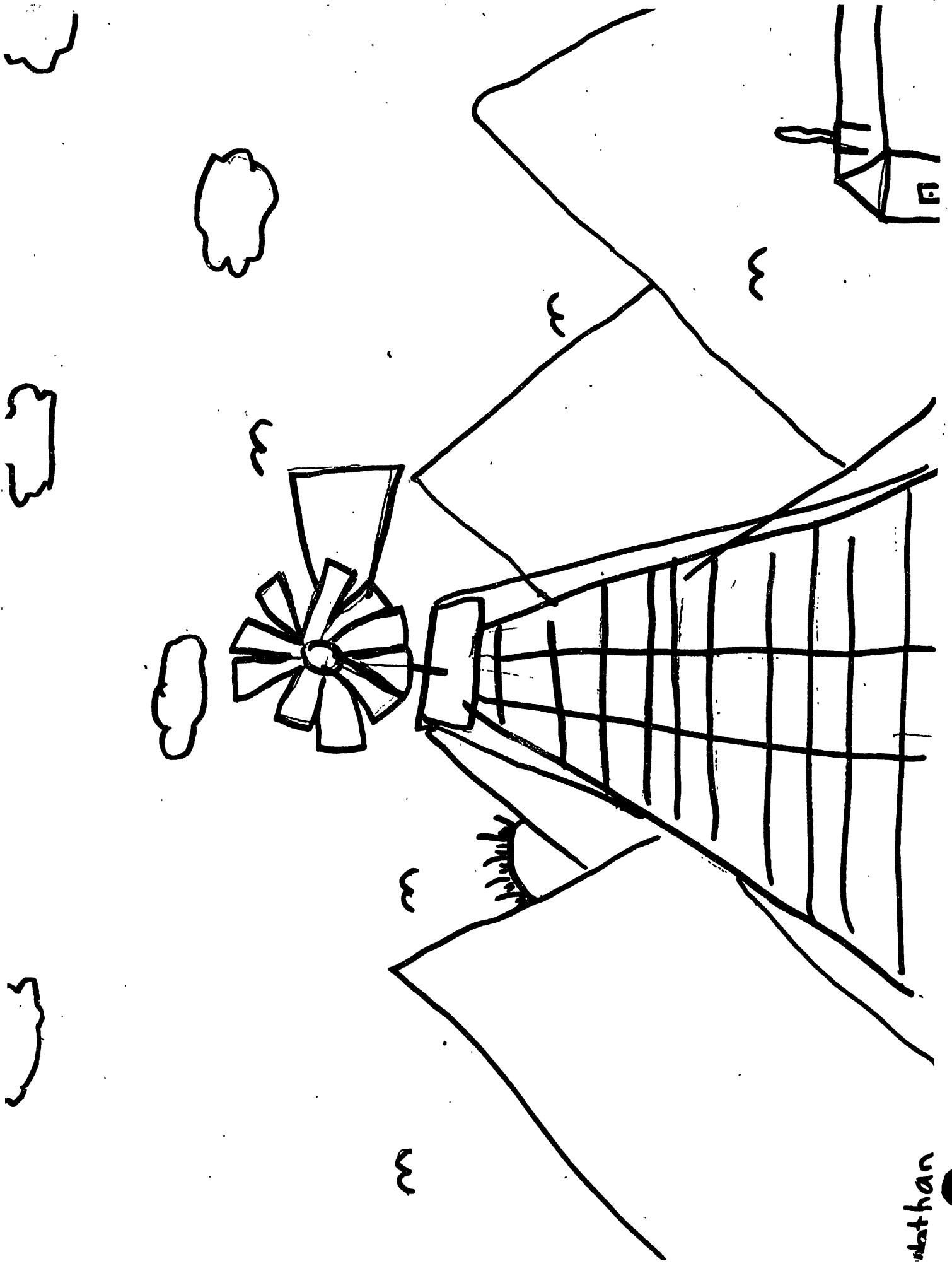
Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Earliest possible date of adoption: September 20, 1993

For further information, please call: (512) 463-8630

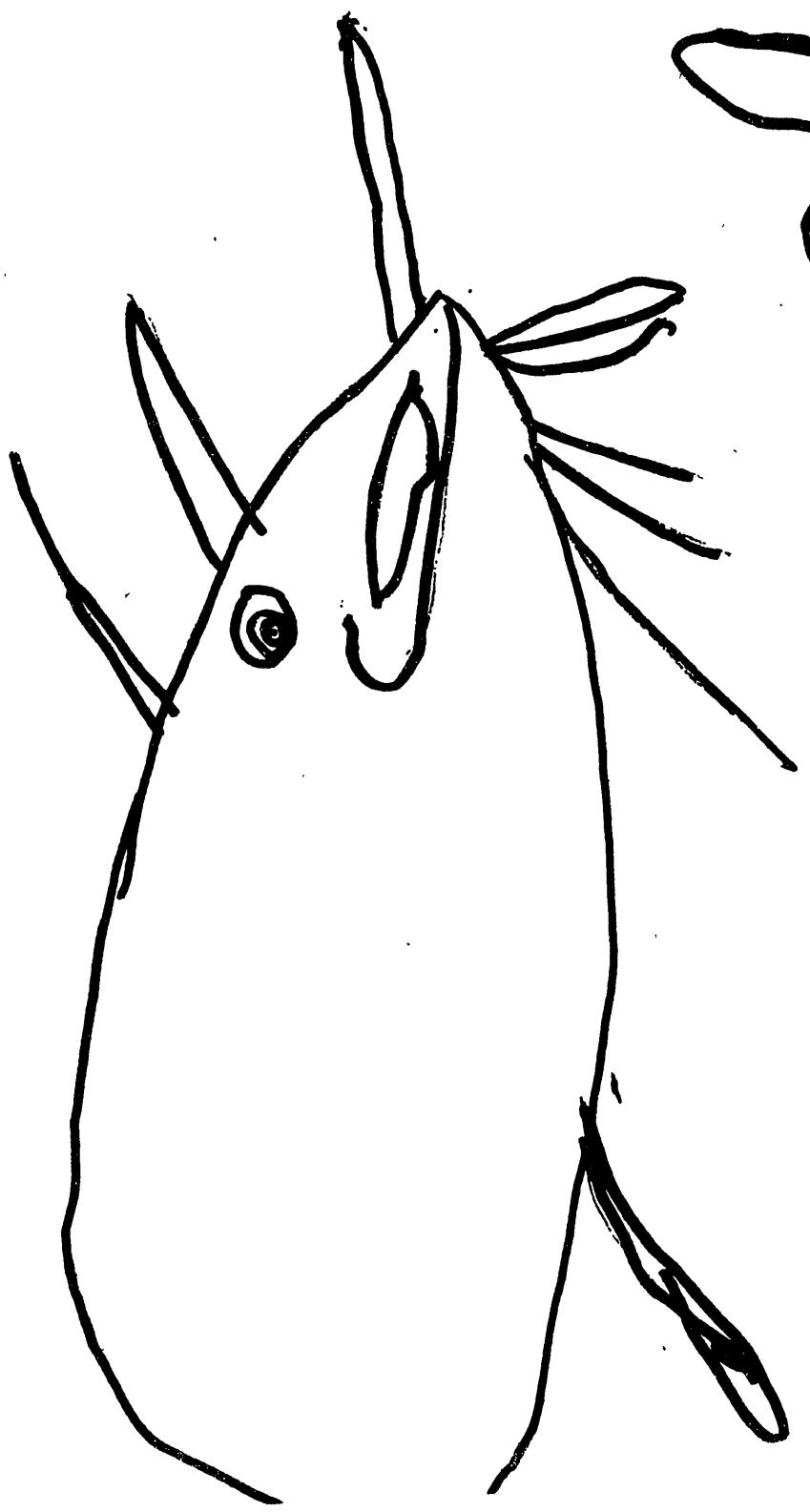
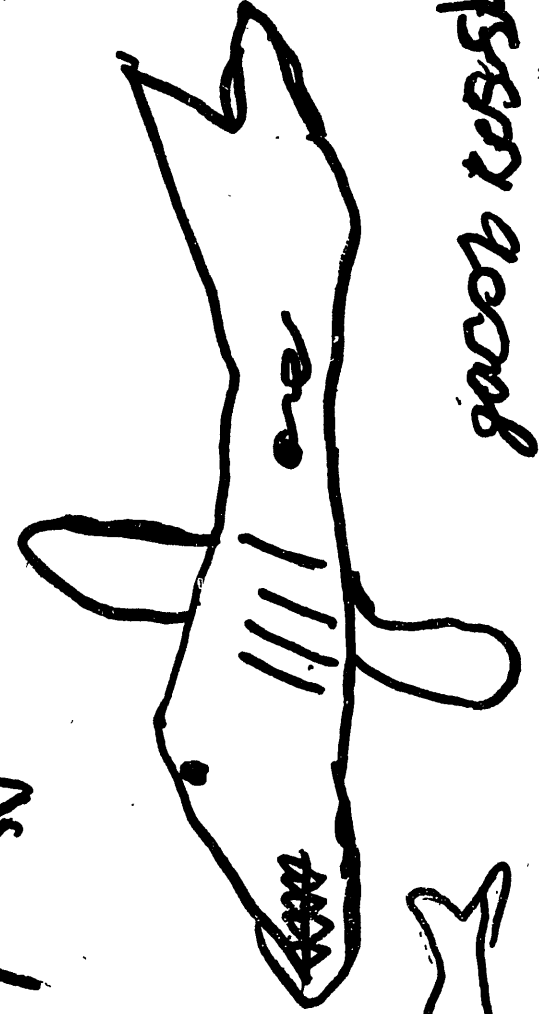
◆ ◆ ◆



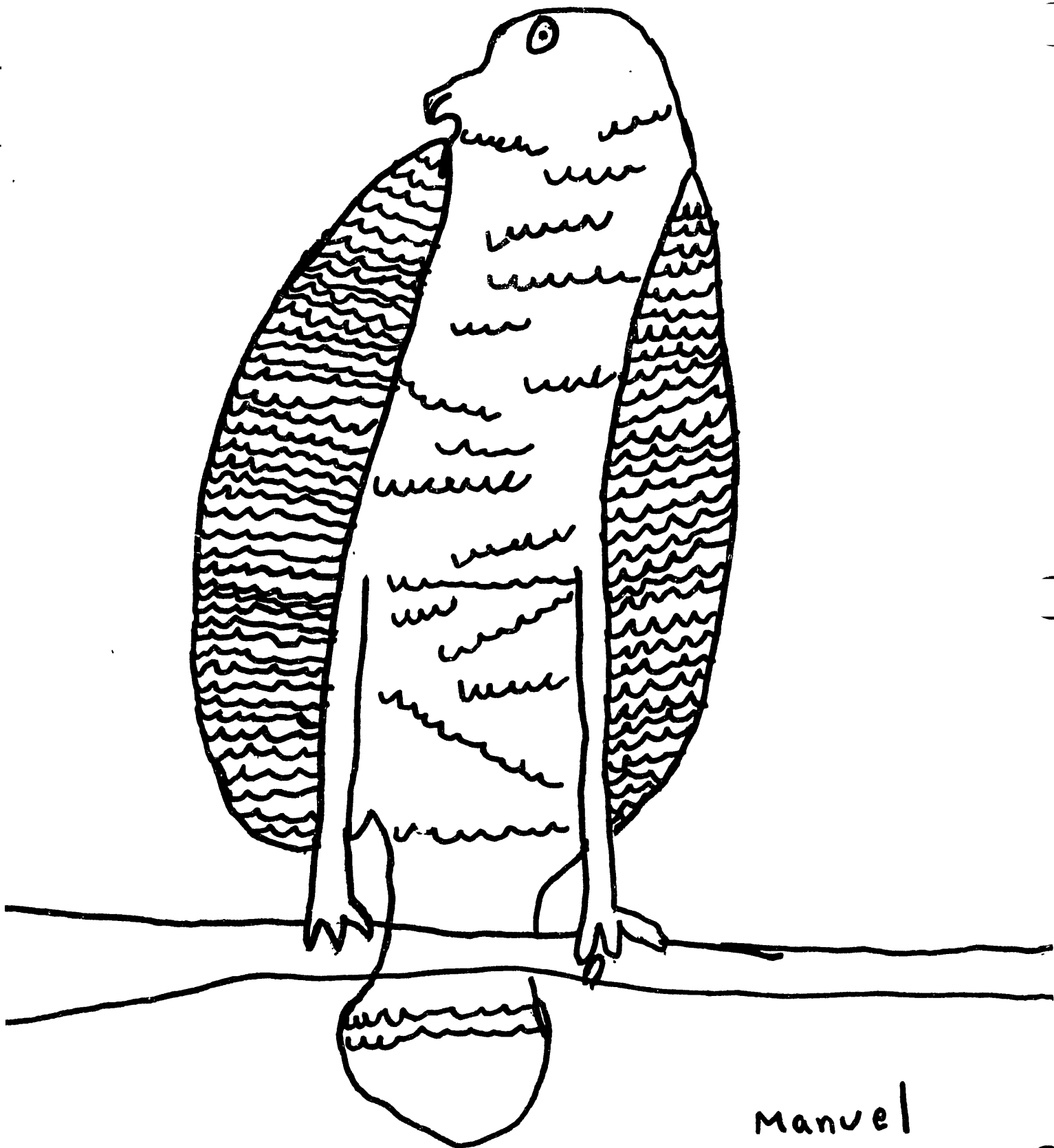


nathan ●

gacob 2008



gacob 2008



Manuel
Manuel

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part XIII. State Employee Incentive Commission

Chapter 273. Program Definitions

• 1 TAC §273.27

The Texas Incentive and Productivity Commission adopts an amendment to §273.27, concerning Awards, without changes to the proposed text as published in the June 18, 1993, issue of the *Texas Register* (18 TexReg 3913).

The amendment was made in response to a statutory change passed by a records vote from the 73rd Legislature regarding the State Employee Incentive Program

Section 273.27 is amended to clarify distribution of a bonus if a suggestion is submitted by more than one employee.

No comments were received concerning the adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 6252-29a, §1, which authorizes the Texas Incentive and Productivity Commission to promulgate rules for its 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 August 12, 1993

TRD-9327284 M Elaine Powell
Executive Director
Texas Incentive and
Productivity
Commission

Effective date: September 3, 1993

Proposal publication date: June 18, 1993

For further information, please call: (512) 475-2393

Chapter 275. Productivity Bonus Program

• 1 TAC §§275.1, 275.5, 275.11, 275.13, 275.17

The Texas Incentive and Productivity Commission adopts an amendment to §§275.1, 275.5, 275.11, 275.13, and 275.17, concerning Productivity Bonus Program, without changes to the proposed text as published in

the June 18, 1993, issue of the *Texas Register* (18 TexReg 3913).

All amendments, except those to §275.13, were made in response to statutory changes passed by a record vote from the 73rd Legislature regarding the Productivity Bonus Program.

Changes to §275.5 expand the definition of division so that Productivity Plan submissions may be submitted by an identified group of employees other than those defined by having their own identifiable budget within an agency. Amendments to §275.5 change the timeframe that the commission has to review and inform the agency of its action on a Productivity Plan. Section 275.11 was amended to clarify that an element does not have to be totally eliminated to qualify as legitimate savings. Section 275.13 is amended to allow greater flexibility in certification of savings at the end of the fiscal year. Section 275.17 amends the amount of an award to be distributed by an agency

No comments were received concerning the adoption of the amendments

The amendments are adopted under Texas Civil Statutes, Article 6252-29a, §1, which authorizes the Texas Incentive and Productivity Commission to promulgate rules for its 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 August 12, 1993

TRD-9327270 M Elaine Powell
Executive Director
Texas Incentive and
Productivity
Commission

Effective date: September 3, 1993

Proposal publication date: June 18, 1993

For further information, please call: (512) 475-2393

TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 186. Smart Jobs Fund Program

Subchapter A. General Provisions

• 10 TAC §§186.101-186.105

The Texas Department of Commerce adopts new §§186.101-186.105 implementing the Smart Jobs Fund program enacted by the 73rd Legislature in Senate Bill 130 through the addition of Subchapter J of Chapter 481 of the Government Code. Section 186.104 is adopted with changes to the proposed text as published in the June 25, 1993, issue of the *Texas Register* (18 TexReg 4165). Sections 186.101-186.103 and 186.105 are adopted without changes and will not be republished

Subchapter A, §186.101, concerning Authority, describes the statutory authority for the Smart Jobs Fund program. Section 186.102, concerning Purpose, describes the purpose of the Smart Jobs Fund program rules. Section 186.103, concerning Policy Board monitoring, provides that the Texas Department of Commerce (Commerce) Policy Board shall monitor the goals and results of the Smart Jobs Fund program on a regular basis. Section 186.104, concerning Definitions, defines words and terms used in §§186.101-186.308. Section 186.105, concerning Waivers, provides for waiver and suspension upon a showing of good cause and a finding that the public interest will be served by such action.

Comments in opposition, or requesting changes or additions to the definitions set forth in §186.104 were submitted by the City of Austin, Employment Access for Retirees, the Creative Rapid Learning Center, the Texas Public Community Junior College Association, and the Harlingen Area Chamber of Commerce. Substantive comments received and any revisions to the rules made in response to those comments are discussed in the following narrative.

Comment: Jobs change, leading to new position qualifications and requirements. Sometimes the new training requirements are less expensive. The amount spent on training alone is inadequate as a measure of whether the objectives of the Smart Jobs Program are being accomplished. The commenter recommended that §185.202(c)(3) be changed to

add language to include "or change in the requirements for its positions." Section 185.202(c)(3) would then read as follows: the employer has reduced the amount of private money spent on non-managerial training due to economic necessity caused by downturns in the overall economy, increased competition, technological change, or change in the requirements for its positions.

Response: Commerce believes that the current rule includes the commenter's concerns. "Jobs changes" is included within the scope of downturns in the overall economy, increased competition, and technological changes

Comment: What is "historically underutilized business?" Senate Bill 130 is clear on the definition of minority employer, the rules lead to more questions, rather than clarification. The citizenry of this state generally understand the term "minority employer", but do not understand the term "historically underutilized business."

Response: "Historically underutilized business" is defined in amended Subdivision (1) of the Government Code, §481.101, as: a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities is owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; a sole proprietorship formed for the purpose of making a profit that is 100% owned, operated, and controlled by a person described by Paragraph (A); a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A). Those persons must have proportionate interest in the control, operation, and management of the partnership's affairs; a joint venture in which each entity in the joint venture is a historically underutilized business under this subdivision; or a supplier contract between a historically underutilized business under this subdivision and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies.

Comment: The definition of "matching funds" as private contributions from the employer is unduly restrictive. Requiring matching funds to come from employers is unduly restrictive and may be a hardship on small employers.

Response: The law requires the employer to match the contract funds. It also requires that Commerce's executive director attempt to award 50% of the funds to small businesses. In order to encourage small businesses to fully participate in the program, the rules require a 10% match from small businesses which employ fifty or fewer employees. Other businesses must, according to the law, provide a 50% matching contribution.

Comment: Definition of existing job is not clear.

Response: The definition is tied to the statutory definition of "existing employer" set forth in the Smart Jobs Fund Program Act, §481.151(6). It is written to distinguish an "existing job" from a "new job." Employers have to meet different wage targets, upon completion of the training, for each type of job. Smart Jobs Fund money comes from the Unemployment Insurance Trust Fund into which employers pay taxes

Comment: Definition of job security is too vague and difficult to quantify.

Response: The definition of "family wage job" refers to long term job security, however neither family wage job or long term job security is required by statute. The only statutory requirements are to meet the wage levels specified for new and existing jobs and to retain the employee in the job for 90 days after the training is complete

Comment: The definition of "literacy skills" does not tie into the prescribed funding intent. There is a large demand for GED and ESL remedial training.

Response: As with Job-Related Basic Skills, Commerce recognizes the demand in certain regions of Texas for such training. Here too, such training will be more effective in a work environment in order to meet the intent of the Act which is to train for high skill, high wage jobs.

Comment: The rules do not specify who certifies minority firms as Historically Underutilized Businesses (HUBs)

Response: Providing such information will be part of the technical assistance responsibilities of Commerce. The State General Services Commission will be responsible for such certification, and Commerce will provide the necessary referrals. The referral information will also be available in the Smart Jobs Fund application packet.

Comment: The definition of "new job" is not clear.

Response: The definition of "new job" is put into the rules as a companion definition to "existing job". These two definitions are tied to the statutory definition of "existing employer" set forth in §181.151(6). The definitions distinguishing the two are tied to the employer's payments to the Unemployment Insurance Trust Fund.

Comment: The definition of "provider" doesn't refer to technical colleges; it refers to institutes.

Response: The definition is intended to be inclusive of all technical colleges, proprietary schools and other higher education entities as defined in the Education Code, §61.003. The definition has been amended to address the commenter's concern.

Comment: The definition of "reimbursable costs" requires further clarification.

Response: The instructions for completing the application "Business and Training Plan" budget will provide clarification of allowable costs.

Comment: The definition of "subcontract" is not clear as to intent.

Response: Eligible applicants include consortia and partnerships. Commerce expects the members of such groups to have written agreements between themselves. Those agreements are subcontracts, each of which will become part of the contract with Commerce.

Comment: Consider including in the rules criteria for defining targeted industries.

Response: Commerce currently designates and promotes targeted industries in economic development using objective criteria and methodologies.

Comment: High-technology areas should be defined and information about the demand occupations that provide high-skill, high-wage jobs should be publicized.

Response: High-technology is an inclusive definition not required for eligibility. Eligibility for funding is based on high-wage jobs, defined by statute. Demand occupation is defined by statute and is varied by region. It will be determined based on statutory requirements and the best labor market information available

Comment: Provide definitions of new business/industry, existing business/industry, and business plan

Response: Commerce does not believe that such definitions are necessary. By way of clarification, the term "Business" includes "industry" instructions for providing "business plan" information will be in the application packet

Comment: Rules need a clear statement that public sector employers are eligible

Response: Political subdivisions of the state which meet the requirements of the legislation pertaining to employers may be eligible, however, under the priorities for funding established by the Act, funding of public sector employers is prioritized after minority businesses, small businesses, and existing businesses which pay the Smart Jobs Fund assessment.

In addition to the changes made in response to the comments summarized above, several grammatical and other nonsubstantive changes have been made by staff to clarify some of the definitions set forth in §186.104. As a result of the changes, §186.104 is reprinted below in its entirety.

The new sections are adopted under the authority of Subchapter J of the Government Code, §§481.151 et seq, particularly §481.153, and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

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

Benefits-Perquisites paid by an employer to an employee, either voluntarily or by collective bargaining agreement, in addition to the employee's wages, including va-

cation pay, holiday pay, sick leave, health insurance coverage, workers' compensation coverage, retirement or pension plans, and life insurance.

Community-based organization—A public or private non-profit entity authorized to do business within the State of Texas and exempt from taxation under the United States Internal Revenue Code, §501(c), and which has as a purpose of the organization providing education, employment or training services.

Competencies—The employer's measures of the participant's expected learning gains or skill mastery of the job-related occupational skills or job-related basic skills for which they are being trained. Such competencies may be specified by the employer, by industry associations, and be consistent with ISO 9000 certification standards, or other credible sources acceptable to the employer as evidenced by their inclusion in the application. The employer's measures shall be consistent with specifications in its business plan as essential to the business' competitiveness.

Completed Application—A document submitted by an applicant on the forms provided by the Department that provides the information specified in §186.302 in sufficient detail to permit the Department to write a contract for a grant awarded under this chapter.

Contract—The written agreement between the Department, the applicant, and each employer participating in a project that is signed after a project has been approved and a grant awarded, and which details the rights and responsibilities of each of the parties to that agreement.

Department—The Texas Department of Commerce.

Diversification—An increase in the variety of products produced.

Employer organization—An organization funded by a group of employers that provides employment based training.

Existing job—A position for which there is an incumbent employee or an opening on the day before the date on which the project is to begin and for which the employer has been liable to pay contributions under the Texas Unemployment Compensation Act in the year preceding the day before the project begins.

Expansion—an increase in the production volume and number of jobs.

Full time employment—Employment of at least 35 hours a week for a period of 25 consecutive weeks for a single employer, including normal days not worked by an employee such as a weekend or holiday.

In-kind contribution—a noncash contribution of goods and services provided by an employer as all or part of the employer's matching share of a grant or project.

Job security—Reasonable opportunity for continuation in an occupation.

Job-related basic skills—The knowledge and abilities identified by the federal Department of Labor Secretary's Commission on Achieving Necessary Skills, known as the "SCANS Skills," including basic academic skills. There are no stand-alone curricula for training for these skills. Rather, they are to be integrated as part of the job-related vocational (occupational) skills training curricula. These skills specifications shall be consistent with the requirements of the employer's business plan.

Job-related occupational skills—The same thing as "job-related vocational skills." The term means the knowledge and abilities the employer specifies as necessary for a specific job or demand occupation for which a participant is being trained and in which the participant will be employed at the end of the project consistent with the employer's certification. These skills specifications shall be consistent with the requirements of the employer's business plan.

Labor market information—Economic, occupational, geographic and demographic characteristics of the labor market that encompasses population and labor force composition, industry and occupational trends and outlook, job opportunities, hiring and training practices, skills requirements and trends, wages, labor force estimates, career ladders, and occupational supply and demand.

Labor organization—Any organization of any kind, or any agency or employee representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

Literacy skills—The knowledge and abilities necessary to communication in the workplace. Such skills may include reading, writing, mathematics, and language comprehension commonly assumed to have been learned in the public schools through the middle school level. Such skills may also include English as a Second Language or Spanish as a Second Language necessary for the job in which the participant will be employed at the end of the project consistent with the employer's certification. Literacy skills are considered part of job-related basic skills or SCANS skills.

Matching costs—the dollar value of the private contributions from the employer required under the Smart Jobs Fund Program, whether they be dollar contributions or in-kind contributions. Calculation of the required matching amount is as follows.

(A) Total dollar amount of the grant divided by the required per cent of matching cost equals the total project cost. The total project cost minus the total dollar amount of the grant equals the matching cost requirement.

(B) An example follows:

(i) \$50,000 total grant amount / .50 (50% match requirement) = \$100,000 total project cost;

(ii) \$100,000 total project cost - \$50,000 total grant amount = \$50,000 matching requirement.

Minority employer status for application purposes—Meeting the qualifications for certification as an historically underutilized business.

New job—A position which did not exist in the employer's business in this state on the day before the project begins and a position which had no incumbent employee for whom the employer had been liable to pay contributions under the Texas Unemployment Compensation Act in the year preceding the day before the project begins.

Policy Board—The existing Board of the Texas Department of Commerce.

Program expenses—the costs incurred by the Department for its operation of the program, which are not included in the cost of specific projects.

Project—A specific employment training activity for which an applicant developed and implemented a plan and entered into a contract under the Texas Government Code, Subchapter J, §481.151 et seq.

Provider—A person that provides employment-related training. The term includes employers, employer associations, labor organizations, community-based organizations, training consultants, public and private schools, technical institutes, junior or community colleges, senior colleges, universities, technical colleges, and other higher education entities as defined in the Education Code, §61.003, and proprietary schools as defined in the Texas Education Code, §32.11.

Reimbursable costs—Those expenses in a training project that are reimbursed by a grant from the fund. Direct training costs and administrative costs for a project are reimbursable costs.

Subcontract—A written agreement between an applicant and a provider of training or administrative services that is signed after a project has been approved and a grant awarded and that details the rights and responsibilities of each party to the agreement.

Technological change—An advance in product design or production technique that enhances production efficiency or product marketability.

Total project cost—The sum of the direct training-related costs plus administrative costs funded by a grant awarded under this chapter plus the employer's required matching contribution. It is calculated as follows:

(A) Total dollar amount of the grant divided by the required per cent of matching cost equals the total project cost.

(B) An example follows: \$50,000 total grant amount / .50 [50% match requirement] = \$100,000 total project cost.

Turnover—The separation of an employee from his or her job.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 13, 1993.

TRD-9327374

Sedora Jefferson
General Counsel
Texas Department of
Commerce

Effective date: September 3, 1993

Proposal publication date: June 25, 1993

For further information, please call: (512) 320-9401

Subchapter B. Methodologies for Determining Certain Variables

• 10 TAC §§186.201-186.204

The Texas Department of Commerce adopts new §§186.201-186.204 implementing the Smart Jobs Fund Program enacted by the 73rd Legislature in Senate Bill 130 through the addition of Subchapter J of Chapter 481 of the Government Code. Section 186.204 is adopted with changes to the proposed text as published in the June 25, 1993, issue of the *Texas Register* (18 TexReg 4165). Sections 186.201-186.203 are adopted without changes and will not be republished.

Section 186.201, concerning State Average Weekly Wage; Regional Variances, describes the process to be followed by the Texas Department of Commerce (Commerce) in determining regional variances in the annual average of the average weekly wage of manufacturing production workers. Section 186.202, concerning Full-time Employment, provides that grants cannot be awarded to projects unless they train employees for full-time employment, unless a waiver is granted upon a showing of good cause. Section 185.203, concerning Maintenance of Effort, provides that employers must certify in their application(s) that approval of a project will not result in a net decrease in the average amount of private money spent by the employers on non-managerial training in Texas. Section 186.203 also provides that Commerce may require an employer to document the amount spent on non-managerial training in the two year period prior to the application being made. Finally, §186.203 establishes a procedure for modification of its requirements. Section 186.204, concerning Positive Growth to Replacement Ratios, sets forth the formula to be used by Commerce in calculating the growth to replacement ratio.

Comments in opposition, or to request changes or clarification to portions of Subchapter B, §§186.201-186.204, were submitted by the Harlingen Area Chamber of Commerce, and Loral Space Information Systems. The Texas Employment Commission commented, in response to §186.204, that it should be considered only one source of data for computation of growth to replacement ratios since it publishes such data infrequently.

Substantive comments received and any revisions to the rules made in response to those comments are discussed in the following narrative.

Comment: Correct typographical error in description of when the Department publishes the state average weekly wage; change "of" to "or" in §186.201.

Response: There is no typographical error. Section 186.201 provides that "Between September 1 and October 1 of each year, the Department shall contact the Texas Employment Commission to determine the state average weekly wage as of September 1 of that year".

Comment: Concerning §186.201, which references that regional adjustment of the State Average Weekly Wage, comment was made that this ceiling or base is artificial.

Response: Section 481.151(15) of the Smart Jobs Fund Program Act defines "State average weekly wage" as the annual average of the average weekly wage of manufacturing production workers in this state as of September 1 of each year, as determined by the Texas Employment Commission under §3(b), adjusted for regional variances. The use of the State Average Weekly Wage is required by statute and Commerce is responsible for regional adjustment.

Comment: Concerning §186.204, the proposed rules state that the Texas Employment Commission will provide the data necessary to calculate the growth to replacement ratio for occupations. The Texas Employment Commission collects and publishes the data to compute this ratio infrequently and for a limited number of occupations and should be considered only one source of the data.

Response: Commerce agrees with this comment. The rules have been amended to allow Commerce to use all the best sources of this data, including, but not limited to, the Texas Employment Commission.

Comment: The methodology for determining the entry-level norms for the number of hours an employee works is unrealistic and will create audit problems. Section 185.202(D)(3).

Response: The published version of the proposed rules does not contain a methodology for determining the entry-level norms for the number of hours an employee works, therefore, no change needs to be made in response to this comment. Section 186.202 states that "[e]xcept as provided by this section, the Department may not award a grant to a project that does not train employees for full-time employment. The executive director may waive the requirements of this section on a showing of good cause as it relates to the purposes of the Program."

Comment: Language requiring employers to commit to a work week above thirty-five hours per week is too restricting and needs to be more flexible. Section 185.202(D)(4).

Response: Commerce disagrees with the comment. Section 186.202(D)(4) does not contain such a requirement, however, the definition in §186.104(11) of "full time employment" states that employment must be at least 35 hours per week for a period of 25 consecutive weeks for a single employer, including normal days not worked by an employee such as a weekend or holiday. Commerce believes that training for high skill, high wage jobs requires, as a general rule, training for full time employment.

Comment: Tie percentage award for employees working less than thirty-five hours per week after a year to the 25% retained monies. Section 185.202(F).

Response: It is important in developing high skill, high wage jobs that the award of grants generally be limited to training for full-time employment. However, there is a waiver provision in Section 186.202 of the rules.

Sections 186.201-186.204 are adopted under the authority of Subchapter J of the Government Code, §§481.151 et seq, particularly §481.153, and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

§186.204. Positive Growth to Replacement Ratio. Growth to replacement ratio is calculated by dividing the estimated number of job openings due to growth by the estimated number of job openings due to labor turnover. Commerce will utilize the best data sources available including, but not limited to, the Texas Employment Commission and the United States Department of Labor to determine the numerator and denominator. When the ratio is greater than 1.0, more openings occur through growth than replacement.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 13, 1993.

TRD-9327375

Sedora Jefferson
General Counsel
Texas Department of
Commerce

Effective date: September 3, 1993

Proposal publication date: June 25, 1993

For further information, please call: (512) 320-9401

Subchapter C. Application for Grants

• 10 TAC §§186.301-186.308

The Texas Department of Commerce adopts new §§186.301-186.308 implementing the Smart Jobs Fund program enacted by the 73rd Legislature in Senate Bill 130 through

the addition of Subchapter J of Chapter 481 of the Government Code. Section 186.302 and §186.308 are adopted with changes to the proposed text as published in the June 25, 1993, issue of the *Texas Register* (18 TexReg 4165). Section 186.301 and §§186.303-186.307 are adopted without changes and will not be republished.

Subchapter C, §186.301, concerning Eligibility, requires the Texas Department of Commerce (Commerce) to evaluate applications submitted by one or more employers or by one or more employer organizations, labor organizations, community-based organizations or providers acting in partnership with one or more employers. Section 186.302, concerning Application Requirements, describes who may submit applications, who is not eligible for a grant, the form the grant application must follow and what information the grant application must provide. It also describes the application process and timeline. Section 186.303, concerning Technical Assistance, provides that Commerce may provide technical assistance to applicants in formulating business and training plans and in completing the application, upon request. Section 186.304, concerning the Application Packet and its Review, provides that the executive director of Commerce shall approve a staff designed application packet, and shall review it annually to ensure that it contains the necessary information while being no longer than necessary, does not contain unreasonable demands for information and is readable and understandable. Section 186.305, concerning Funding of the Contracts, provides that the executive director of Commerce shall attempt to award a grant for all approved projects, subject to funds availability, in accordance with funding priorities of §186.306. It also provides that the Policy Board of Commerce shall annually review the funding priorities of §186.306 and advise the executive director of any changes thereto. Section 186.306, concerning Funding Priorities, describes the funding priorities that shall guide Commerce in awarding money under the Smart Jobs Fund program. It also requires the executive director to attempt to insure that employers throughout the state are aware of the program. Section 186.307, concerning Provider Registration, requires providers to register with Commerce, certifying that they have been in business at least one year and that during that period they have met the definition of "existing employer" set forth in the Smart Jobs Fund Program Act. Section 186.308, concerning Contracts, requires Commerce to enter into contracts with successful grant applicants and each employer designee participating in the project. It establishes requirements for the contracts, provides for the withholding of 25% of the training grant for ninety days after the training is completed, which money is to be remitted to the employer if all trainees have been retained in jobs ninety days subsequent to the date of termination of the contract, establishes caps on allowable attrition rates, establishes record retention requirements, contract terminations provisions and certain certification requirements.

Comments in opposition, or requesting changes or additions to Subchapter C. of the

rules were received from the Texas Public Community/Junior College Association, the Texas Employment Commission, Representative Steve Holzhauser, Representative Jim Horn, Representative Yvonne Davis, Representative Rob Junell, Representative Jim Pitts, Representative John Shields, Employment Access for Retirees, Sandra Steen & Associates, the San Angelo Chamber of Commerce, the Creative Rapid Learning Center, Design Plastics, Inc., the Harlingen Area Chamber of Commerce and Texas State Technical College Sweetwater. A letter concerning the legislative intent of the Smart Jobs Fund Program Act, §481.159(c), was received from Senator John T. Montford and Senator Rodney Ellis. Representative Steve Holzhauser submitted comments in which he requested that Commerce delay further action on the rules pending further study of the rules by the House Economic Development Committee. Commerce cannot delay adopting the rules because the Smart Jobs Fund Program Act becomes effective September 1, 1993. Substantive comments received and any revisions to the rules made in response to those comments are discussed in the following narrative.

Comment: Smart Jobs application process should be simple, but actual application process proposed in the rules is very difficult

Response: Commerce has attempted to develop rules for the application process that are accessible to employers and provide maximum simplicity and that will be consistent with Commerce's responsibilities under the requirements of Senate Bill 130. Every attempt has been made to ensure that the application form and process are as simple as possible and do not contain unreasonable demands.

Comment: Businesses will not understand the requirements of the Smart Jobs program which will create a business in Texas composed of consultants to the Smart Jobs process.

Response: Commerce staff will be available to provide technical assistance to the employer in all phases of the program. The application package will contain all information necessary to explain the program and complete the application form.

Comment: The requirement for providers to be in business for one year will impact those individuals and/or businesses who are just starting.

Response: Commerce believes it is important for providers to have been in business for one year so that they are well established, have a track record, and have the demonstrated capability and experience to design curriculum for varied projects.

Comment: There is a lack of emphasis on managerial training, we feel that the rules should recognize the importance of managerial and executive training.

Response: The rules are consistent with the statutory directive of §481.159(b) that reimbursable contract costs may include only those expenses related to direct training in job-related basic skills, including literacy skills, or job-related vocational skills.

Comment: Smart Jobs rules should contain a statement about their limitations and always be distributed with the law as a package.

Response: The commenter seems to suggest that the rules should have a statement that they do not contain the Smart Jobs Fund Program Act. The rules are to implement the Smart Jobs Fund Program Act. In an effort to assist applicants, however, Commerce intends to include a copy of the Act and the rules implementing the Act in the application packet.

Comment: No mention in the rules of the "attempt to ensure that at 20% of the total amount of grants awarded under the program are awarded to minority employers", as if this was somehow less important than the commitment to small business.

Response: This is in §481.155(a) of Senate Bill 130, the Smart Jobs Fund Program Act. Commerce intends to include a copy of the Act in the application package. Commerce also intends to include additional information emphasizing the 20% goal for minority businesses in the application package and in all marketing literature.

Comment: Smart Jobs rules should contain a commitment to disadvantaged workers. Under funding priorities, a commitment of at least a percent of the money should be for disadvantaged or minority workers, as has been done for small business. And possibly give preference to those applications including commitments to disadvantaged workers.

Response: The Smart Jobs Fund Program Act was designed to serve the entire work force and business community. It is an economic development program which is intended to create jobs. The Act, §481.152(a), states that the program is created as a work force development incentive program to enhance employment opportunities and to meet the needs of existing and new industries in the state. There is a statutory goal of 25% of the funding to assist minority businesses.

Comment: Two commenters expressed concern that the rules do not limit the size of the contracts which a business may request. These commenters felt that this would limit the number of companies that will benefit and encourage very large firms to enhance monies already available to them. One of the commenters further commented that there are many small, medium, and medium-large firms that rarely have the opportunities which will become available with Smart Jobs.

Response: There is no provision in the law to limit the size of contracts or the number of contracts an employer or other applicant might get. In order to provide flexibility, Commerce will negotiate each contract separately, keeping in mind the Government Code, §481.155(g), which requires that it attempt to ensure that at least 50% of the total dollar amount of grants awarded under the Smart Jobs Fund Program Act be awarded to small businesses. In addition, the rules allow for a smaller matching requirement for small businesses.

Comment: One commenter stated that there had been some indication some of the Smart Jobs Fund program funds would target

defense-related firms due to the heavy downsizing our state has experienced. The commenter believed that the emphasis should be on those small to medium-sized firms reeling under the ripple effect of the downsizing, but for whom there has been little assistance.

Response: The Smart Jobs Fund Program Act, §481.152(b) sets a goal of 50% of the money be used to fund projects which assist small businesses. The law speaks also to regional effects of various economic and technological change factors in the state as a possible reason to modify applicant requirements. These effects may include the results of defense downsizing.

Comment: A commenter recommends that the Department not tie the availability of funds to whether or not a firm participates in the Texas Workman's Compensation System.

Response: Such participation is not a requirement of the law or the rules for submitting an application or for receiving a grant award. The law does require Commerce to report to the Legislature on the extent of such coverage among the employers receiving grants. Commerce will ask for such information in the application. Comment: Two commenters stated that wage levels for a job existing at the start of the project, increasing to the greater of either 10% of the wage the day before the project started or 75% of the state average weekly wage will prevent many companies from participating—a 10% increase is almost impossible in this economy.

Response: Section 481.155(c)(1) and (2) of the Smart Jobs Fund Program Act require such wage increases. The increase is to be tied to the state average weekly wage for manufacturing production as determined by the Texas Employment Commission on a yearly basis, adjusted for regional variances. Commerce is responsible for specifying the regional adjustments.

Comment: Job-related basic skills training should not have to be hidden in the vocational curriculum. Doing so prevents employers from being able to provide solely basic skills training which is often a prerequisite to technical training.

Response: Commerce recognizes the possibility that occupational skills training curriculum development which includes basic skills (defined as SCANS skills) training may be new to employers or to providers. However, the Smart Jobs Fund training is to focus on high skill, high wage jobs which require an emphasis on occupational skills training leading to higher wages, higher skills, job security, and the ability to care for oneself and one's family. In addition, the SCANS skills cannot be taught in a vacuum and are learned more effectively when related directly to worksite experience or occupationally-related skills training. Where basic skills are needed they should remain within the context of occupational training.

Comment: How will calculations of variances to the state average weekly wage be handled?

Response: Commerce will use regional wage data from Councils of Government Planning

Regions in the state to benchmark adjustments based on how the wage data for each region vary from the state's average.

Comment: Two commenters suggested that the rules should contain language identifying a fiscal agent for the contract.

Response: Commerce believes that this comment has merit but that it is unnecessary to specifically address fiscal agents in the rules. Rather, designation of a fiscal agent for consortia or partnership applicants will be a part of the contract with Commerce. Contracts with individual employers will provide that the employer will serve as the fiscal agent.

Comment: The language referring to eligible applicants as employers and providers is not clear.

Response: The definition of "employer" is found in the Smart Jobs Fund Program Act, §481.151(4). "Existing employer" is defined in the Act, §481.151(6). "Provider" is defined in the Act, §481.151(14). An employer and a training provider may form a partnership for submitting an application resulting in training provided to the employer's business supported by the Smart Jobs Fund program.

Comment: The language specifying grant funds will pay for job-related occupational skills training and job-related basic skills training conflicts with the rule that there are no stand-alone curricula for the basic skills training.

Response: Section 186.302(d) specifies both types of skills training. Since there are no stand-alone curricula for training in job-related basic skills (defined as SCANS skills) the training in those skills would become part of the job-related occupational skills curricula, if an employer elects to propose job-related basic skills training. Without applied references based on occupational worksite or occupation-related classroom training content, it is ineffective to attempt to train in job-related basic skills. The Smart Jobs Fund Program Act requires that employers specify the expected skills and competencies achieved by the projects' participants resulting from the training funded by the Smart Jobs Fund program. Section 186.302(d) further requires employers to specify the assessment method(s) by which they will ascertain the participants' pre- and post-training competencies. Where an employer proposes job-related basic skills training, they will have to specify the assessment method(s) for ascertaining those pre- and post-training competencies as well as the participants' job-related occupational skills competencies.

Comment: List the allowable costs in the development of the application.

Response: The application will be as brief as possible, as required by the Smart Jobs Fund Program Act, §481.156(d), while meeting the requirements of the Smart Jobs Fund Program Act. The cost categories in the budget portion of the application which employers will have to complete will be clear in the application.

Comment: Define what would be a "significant economic benefit to an entire region." This requirement implies a larger burden for

small businesses to meet this criteria, and it is a disincentive for them.

Response: Section 186.302(f)(4) of the rules provides that projects which provide significant economic benefits to an entire region of the state may have all matching requirements waived, at the discretion of the executive director. A list of criteria is included in the rules which will assist in the determination of significant economic development on an individual basis. The Smart Jobs Fund Program Act, §481.157(b), allows Commerce to waive the matching requirements of the Act, §481.157(a), for projects which provide significant economic benefits to an entire region of the state. The provision has significance only for those employers seeking specific waivers to the rules as permitted by the legislation. The rule allows the applicant to explain the economic and social variables relating to reduction in public assistance and increasing personal income. Each applicant may describe whether its business has a significant regional effect.

Comment: Will the Department have funds for technical assistance?

Response: Yes. The Smart Jobs Fund Program Act, §481.156(c), allows Commerce to provide assistance to applicants in formulating a business and training plan. Section 186.303 of the rules explains how Commerce will provide such assistance. Commerce has a skilled and experienced staff and a broad network of referral allies and partners which it will use.

Comment: The funding priorities in the proposed rules are too restrictive and 40% of the money will go to new businesses. Further clarification is required.

Response: The Smart Jobs Fund Program Act, §481.152(b), requires that at least 60% of the funds be used to assist existing employers. Existing businesses can also create new jobs; in fact, the proposed rule is that at least 20% of the 60% funding will be spent on training for new jobs. The funded percentage could be higher under this rule. The intent of the Act is to provide resources to help the economy grow. One way for it to grow is to create new jobs, which often come from new businesses. The legislation also allows partnerships or consortiums and emphasizes small businesses. The purpose of §186.306(b) is to encourage small business partnerships and consortia to apply since this may be a less costly way for small businesses to apply.

Comment: Since Commerce has to contract with each employer and the applicant under §186.308(a) of the rules, will a budget have to be prepared for each employer participating in the project?

Response: Each application will have to show certain costs pertaining to the project. The application budget will have to show matching funds from private employers. Consortia or partnership employers will have to clearly show the extent of their participation in the project.

Comment: Direct training costs should include stipends or wages for participants. Dependent care should be allowable regardless

of the length of training. Several members of the Legislature commented that they never understood that dependent care and transportation costs would be included as reimbursable expenses. Their understanding is that this program is an economic development program, not an entitlement program.

Response: It is not the intent of the Act to pay participants' wage stipends. However, the legislation specifically allows trainee wages to be counted as matching contributions from employers. In response to comments concerning dependent care expenses, §186.308(f)(1) has been revised to provide that in considering whether to include reasonable child care and transportation expenses, the executive director will consider the ability of the employer to provide matching funds to cover the cost of such expenses and the accessibility of other public and private funds to be used for such expenses. This is an economic development program to stimulate the economy and dependent care costs will be limited.

Comment: There should be a schedule of matching funds based on the number of employees, and the requirement should be waived for consortia. "Private" contributions is too restrictive for public sector employers.

Response: The Smart Jobs Fund Program Act, §481.157(a), requires that money provided under a grant for a project must be matched by private funds provided by the employer benefiting from the project. The Act does allow a modification of the rules for small employers with 50 employees or less. Section 186.302(f)(4) of the rule lowers the match to 10% for these employers.

Comment: Comments were received that absolute employer accountability for retention of employees for 90 days, as required by §186.308(c) of the rules, is unreasonable for several reasons. Specifically, an employee may obtain employment with someone other than the original employer; uncontrollable events may preclude retention (death, illness, need to relocate, etc.). One commenter suggested that there should be a provision to allow for an attrition rate of at least 25% given the projected length of training and the lower skill levels of the targeted trainee population. Two senators commented that the Smart Jobs Fund Program Act was not intended to unduly penalize employers who, despite their best efforts and for reasons beyond their control, are not able to achieve a 100% success rate for trainees during the training period plus 90 days. They commented that it would be appropriate to implement the employer accountability provision in a manner that incorporates attrition rates for both the training period and the 90-day retention period. The senators also stated that one would expect the attrition rate during the 90-day retention period to be significantly lower than the attrition rate during the training period.

Response: Commerce agrees that the concerns about absolute employer accountability are reasonable. Employers may develop agreements between themselves and their employees in training whereby the employee stays for 90 days or reimburses the employer for training costs. In addition, flexibility for the employers is allowed at the beginning of the

project where they are allowed state funds for screening of their new employees before entering the training project. The selectivity of the employee is done before the projects begins with total discretion at the will and ability of the employer. In response to the comments received, an attrition rate will be set, capped at 3.0% during the 90-day retention period, and at 12% during the training period. In order to allow small training programs some attrition, the executive director will have authority under the rules to approve different attrition caps for small training programs. Commerce believes that these attrition caps reasonably accommodate unforeseeable circumstances, beyond an employer's control, which result in some trainees leaving prior to the completion of training and the ninety day employment period, while maintaining a high level of employer accountability for providing high skill, high wage employment. Commerce believes that the suggested attrition rate of 25% is too high to maintain employer accountability for providing high skill, high wage jobs. Commerce agrees with the senators that attrition rates should be higher during the training period than they should be during the 90-day employment period, therefore, the cap for attrition during training is significantly higher than the cap allowed for attrition during the employment period.

Comment: Concerning §186.307, consider including criteria to demonstrate provider's qualifications and encourage quality of training considerations and "exemplary practices."

Response: The Act provides criteria for providers which rules support under this section. Further qualification will be based on the employer's needs, judgment, and technical assistance from Commerce staff. Commerce will encourage the best training possible for employers without establishing bureaucracy.

Comment: Establish criteria and qualifications for instructors/trainers and guidelines for instructor hourly pay.

Response: Each employer will design its own training plan and the overall cost, including salaries, through negotiation. Each employer will also be responsible for matching costs. Additional restrictions are not needed.

Comment: Develop an application review process that is based on objective, independently validated criteria.

Response: The Act establishes several criteria which Commerce will follow in establishing such an objective review process.

Comment: Establish and schedule workshops to explain to businesses and providers the criteria that will be used to evaluate applications and proposals.

Response: Commerce is developing a complete marketing plan which will include this information.

Comment: Keep the application process as simple as possible.

Response: In order to meet the statutory goal of 50% of the grants going to small businesses, the application forms will be simple. Commerce will also provide technical assistance which will help simplify the application process.

Comment: Using a set percentage of the state average weekly wage could obstruct some placement because existing wage structures may be lower than the state average weekly wage. If so, employers are likely to refuse to participate. The development of a quality work force must include the least advantaged in our communities. Smart Jobs should not assume that other funding, in particular JTPA, will address training for the economically disadvantaged. It is critical to the future of the state work force that Smart Jobs specifically commit to serving the economically disadvantaged. Low literacy plan participants should be approved for extra time in training.

Response: Section 186.308(h) is required by the statutory requirements of the Smart Jobs Fund Act Program, §481.155(c). Neither the Act nor the rules specify or assume projected lengths of training or skill levels of the targeted trainee population. In fact, the Act does not have a targeted trainee population, and it does not segment the Texas work force. The legislation is employer and job-driven and addresses employers' needs for the entire work force of the state. The rules do not make assumptions about the relationship of other programs or their eligible participants to the Smart Jobs Fund Program. The length of the training contract is determined by the employer in the Business and Training Plan.

Comment: It is unclear whether Smart Jobs Fund money can subsidize trainee wages placed after training.

Response: Smart Jobs Fund program money cannot be used to subsidize trainee wages placed after training. Such subsidization is not the intent of the Act, the purpose of which is to provide training for high skill, high wage jobs.

Comment: Concerning §186.306, the 0.1% assessment that employers will pay to support the Smart Jobs Fund will be levied against the replenishment tax and the entry level tax employers new to Texas pay until they have established a tax rate based on their experience. Two groups will not pay the Smart Jobs assessment: reimbursing employers, including state government and education institutions, and governmental employers that pay a special tax rate calculated annually. The Department may wish to consider whether employers who do not pay the assessment should have a lower priority in receiving grant funds.

Response: While Government entities are eligible, they are a lower priority than those businesses which meet the definitions of small businesses, historically underutilized businesses, and existing businesses which do pay the Smart Jobs investment assessment. This is especially true during the initial start-up of the program when funds are limited.

Comments: Concerning §186.306, where funds available for existing Texas' businesses have been earmarked for new jobs comment has been made that this is too restrictive.

Response: The rules provide that at least 20% of the funds for existing businesses are for new jobs, while allowing for a higher per-

centage. Without this rule, there is no reservation of any of these funds for new jobs.

Comment: Concerning §186.308(b) which requires Commerce to withhold 25% of a training grant for 90 days after the end of a contract. Paragraphs (1) and (2) require the employer to submit certain documentation at the end of the 90 days to prove that 90 days of employment was provided to trainees. Paragraph (2) requires the employer to submit the most current employment record for each trainee participant as submitted to the Texas Employment Commission. The document routinely submitted to the Texas Employment Commission containing evidence of employment is the Employer's Quarterly Report (TEC Form C-3) and the Wage List that is part of the quarterly report (TEC Form C-4). These reports are submitted during the month following the close of each calendar quarter, i.e. during January, April, July, and October. Unless a trainee moved into employment status at the beginning of the calendar quarter, an employer's most recent Quarterly Report would not necessarily show that the requisite 90 days' work had been provided to the trainee after the end of the contract.

Response: Commerce agrees that an employer's most recent quarterly report to the Texas Employment Commission may not show the requisite 90-day retention in the job for which the employee was trained. Paragraph (2) has been deleted and language has been added to §186.308 to allow Commerce to utilize the best source of data available for its monitoring purposes.

Comment: Concerning §186.302, where partnerships are allowable with training providers, comment was made that where when a local training need is identified that a local community college should fill that need.

Response: The Smart Jobs Fund grants will be made based on employers' needs, not regional or local needs. It is also "customized training" where employers determine their needs which may not be part of a standard curriculum. Where there are courses taught which meet local demands, the Smart Jobs Fund will not pay for services (i.e. instructors' salaries) already paid by tax dollars.

In addition to the changes made in response to the comments summarized above, the staff of Commerce modified §186.302(g)(3) and (5) to allow ten business days, rather than five, in which to notify an applicant concerning the completeness of his or her application, and in which to prepare a contract for execution by the applicant subsequent to the approval of the executive director. The staff also added to §186.302(d)(7) a requirement that business and training plans specify the wages to be paid to trainees upon successful completion of training. This information is required by the Smart Jobs Fund Program Act, §481.156(b)(3). Section 186.302 and §186.308 are republished below in their entirety.

Sections 186.301-186.308 are adopted under the authority of Subchapter J of the Government Code, §§481.151 et seq, particularly §481.153, and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

§186.302. Application Requirements.

(a) The following may submit an application for a grant under the Smart Jobs Fund Program:

(1) one or more employers to secure training for demand occupations in a particular industry;

(2) one or more employers acting in partnership with an employer organization, labor organization, or community-based organization to secure training for demand occupations in a particular industry; or

(3) one or more employers acting in partnership with one or more providers to secure training for demand occupations in a particular industry.

(b) Employee leasing firms, including firms contracting for temporary employees, are not eligible for a grant or to participate in grant applications. Employees obtained from agreements with such firms are not eligible to participate as trainees unless the employer complies with the applicable certification requirements of this chapter.

(c) Grant applications must be filed in a form approved by the Department and must include a complete business and training plan and a project budget.

(d) Grant funds awarded hereunder shall pay for job-related occupational skills training and job-related basic skills training that enhance the employer's ability to carry out its business plan. An approved business and training plan will become part of any contract or subcontract for grant funds awarded. The business and training plan will specify a project start date and a project end date. Each business and training plan must contain the information required by the Smart Jobs Fund Program, §481.156(b). Each business and training plan shall also:

(1) describe how the proposed training is consistent with, and will enhance the employer's ability to carry out, its business plan to retain and increase its competitiveness;

(2) describe the job-related occupational skills training curricula for each course to be funded by the grant, including how the course will integrate job-related basic skills training and the length of time each curriculum will require;

(3) describe the job-related occupational skills and job-related basic skills and the competencies the employer expects the participant to achieve upon completion of training;

(4) describe the method(s) used to assess each participant's competencies in the skills for which the project will train

both immediately prior to the start date of the project and upon completion of the training;

(5) specify the number of people to be trained in each curriculum including the number of current employees undergoing retraining for each demand occupation; the number of new hires for each demand occupation; and the number who will occupy new jobs at the completion of training for each demand occupation;

(6) specify the projected cost per person enrolled, trained, hired, and retained in employment;

(7) specify the number and kind of jobs, specified in terms of demand occupations, related to the project training that are available at the start of the project, and that will be available at the end of the project; and the wages to be paid to trainees on successful completion of the project;

(8) specify the geographic location of all training to be provided with grant funds. All trainee travel will be specified in the proposed budget. All trainee travel outside the geographic location in which the employer is located and all trainee travel to locations outside of Texas will be at the discretion of the executive director as specified in the contract. No trainee travel will be reimbursed from grant funds for any purpose other than training as specified in the employer's business and training plan.

(e) The application shall include the following information:

(1) whether the employer is a small business as defined by the Texas Government Code, §481.101(3); and

(2) whether the employer is a woman or minority group member, and if so, to which minority group the employer belongs.

(f) Each application shall include a budget consistent with the requirements of the Smart Jobs Fund Program and these rules. The budget shall include three parts: specification of direct training-related costs; specification of administrative costs; specification of matching contributions. An approved budget will become part of any contract or subcontract for grant funds awarded hereunder.

(1) Direct training-related costs may include: tuition; fees; books and classroom materials; instructor wages and salaries and reasonable benefits if the instructor is not an employee of a public education institution if grant funds are paying tuition and fees; instructor travel and per diem reimbursed at the State of Texas allowable rate; trainee travel outside the employer's specified region of the state as approved by the executive director; reasonable equipment lease or rental costs during the term of

the project; reasonable costs of pre- and post-training participant assessment, including recruiting and identifying trainees; costs of purchasing approved curricula specified in the applicant's business and training plan if they are not already a course offering at a convenient public education institution for which the grant is paying tuition and fees; costs of job analysis, task analysis, curriculum design, and job development as defined by the Department; wages, salaries, and reasonable benefits of instructional aides and trainees' counselors if such personnel are not employees of a public education institution if grant funds are paying tuition and fees; and such other reasonable direct training-related costs as may be appropriate such as preparation and printing of training materials, communications, and consumable supplies. Such costs may include reasonable childcare expenses (except for existing employees who participate in training during normal working hours) in cases approved by the executive director and the costs associated with supporting dependent care expenses of trainees undergoing training in an approved curricula with a term of 6 months to 2 years. These costs may include reasonable childcare expenses and trainees' public transportation expenses (excluding taxi cab fares) related to training. In considering whether to include reasonable childcare and transportation expenses, the executive director will consider the ability of the employer to provide matching funds to be used for such expenses and the accessibility of other public and private funds to be used for such expenses. Continued payments of such expenses is contingent on the employer's satisfaction with the participant's progress during training.

(2) Reimbursement for direct training-related costs will not include the lease, rental, purchase, or construction of facilities, the purchase of capital equipment, salaries, wages, or benefits paid to personnel assigned to manage or report on the project or the contract agreement.

(3) Administrative costs may include the lease or rental of facilities excepting those facilities belonging to public education institutions where the curriculum specified in the business and training plan will be provided and for which the grant is paying tuition and fees; salaries, wages, and reasonable benefits paid to personnel assigned to manage or report on the project or the contract agreement; and such other reasonable expenses not included in direct training-related costs as are necessary to the successful completion of the project.

(4) Employers with fewer than 50 employees receiving a grant must provide a matching amount of private funds in an amount at least equal to 10% of the total project cost. Projects that provide significant economic benefits to an entire region

of the state may have all matching requirements waived at the discretion of the executive director. Such projects must provide information describing the region to which benefits will accrue and projected economic information, in addition to other relevant macroeconomic and microeconomic data that shows positive effects on the region's average weekly wage, tax base, employment rates, family income, purchasing power, expenditures on unemployment insurance, Aid to Families with Dependent Children, Medicaid, and other public assistance, and the availability of job openings in demand occupations. Employers may meet matching requirements by providing in-kind contributions. Documentation for in-kind contributions which are submitted as part of the employer's match must specify the dollar value of facilities, equipment, personnel, and consumable supplies contributed to the project. New equipment will be valued at cost. Existing equipment and facilities will be valued on a pro rata basis for the time used for training consistent with the United States Internal Revenue Service depreciation schedules for such assets based on data provided by the employer. Personnel contributions will be valued on a pro rata basis for the time spent on the project. In-kind contributions may not include the value of facilities, equipment, or personnel existing in public education institutions where such resources already are available to the employer as part of the institution's course offerings and for which the grant is paying tuition and fees. In-kind contributions may match either direct training-related costs or administrative costs. The sum of such contributions will be used to determine the total matching costs required for any grant awarded.

(5) The Smart Jobs Fund shall not pay for the costs of preparing an application nor shall it reimburse an applicant or any employer for retroactive training costs incurred prior to the start date of the contract.

(g) Application Process and Timeline.

(1) Any eligible entity desiring to request funds from the Smart Jobs Fund Program shall submit a completed application for funding.

(2) Within three business days after receiving an oral or written request for an application from an applicant, the Department shall send an application packet to the applicant.

(3) Within ten business days of receiving an application, the Department shall notify the applicant whether the application is complete. If the application is incomplete, the Department shall specify the additional information required to complete the application. With this notification to the

applicant, the Department shall identify a contact person on its staff who is available to assist the applicant in completing the application.

(4) Within 30 business days of receiving a completed application, the Department will complete all further negotiations and the executive director will act on the application. In acting on the application the executive director may approve the application and award a grant; approve the application pending the award of the grant; disapprove the application or request the applicant to modify all or part of the application.

(5) Within ten business days after the executive director approves an application, the Department will have a contract for the project available for execution by the applicant.

§186.308. Contracts.

(a) The Department shall enter into a contract for an approved application with the grant applicant, and each employer designee participating in the project. Each trainee may be required to enter into an agreement with the employer to remain in the job for which they were trained for 90 days after the completion of the training. The contract will be executed by the grant applicant's signature authority, employer designee signature authority, and the Department executive director or executive director designee (notarized signatures for consortium applicants). Four original contracts will be mailed by first class mail to the grant applicant and employer(s) for signature. The original contracts must be returned to the Department within 15 days from the date on the contract cover page for execution by the executive director. A copy of the executed contract signed by the executive director will be mailed by first class mail to the grant applicant and each employer within 5 days of receipt of the signed contract from the grant applicant or employer by the Department. The date of execution by the executive director is the effective date of the contract.

(b) Within 20 days after the expiration of the ninety day training period, the applicant shall submit to the Department for verification the employment records for each trainee and such other data as the Department may require to verify training and employment.

(c) If all trainees in the project have been retained in employment 90 days subsequent to the date of termination of the contract, the amount of the grant award withheld shall be remitted to the employer(s). For each trainee who is not retained in employment for that 90 day period, an amount withheld shall be reduced by the amount of the training costs for that trainee

that is derived from grant money, and any balance shall be remitted to the employer. If there is a negative balance, the employer is liable for the amount for the negative balance and shall remit that amount to the Department not later than the 30th day after the date of correspondence on which the grant applicant or employer(s) is notified of the negative balance by the Department. Notwithstanding any other provision of these rules, there may be an attrition rate for trainees established for the period during the training and for the 90 day period after the training is complete. The attrition rate will be established based on the criteria of each submitted proposal. During the training period there will be a cap on the attrition rate of 12%. During the 90 day period after the training is complete there will be a cap on the attrition rate of 3.0%. The executive director may approve different numerical caps for small training programs in order to allow reasonable attrition in the small 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 August 13, 1993

TRD-9327376

Sedora Jefferson
General Counsel
Texas Department of
Commerce

Effective date: September 3, 1993

Proposal publication date: June 25, 1993

For further information, please call: (512) 320-9401

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as CPA

Experience Requirements

• 22 TAC §511.122

The Texas State Board of Public Accountancy adopts an amendment to §511.122, concerning acceptable experience, without changes to the proposed text as published in the June 4, 1993, issue of the *Texas Register* (18 TexReg 3548).

The amendment will enable the Board to count toward the experience requirement, experience acquired through an accounting internship program.

The Board will consider, on a case-by-case basis, experience acquired through an accounting internship program to determine whether it can be counted toward the experience requirement for certification.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding approved areas of work experience for CPA candidates

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on August 12, 1993.

TRD-9327240

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: September 3, 1993

Proposal publication date: June 4, 1993

For further information, please call: (512) 505-5566

Certification

• 22 TAC §511.161

The Texas State Board of Public Accountancy adopts an amendment to §511.161, concerning qualifications for issuance of a certificate, without changes to the proposed text as published in the June 4, 1993, issue of the *Texas Register* (18 TexReg 3548).

The amendment will enable the Board to delete the requirement for an FBI fingerprint card for certification based on reciprocity. The Board will save time and expense by acquiring the same information from the Texas Department of Public Safety at a substantial savings.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding certification.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 12, 1993.

TRD-9327238

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: September 3, 1993

Proposal publication date: June 4, 1993

For further information, please call: (512) 505-5566

TITLE 25. HEALTH SER- VICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 407. Internal Facilities Management

Financial Services

• 25 TAC §§407.1-407.6, 407.22-407.24

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts amendments to §§407.1-407.6 and §§407.22-407.24, concerning financial services. Sections 407.2-407.4, 407.6, 407.22, and 407.24 are adopted with changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1617-1621). Sections 407.1, 407.5, and 405.23 are adopted without changes and will not be republished.

This amendment provides for more uniform procedures for fiscal operations regarding trust funds and personal effects; deposit and investments of funds; use and control of benefit funds, mail opening procedures; and processing warrants and vouchers after the death of a payee. Minor changes have been made to the text of the rules to clarify the intended policy. In §407.2, language has been added which clarifies that consent to administer a trust fund account may be withdrawn at any time. Language added to §407.5 (f)(2) provides for the client to be informed of the availability of a trust fund and how monies can be securely sent. Section 407.22 clarifies that a restriction placed on funds by a donor does not apply when the client is 18 years old or older and deemed competent; a copy of the cash receipt will be forwarded to the client when funds have been deposited in that client's trust fund; and clients with active trust funds will be informed of their right to request a balance of their trust fund at any time.

Comments were received from one individual. The commenter expressed concern over the terminology "patient" and "client" used to identify persons receiving services. The commenter also objected to the term "merit/demerit" when referring to a specific behavior therapy program. The department responds that although referring to persons receiving services as "clients" is not ideal, it does convey the intended meaning without adding cumbersome language. The term "patient" has either been replaced with "client" or deleted. The department also responds that the term "merit/demerit" has been replaced with more appropriate language.

The same commenter questioned the use of religious funds being limited to Protestant and Catholic accounts. The department responds that the language which limits the use of religious funds has been deleted.

The commenter expressed concern that the rule did not allow for clients to be informed of trust fund issues and procedures or notified of

any deposits made into their trust fund account. The department responds that language has been added to reflect the commenter's concern.

The commenter also felt that any restrictions a donor wishes to place on funds deposited into a client's trust fund should be arranged directly with the client, donor, and the client's interdisciplinary team. The department responds that language has been added to clarify that restrictions placed on funds by a donor do not apply when the client is 18 years old or older and deemed competent.

The commenter believed that the posting of a list of former clients who have unclaimed funds violates confidentiality regulations. The department responds that language has been added clarifying that the posting should not identify the persons listed as clients or former clients.

The amended sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§407.2. Trust Funds and Personal Effects.

(a) All funds received at the facility for the personal use of an individual client who has given consent for the facility to administer the client's personal trust funds will have his or her funds deposited to the client trust fund. Consent may be withdrawn at any time. These funds shall be deposited in national or state banks that are insured by the Federal Deposit Insurance Corporation or in savings and loan associations domiciled in the State of Texas that are insured by the Federal Savings and Loan Insurance Corporation.

(b) At least 75% of the balance of the total amount held in trust at each facility shall be invested with insured Texas financial institutions. Any remaining balance that is not required for current operations of the trust fund shall also be invested.

(c) Each client's trust fund account is separately insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation provided that each client's trust fund records are maintained by the facility. This makes it possible to maintain the trust fund balance in one demand deposit account, bank investment account, and/or savings and loan account.

(d) Earnings from the investment of pooled trust funds are to be prorated to individual client trust fund accounts in one of the following ways:

(1) Prorated to each client on an actual interest-earned basis, or

(2) Prorated to each client on the basis of the average monthly balance for the period of proration.

(e) When a client dies and there are funds remaining in the client's trust fund, such funds should be disposed of as follows:

(1) Where no demand is made for disbursement of funds remaining in the deceased client's account, the facility should dispose of such funds in accordance with the Texas Health and Safety Code, §551.005. The facility shall hold such funds in the client's trust fund account for a period of three years. If at the end of three years, no demand has been made for disbursement of the funds, the facility shall turn such funds over to the State Treasurer. The State Treasurer shall hold the funds for a period of five years; and if, at the end of that five-year period, no demand has been made, the funds shall escheat to the State and shall become a part of the General Fund.

(2) Where demand is made, the facility may release the deceased client's funds in one of the following ways:

(A) Small Estates Affidavit. The facility shall require the claimant to produce a copy of the small estates affidavit which has been filed in and approved by the probate court and certified by the clerk of said court in order to prove that the claimant has been authorized to collect the assets or a portion of the assets of the deceased client's estate.

(B) Guardian of the Estate. The facility shall release any remaining trust funds to such guardian. In order to prove that the person claiming the remaining trust funds is the guardian of the deceased client's estate, the facility shall require the claimant to provide letters of guardianship which indicate that the claimant is guardian of the deceased client's estate.

(C) Executor or Administrator of the Estate. The facility shall release any remaining trust funds to the representative appointed by the probate court to administer the estate. The facility shall require the representative to produce testamentary letters or letters of administration in order to prove that the representative has been authorized by the probate court to collect all assets of the deceased client's estate.

(D) If the probate court has determined that there is no necessity for administration of the deceased client's estate, the facility shall release any remaining trust funds to the distributees of the deceased client. The facility shall require a claimant to produce the court order refusing application for administration in order to

prove that the claimant is collecting the remaining trust funds pursuant to the Texas Probate Code, §180. In the event the court order does not set forth the manner in which the assets of the deceased client's estate are to be distributed, the facility shall require the claimant to obtain a court order which shows that the claimant has been determined by the probate court to be a lawful heir of the deceased client's estate.

(E) When any questions arise concerning the proper distribution of assets remaining in a deceased client's trust fund, the facility is advised to seek legal counsel.

(F) In cases where the remaining funds are \$100 or less and the facility feels reasonably sure that the person claiming the funds is the lawful heir and there would probably not be a future dispute over distribution of said funds, the facility may use its discretion as to whether to distribute the funds with the caveat that the release of such funds would be without any legal protection from potential liability by wrongfully distributing assets of the estate.

(3) Exceptions. Any funds deposited in a deceased client's trust fund pursuant to a specific trust arrangement or any funds which have been designated for a specific purpose by the facility prior to the death of the client shall be disposed of pursuant to the terms of that arrangement or pursuant to the purpose designated by the facility. Examples would include where funds are specifically set aside by a grantor for funeral expenses or where the facility has designated specific funds prior to the death of the client to be used to pay funeral expenses.

(4) In order to comply with the Texas Department of Human Services' rules concerning funds of deceased clients, the facility should, within 45 days after the death, forward a notarized affidavit outlining the disposition of the funds to the Texas Department of Human Services.

§407.3. Deposit and Investment of Funds.

(a) All funds received shall be deposited with the state treasurer or in a national or state bank which is a member of the Federal Deposit Insurance Corporation or in a savings and loan institution which is a member of the Federal Savings and Loan Insurance Corporation. The balance of any bank account must never exceed the FDIC/FSLIC-insured limit unless it is secured by a bank pledge of collateral under the provisions of Texas Civil Statutes, Article 342-603. All funds which are required to be deposited in the State Treasury must be deposited within three working days of receipt.

(b) It is desirable, if practical, that the funds of the department be deposited in more than one bank in the immediate area, without preference to any one bank. Conflict of interest situations resulting from relationships between facility employees with any degree of control over bank accounts or investments and employees or officers of a financial institution shall be avoided.

(c) Funds which are not required for current use should be invested with insured Texas financial institutions in time deposit certificates, savings accounts, or the Central Office investment plan. The rate of return and the availability for withdrawal in case of emergency shall be considered in making the selections.

(d) The investment source selected must provide adequate security for the total amount invested.

(e) The Central Office offers a temporary, current interest rate, investment plan for the benefit of all facilities. Funds may be transferred to the Central Office in multiples of \$5,000 for immediate return when requested. Interest payments are remitted by the Central Office at the end of each month.

(f) Earnings from investment of clients' trust funds shall be allocated to individual trust fund accounts. Earnings on invested funds other than trust funds shall be added to the funds from which earnings are derived.

(g) A register of all investments shall be maintained in the office of the business manager/assistant superintendent for administration. It shall include a description of each investment, the amount and date, interest due dates, interest paid dates, maturity date, and reinvestment information. The business manager/assistant superintendent for administration shall use this register to verify collection of income and principal and to plan the investment program.

\$407.4. Benefit Funds: Use and Control.

(a) The Texas Health and Safety Code, §551.004 provides that the superintendent/director shall be the trustee of a special fund to be designated the benefit fund. The superintendent/director may expend the monies in any such fund for the education or entertainment of the clients of the facility or for the actual expense of maintaining the fund at the institution.

(b) The source of benefit funds are:

- (1) private donations or gifts;
- (2) interest earned from investment of benefit funds;
- (3) proceeds, rentals, or commissions received from vending machines; and

(4) proceeds, rentals, or commissions received from pay station telephones.

(c) Except for specific purpose funds, benefit funds may be used only for the purposes of education or entertainment of clients as a body. Each expenditure must be of general benefit to the population of the facility. This does not mean or imply that every client must benefit from each expenditure from the benefit fund. The guiding principle in the expenditure of these funds is that no partiality or preferential treatment is shown individuals or selected groups of clients. Expenditures from benefit funds must be properly documented to show the exact purpose and, if practical, to show the name of the clients benefiting from the expenditure.

(d) The following are examples of expenditures that meet the requirement pertaining to education or entertainment.

(1) purchase of supplies for a client behavior therapy program which involves a token economy or point level system;

(2) client outings, including necessary admission fees and meals for those employees who are required to accompany a group of clients;

(3) coffee for clients;

(4) religious items;

(5) educational books and supplies;

(6) salaries of teachers on a temporary basis (includes athletic instructors and recreation assistants);

(7) playground equipment, T.V. sets, record players, and stereos, for use by the clients as a whole in the living areas; and

(8) grocery items purchased for a class in home economics.

(e) The following are examples of expenditures that do not meet the requirement pertaining to education or entertainment.

(1) travel of state employees;

(2) operating supplies.

(3) maintenance supplies—lumber, circuit breakers, and other similar items;

(4) supplies for training programs in volunteer center;

(5) nursery stock;

(6) clothing for individual clients;

(7) Regular cash issues to clients with no trust funds;

(8) purchase of canteen coupon books for issue to clients with no trust funds;

(9) extra pay for facility employees;

(10) individual transportation for home visits by clients; and

(11) furniture and equipment normally purchased from state-appropriated funds.

(f) Some funds may be donated for a specific purpose in which case they should be used for that purpose if state regulations permit. In case of a conflict, the donor should be contacted and requested to specify a purpose that will permit expenditure of the funds in compliance with state regulations.

(g) The chaplain fund is a special purpose fund which may be provided for recording contributions at religious services and special gifts designated for such fund by the donor. The following lists indicate the approved source for purchase of chaplaincy equipment and supplies. While most of the items listed in paragraphs (2) and (3) would be considered in the categories of "education or entertainment" under the procedure for handling benefit funds, the proper handling of a chaplain's fund must be based on the understanding by the donors that the funds will be used for the purposes which are listed. Expenditures from the fund should be limited to the items on the list which have been approved by the chaplains, the advisory committee, or the chaplain coordinator.

(1) Items to be provided by the facility.

(A) adequate space for worship (with necessary equipment);

(B) chaplain offices accessible to clients, family, staff, and public (with necessary equipment);

(C) classroom(s) and conference room(s) (with necessary equipment);

(D) altar and altar equipment (i.e., pulpit, lectern, confessional stand, kneeling rails, cross, candles, Star of David, etc.);

(E) hymnals and missalettes;

(F) weekly church bulletins;

(G) communion service supplies (i.e., candies, hosts, wine or grape juice, portable communion/altar set, etc.);

- (H) audiovisual equipment;
- (I) organ and piano for religious services and fellowships;
- (J) public address system;
- (K) religious classroom supplies (i.e., blackboards, maps, text materials, etc.); and
- (L) counseling room(s) in living areas; and
- (M) personnel (i.e., chaplain assistants, musician, and secretary).

(2) Items to be provided by facility if current appropriations are available or through donations to the chaplain's fund. Items in paragraph (1) of this subsection are also included here if current appropriations are not available.

- (A) choir and vestment robes;
- (B) religious books, magazine, audio tapes, video tapes, etc. for medical and client libraries;
- (C) classroom supplies;
- (D) sheet music for choir organ and piano music scores for dramas;
- (E) religious records, audio tapes, video tapes, etc.;
- (F) musical instruments (i.e., portable organ, guitar, bells, rhythm instruments, etc.);
- (G) pulpit supplies;
- (H) printed materials for local clergy (educational and announcement); and
- (I) refreshments for chapel socials.

(3) Important items for chaplaincy ministry. These items cannot be the responsibility of the facility and must come from the chaplain's fund or other types of gifts (most of these items become the property of clients).

- (A) Bibles, New Testaments, Koran, and Hebrew scriptures (Spanish and

English);

- (B) devotional and prayer booklets, tracts;
- (C) personal religious articles (i.e., rosaries, medals, statues, holy cards, scapulars, crucifixes, crosses, prayer cards, etc.);
- (D) special religious year remembrances (i.e., Holy Week, Easter, Christmas, Ramadan, Rosh Hashanah, etc.);
- (E) drama equipment (i.e., props, puppets, costumes, etc.); and
- (F) other religious materials.

(h) In accordance with approved procedures, all receipts should be deposited in a bank account and all expenditures should be made by check signed by the business manager/assistant superintendent for administration or administrator and countersigned by the superintendent/director or designees. Approved purchasing procedures applicable to other funds should be adhered to in every respect.

(i) The actual expense of maintaining benefit funds may include expenditures to cover administrative errors which arise in the administration or disbursement of benefit funds and trust funds, provided the following restrictions are met:

- (1) the amount of benefit funds expended to cover any single loss shall not exceed \$250;
- (2) in each instance of loss, prior approval for the use of benefit funds to cover the administrative error must be obtained from the superintendent or director of the facility;
- (3) the circumstances surrounding each administrative error must be fully documented;
- (4) for auditing purposes, the expenditure, if approved and made, must be charged to cash shortage;
- (5) benefit funds shall not be used to cover losses which result from the gross negligence of any employee or employees;
- (6) the facility in which the administrative error occurred shall take such action as is necessary to correct the error and/or prevent its recurrence, including, but not limited to, the counseling of employees on correct procedure for the administration and disbursement of benefit funds and trust funds; and
- (7) employees responsible for administrative errors in the administration

or disbursement of benefit funds and trust funds may be subject to disciplinary action as described in the department's Human Resource Services Operating Instruction, 406-3.

§407.6. Commercial Solicitation on Grounds. Commercial solicitation on the grounds of the state facility shall be only in accordance with the instruction and direction established by the superintendent/director. Such solicitation should be at times and places specifically authorized for that special area of concern. For instance, general salesmen should be directed to the purchasing and supply office. Drug salesmen should be given instructions as to what times and at what places they may meet with the formulary committee or the pharmacist or other medical staff. Employees are to be reminded that they are prohibited by law from accepting gifts from salesmen or others. If such gifts are offered, they must either be rejected or handled as any other donated item to the facility.

§407.22. Trust Fund Procedures.

(a) Amounts received for benefit of clients specified by name are recorded in that client's trust fund account. A subsidiary ledger account is established for each client and any restriction imposed by the donor is recorded on that ledger account. Each receipt or disbursement is posted to that ledger account. Funds received for the general use of clients are considered as benefit funds. (See §407.23 of this title (relating to Benefit Fund Procedures).

(1) The cashier receives all cash for clients, prepares five copies of the official cash receipt, furnishes the original receipt to the donor, forwards one copy to the client, forwards one copy to accounting, forwards one copy to the reimbursement office, and retains one copy in the receipt book. At close of business each day, the cashier forwards the cash receipts to accounting for posting to the trust fund and for preparing cash vouchers. After the receipts are posted to the subsidiary ledger, they are marked to indicate action completed and filed with the cash voucher.

(2) Disbursements from trust funds are made for canteen merchandise coupons, cash withdrawals given to the client and cash given to an employee to make an authorized purchase for a client or pay a client debt. The request for disbursement is approved by the subsidiary ledger clerk as to availability of funds and absence of donor restrictions (Donor restrictions do not apply when the client is 18 years old or older and deemed competent.); the cashier then makes the disbursement and secures supporting documentation.

(A) If cash is given to the client the client may sign beside an entry on the list of disbursements. When authorized purchases are made for a client, sales slips, receipted bills, or other vouchers signed by the client (or two employees acting for the client) are secured, posted to the subsidiary ledger, and filed in support of the check voucher in the same manner as cash receipts are filed with the cash voucher.

(B) A cash withdrawal request list or a canteen merchandise coupon request list may be prepared for several clients and the total disbursed by the cashier to an authorized employee. This list shall provide space for the client's signature or mark. Two employees shall act as a team in making disbursements and shall sign a certification on the list, that the monies or coupons listed were disbursed to the payees on the date shown. The disbursing team members shall be rotated frequently. If the superintendent/director desires that a caseworker be a permanent member of the team, the second team member shall be rotated.

(3) Funds are deposited and invested in accordance with §407.2 of this title (relating to Trust Funds and Personal Effects) and §407.3 of this title (relating to Deposit and Investment of Funds). Earnings from investment of funds are deposited to the each client's trust fund account.

(4) Control accounts for trust funds are 1113xxx0, Trust Fund, and 23110000, Trust Fund Payable. The balances of the 23110000 account must equal the total of all subsidiary ledger accounts at the close of business each month.

(b) When a client leaves a facility, the balance in his/her trust fund is refunded. If the refund check is outstanding for three months, a request that the check be cashed shall be sent to the payee. If no reply is received after one additional month, a "stop-pay" order shall be issued and the amount restored to the trust fund account.

(c) The trust fund clerk reviews all inactive accounts at least once a year and furnishes the chief accountant with a list of all applicable account balances for escheat to the state under provisions of current statutes. At this time, all balances subject to escheat to the state shall be processed as follows:

(1) Identify all accounts held for former clients who are deceased, on unauthorized leave, discharged, or furloughed for a period longer than three years.

(2) Mail a letter to the last known address of the client or to donor. This letter should advise that the money will be escheated to the state treasurer if not claimed within 10 days.

(3) At least 10 days before turning the funds over to the state treasurer, post a list of clients' names and funds to be escheated in the hall of the administration building of the facility. The posting should not identify the persons listed as clients or former clients.

(d) Trust fund ledger entries shall include descriptions or codes indicating source of funds and purpose of disbursements.

(e) Clients who have an active trust fund account shall be informed of their right to request the balance of their trust fund at any time.

§407.24. Processing Warrants and Vouchers after Death of Payee.

(a) In the event that a person who had provided goods or services to the state dies before having executed the purchase voucher for payment for those goods or services, another person may complete the form. The business manager/assistant superintendent for administration of the facility, the spouse of the deceased, or other responsible party may complete a purchase voucher for goods or services furnished to the state, by adding a statement such as "prepared from records of the deceased."

(b) The business manager/assistant superintendent for administration or delegated authority must be satisfied that the claimant to a warrant drawn to the estate of the deceased is entitled to the warrant before releasing the warrant.

(c) A warrant payable to the estate of the deceased is payable by the state treasurer as follows:

(1) If endorsed by the administrator, a copy of the court certificate of appointment must be attached and accompany the warrant to the state treasurer's office.

(2) If endorsed by the payee's heirs, an affidavit shall be signed by two reputable persons stating that the endorsers are the sole surviving heirs, and are all of age and competent to act for themselves. This affidavit shall be attached and accompany the warrant to the state treasurer's office.

(3) If endorsed by the guardian of an heir, the warrant shall have a certified copy of the court certificate of guardianship attached when presented to the state treasurer's office for payment.

(4) One of the heirs may endorse the warrant, attaching a power of attorney or certified copy thereof, signed by all of the remaining heirs. The power of attorney shall state that the signers are the sole surviving heirs and are all of age and competent.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 10, 1993.

TRD-9327085

Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: August 31, 1993

Proposal publication date: March 12, 1993

For further information, please call: (512) 465-4670

◆ ◆ ◆
TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 103. Procedural Rules

Adjudicative Hearings

• 31 TAC §103.46

The Texas Air Control Board (TACB) adopts an amendment to §103.46, concerning Prehearing Conference, without changes to the proposed text as published in the May 7, 1993, issue of the *Texas Register* (18 TexReg 2937).

The proposed changes have been developed in response to an initiative by the Hearings Oversight Committee of the TACB to improve the hearings process.

The proposed changes require that all parties to the hearing make pertinent information available to all other parties at a time and place to be determined by the hearing examiner. The previous language only required such disclosure of the permit applicant.

A public hearing was held in Austin on June 1, 1993, to receive testimony regarding the proposal. Written testimony was received from three commenters during the comment period which ended June 11, 1993: the Texas Chemical Council (TCC); the Ethyl Corporation (Ethyl); and one individual.

TCC and Ethyl expressed support of the proposal and urged its adoption.

The individual expressed the opinion that the proposed rule will increase the difficulty for the public in participating in a contested case hearing. The proposed rule has been developed to improve the hearings process and encourage public input. All parties to the hearing will now be required to disclose pertinent information to the public, instead of just the permit applicant. While this may require more work for the public participants in advance of the hearing, it should allow the hearing to proceed more expeditiously.

The individual commenter further expressed concern that the person requesting the hearing be given at least 90 days from the hearing date to prepare the information, as opposed

to 30 days. Under the proposed rule it is up to the hearing Examiner to determine the appropriate date for the exchange of information. Each case is different and it is appropriate to let the Examiner make the determination of the best date for the exchange in consideration of the factual circumstances of that case.

The amendment is adopted under the Texas Health and Safety Code (Vernon 1990), Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 13, 1993.

TRD-9327384

Cyril J. Durrnberger
Assistant Deputy Director,
Air Quality Planning
Texas Air Control Board

Effective date: September 6, 1993

Proposal publication date: May 7, 1993

For further information, please call: (512) 908-1482

TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 71. Creditable Service

• 34 TAC §§71.14, 71.19, 71.21

The Employees Retirement System of Texas (ERS) adopts new §§71.14, 71.19, and 71.21, concerning Creditable Service. New §71.19 is adopted with changes to the proposed text as published in the July 2, 1993, issue of the *Texas Register* (18 TexReg 4287) New §71.14 and §71.21 are adopted without change and will not be republished.

The new sections are justified in order to implement legislation passed by the 73rd Legislature that allows members to establish service credit in yearly increments by lump-sum purchase and payroll deduction, permits the transfer of service credit between the Teacher Retirement System of Texas (TRS) and the ERS, and transfers the membership of certain state employees from membership in the TRS to membership in the ERS.

The new sections will function by providing alternate ways for members to purchase service credit, providing for efficient service credit transfers between the TRS and the ERS, and providing for the transfer from the TRS to the ERS membership of certain state employees

The agency received no comments regarding adoption of these new sections.

The new rules are adopted under the Government Code, §815.102, which gives the Em-

ployees Retirement System of Texas the authority to adopt rules for the administration of the fund of the retirement system.

§71.19. Transfer of Service Between the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS).

(a) Purpose. These rules are intended to implement the provisions of the Government Code, Chapter 805, concerning the transfer of credit between the Teacher Retirement System of Texas and the Employees Retirement System of Texas.

(b) Forms.

(1) Applications for transfer will be made using forms prescribed by the ERS.

(2) The ERS will cooperate with the TRS in an effort to make such application forms for the ERS comparable to those used by the TRS.

(c) Notice.

(1) A person who elects to transfer service credit pursuant to these rules must file the appropriate form to make such transfer not more than 90 days prior to the person's retirement effective date, but not later than said effective date.

(2) The ERS will notify the TRS of the pending transfer not later than 30 days following said effective date.

(d) Manner of transfer.

(1) Service credit and assets will be transferred through electronic and hard copy documentation pursuant to these rules, and the ERS will maintain records of such transfer permanently.

(2) Any transfer of service credit to the ERS must reflect years of credit, average salary, periods of service, method of calculation, and the manner used to calculate the time period involved, including and military credit purchased.

(3) Any transfer of service credit to the ERS must include specific data regarding the pre-tax and after tax contributions by the person, penalty interest, earned interest, and any other dollar amount which will be part of the transfer.

(4) Assets to fund the portion of the annuity attributable to service with the TRS will be transferred to the ERS pursuant to agreement with the TRS.

(5) Service transferred from the TRS will be established in an employee class account for the benefit of the member.

(e) Calculation of asset value. The value of assets transferred pursuant to these rules will be calculated on the basis of the 1983 Group Annuity Mortality Table and a discount rate equal to the yield for ten-year

United States Treasury notes averaged during the August prior to the effective transfer date and rounded to the nearest 0.25%. The actuarial value of an annuity paid on the basis of these calculations will be determined as of the date the first payment is due.

(f) Purchase of refunded service.

(1) A member of the TRS who cancelled membership in the ERS by taking a refund of his individual account prior to September 1, 1993 may repurchase his service credit at any time prior to retirement. Such persons do not have to become a contributing member of the ERS in order to purchase such cancelled service credit.

(2) A person who cancels membership in the ERS by taking a refund of his individual account after August 31, 1993, must meet the general requirements for reinstatement of purchase of service credit in the ERS.

(g) Military credit. Any transferred military service which would result in a member receiving service credit in excess of that permitted under the ERS rules will not be accepted.

(h) Termination of membership. The transfer of ERS credit to the TRS will terminate membership in the ERS, and will cancel all rights to benefits from the ERS based on that service.

(i) Service in the month following retirement. A retirement shall be cancelled and membership reinstate if a member, who transferred service and retired pursuant to this chapter, holds a position during the month following retirement with the retirement system on which benefits are based.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 11, 1993.

TRD-9327194

Charles D Travis
Executive Director
Employees Retirement
System of Texas

Effective date: September 1, 1993

Proposal publication date: July 2, 1993

For further information, please call: (512) 867-3336

Chapter 73. Benefits

• 34 TAC §73.33

The Employees Retirement System of Texas (ERS) adopts new §73.33, concerning Benefits, without changes to the proposed text as published in the July 2, 1993, issue of the *Texas Register* (18 TexReg 4287).

The new section is justified in order to implement legislation passed by the 73rd Legisla-

ture which allows certain members to receive additional retirement benefits if they retire by a certain time during the next biennium.

The new section will function by allowing members to retire at the earliest eligible date and to receive additional benefits if retirement takes place during the next biennium.

The agency received no comments regarding the adoption of the new section.

The new section is adopted under the Government Code, §815.102 which give the Board of Trustees of the Employees Retirement System of Texas the authority to adopt rules and for the administration of the funds of the retirement system.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 11, 1993.

TRD-9327197

Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Effective date: September 1, 1993

Proposal publication date: July 2, 1993

For further information, please call: (512) 867-3336

Chapter 77. Judicial Retirement

• 34 TAC §77.15

The Employees Retirement System of Texas (ERS) adopts new §77.15, concerning Judicial Retirement, without changes to the proposed text as published in the July 2, 1993, issue of the *Texas Register* (18 TexReg 4287).

The new section is justified in order to implement legislation passed by the 73rd Legislature that allows Judicial Retirement System of Texas Plan One and Plan Two members to establish service credit in yearly increments by lump-sum purchase and payroll deduction.

The new section will function by allowing members to purchase service credit in way other than lump-sum purchase.

The agency received no comments regarding the adoption of the new section.

The new section is adopted under the Government Code, §835.002 and §840.002, which give the Board of Trustees of the Employees Retirement System of Texas the authority to adopt rules and provide for forms as it finds necessary for the administration of the retirement system.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 11, 1993.

TRD-9327195

Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Effective date: September 1, 1993

Proposal publication date: July 2, 1993

For further information, please call: (512) 867-3336

Chapter 81. Insurance

• 34 TAC §§81.1, 81.3, 81.7, 81.11

The Employees Retirement System of Texas (ERS) adopts amendments to §§81.1, 81.3, 81.7, and 81.11, concerning Insurance. Section §81.7, is adopted with changes to the proposed text as published in the July 2, 1993, issue of the *Texas Register* (18 TexReg 4288). Sections 81.1, 81.3, 81.11, are adopted without changes and will not be republished.

The amendments are justified in order to implement changes to the composition of the Group Benefits Advisory Committee (GBAC) enacted by the 73rd Legislature in Senate Bill 1181; the coordination of Chapter 81, Insurance program rules, with Chapter 85, Flexible Benefits program rules; and the coordination of coverage and leave rules with the recently enacted federal Family and Medical Leave Act of 1993.

The amendments will function by improving the representation of program members through an expanded, reconstituted GBAC; the coordination of existing procedures with the Family and Medical Leave Act of 1993; and the requirements of the Flexible Benefits program.

The agency received no comments regarding the adoption of the amendments.

The amendments are adopted under the Insurance Code, Article 3.50-2, §4, which provides the Board of Trustees of the Employees Retirement System of Texas with the authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of the Texas Employees Group Insurance Benefits Act.

§81.7. Enrollment and Participation.

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

(f) Changes in coverages beyond the first 31 days of eligibility.

(1) An employee or retiree who wishes to add or increase coverage, add eligible dependents to the basic plan, or change coverage from an HMO to the basic plan more than 30 days after the initial date of eligibility must make application for approval by providing evidence of insurability acceptable to the Employees Retirement System of Texas. Unless not in compliance with Chapter 85 of this title (relating to Flexible Benefits), coverage will become effective on the first day of the month following the date approval is received by the employee's agency benefits coordinator or by the Employees Retirement System, if the applicant is a retiree or an individual in a

direct pay status. If the applicant is an employee in a leave without pay status, it will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void and a new application shall be required. An employee or retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal.

(2) The evidence of insurability provision applies only to those employees, retirees, or eligible dependents who:

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

(C) enrolled in any coverage under the basic plan and later dropped or were canceled from such coverage, except as provided in subsections (h)(2) and (3) of this section.

(3) An employee or retiree who wishes to add eligible dependents to his or her HMO coverage may do so during the annual enrollment period, when a spouse loses employment and/or health coverage for reasons other than voluntary cancellation, when a dependent moves into the service area of the employee's or retiree's HMO, and as provided in paragraph 10 of this subsection, unless not in compliance with Chapter 85 of this title.

(4)-(8) (No change.)

(9) Unless not in compliance with Chapter 85 of this title, an employee or retiree who wishes to decrease or cancel coverage may do so at any time. Coverage will continue through the last day of the month following the date of application.

(10)-(11) (No change.)

(g) (No change.)

(h) Reinstatement in the program.

(1) Unless specifically prohibited by these sections or contractual provisions, an employee who terminates employment and returns to active duty within the same contract year may reinstate health coverage for himself and his dependents identical to, and optional coverages no greater than, those that were in effect when the employee terminated by submitting an application for the coverages. The application must be submitted on the first day the employee returns to active duty, and, unless the employee completes the application indicating coverages are to be effective on the first day of the month following the date the employee returns to active duty, the coverages will be effective on the day the employee returns to active duty. Dependents

acquired during the break in employment may be added on the application. A returning employee who has selected coverages less than those for which the employee is eligible may reinstate any waived coverages by submitting the appropriate application during the 30 days following the date the employee returns to active duty. The change in coverage will become effective on the first day of the month following the date of application. If the coverage of an employee returning to active duty within the same plan year is affected by Chapter 85 of this title, the employee must reinstate all coverages that were in effect on the termination date, and the effective date of reinstated coverage must be the date the employee returns to active duty.

(2) (No change.)

(i) Continuing coverage in special circumstances.

(1) (No change.)

(2) An employee in a leave without pay status may continue the types and amounts of health, life, and dental coverages in effect on the date the employee entered that status for a maximum period of up to 12 months. The maximum period may be extended for up to 12 additional months for a total of 24 continuous months, provided the extension is certified by the department to be for educational purposes. During this period, the employee, other than an employee whose leave without pay status is a result of the Family and Medical Leave Act of 1993 (Public Law 103-3), may not change coverage except that, employees in a leave without pay status may: add new dependents, including newborns; reduce or cancel coverage; and make such coverage changes as are permitted during the annual limited enrollment period as described in subsection (f)(7) of this section. Disability income coverage for an employee in a leave without pay status, other than an employee whose leave without pay status is a result of the Family and Medical Leave Act of 1993 (Public Law 103-3), will be suspended beginning on the first day of the month in which the employee enters the leave without pay status and continuing for those months in which the employee remains in that status. Suspended disability income coverage for an employee returning to active duty from a leave without pay status will be reactivated effective on the first day the employee returns to active duty if the entire period of unpaid leave was certified by the agency as approved leave without pay. The coverages of an employee whose leave without pay status is a result of the Family and Medical Leave Act of 1993 may continue at the same level of benefits and contributions that would have been in place if the employee had not taken the leave.

(3)-(11) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 11, 1993.

TRD-9327196

Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Effective date: September 1, 1993

Proposal publication date: July 2, 1993

For further information, please call: (512) 867-3336

Chapter 85. Flexible Benefits

• 34 TAC §85.3

The Employees Retirement System of Texas adopts an amendment to §85.3, concerning Flexible Benefits, without changes to the proposed text as published in the July 11, 1993, issue of the *Texas Register* (18 TexReg 3664).

The amendment is justified in allow a state or higher education employee who has elected to not participate in premium conversion to continue this election from year to year without executing a new form each plan year. The employee may again participate in premium conversion by executing a form to do so.

The amendment will function by simplifying administrative procedures and by not requiring state and higher education employees to re-execute a form to not participate in premium conversion each year.

The agency received no comments regarding the adoption of the amendment.

The amendment is adopted under Insurance Code, Article 3.50-2, §4(k), which provides the Employees Retirement System of Texas with the authority to promulgate all rules and regulations necessary to implement and to administer a Flexible Benefits (Cafeteria Plan) program for state employees.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 11, 1993.

TRD-9327198

Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Effective date: September 1, 1993

Proposal publication date: July 11, 1993

For further information, please call: (512) 867-3336

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 72. Memorandum of Understanding with Other State Agencies

Memorandum of Understanding Concerning Coordination of Services to Disabled Persons

The Texas Department of Human Services (DHS) adopts the repeal of §§72.201-72.210 and new §§72.201-72.212. The new §§72.202, 72.203, 72.204, 72.207, 72.209, and 72.212 are adopted with changes to the proposed text published in the February 12, 1993, issue of the *Texas Register* (18 TexReg 924). The new §§72.201, 72.205, 72.206, 72.208, and 72.210-72.211 are adopted without changes to the proposed text, and will not be republished.

The repeals are justified to delete obsolete language. The new sections are justified to clarify the financial and service responsibilities of each agency in relation to persons with disabilities and address how each agency will share data relating to services delivered to persons with disabilities.

The repeals and new sections will function by coordinating services and ensuring that information, service planning, and service delivery for persons with disabilities is shared at the local level.

Comments were received from the Texas Department of Protective and Regulatory Services, the Texas Department of Mental Health and Mental Retardation, the Texas Commission for the Deaf and Hearing Impaired, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation Lufkin State School, and the Texas Physical Therapy Association. The comments offered numerous suggestions for changes that update and clarify the functions of the agencies. The suggestions contained no substantive policy changes.

Response: To clarify the agencies responsibilities, DHS has incorporated the suggestions made by the Texas Department of Protective and Regulatory Services in §72.209, the Texas Department of Health in §72.203; the Texas Department of Mental Health and Mental Retardation in §72.204; and the Texas Commission for the Deaf and Hearing Impaired in §72.207.

The department has initiated minor editorial changes to §72.202.

In §72.202(a)(4) DHS corrected the income eligibility ceiling for community care services to \$1,302.

In §72.202(a)(4)(A) DHS included the description of respite services by adding clause (vi) to include an additional in-home community care service.

In §72.202(a)(4)(B) DHS replaced the term "certified foster homes" with "enrolled foster homes" and has changed the number of clients provided care in enrolled foster homes from three to four clients.

In §72.202(a)(4)(C) DHS replaced the title for the shared attendant care project with the Client Managed Attendant Services Program. Also in that same subparagraph, DHS has updated the statistical information to show that 690 clients in nine sites throughout the state are served and that the FY 1993 budget is \$5.5 million.

One comment suggested adding a quarterly report of abuse and neglect in TXMHMR facilities.

Response: DHS has determined that the reports produced by the various agencies will remain as proposed.

One comment suggested adding physical therapy to the list of related services administered by TEA relating to the needs of children and youth to enable a student with disabilities to benefit from specialized instruction.

Response: DHS believes that the rule sufficiently provides for services available to enable a student with disabilities to benefit from specialized instruction. DHS is adopting the section as proposed.

The department has moved certain mandatory and optional Medicaid services from §72.202(a)(1)(C)(i) and (ii) to §72.203(a)(5) and (6). The department also moved the regulation of maternity homes from §72.203(a)(5)(A) to §72.209(a)(2)(B). Additionally, the department has moved the functions of the Long Term Care Program under §72.203(a)(5) to §72.202(a)(5). These changes were made to reflect recent legislation that changed responsibilities for the agencies.

The effective date for this agreement as proposed in §72.212 has been updated to September 1, 1993.

• 40 TAC §§72.201-72.210

The repeals are 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 and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on August 11, 1993.

TRD-9327180

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Effective date: September 1, 1993

Proposal publication date: February 12, 1993

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

• 40 TAC §§72.201-72.212

The new sections are 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 and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§72.202. Texas Department of Human Services (DHS).

(a) Financial and service responsibilities to persons with disabilities.

(1) Health care services.

(A) One of the most important Medicaid benefits provided to low-income individuals is comprehensive health care services. In Texas, Medicaid services are funded by a combination of approximately 40% state funds and 60% federal funds. The federal matching rate is based upon the state's average per capita income.

(B) Medicaid eligibility is linked by federal law to eligibility for Supplemental Security Income (SSI), the financial assistance program for low-income aged and blind persons, and persons with disabilities; Aid to Families with Dependent Children (AFDC), the financial assistance program for low-income families; and Medicaid for low-income children and pregnant women. Eligibility for AFDC and Medicaid (low-income families) is determined by client self-support services (CSS) eligibility staff. Eligibility for SSI benefits is determined by the Social Security Administration (SSA) based on income and resource requirements and a determination of disability. The SSA contracts with the Texas Rehabilitation Commission (TRC) to perform the disability determinations. Of the three million Texans living in poverty, the Texas Medicaid program covers about 790,000 individuals. Of that number, more than 128,000 are persons with disabilities under age 65.

(C) Federal regulations specify which Medicaid services states must provide as well as a range of optional services states may elect to cover.

(i) Mandatory Medicaid services. The mandatory Medicaid services are long-term institutional care services in nursing facilities.

(ii) Optional Medicaid services. Optional Medicaid services include: day activity and health services and long-term institutional care services in intermediate care facilities (ICF); intermediate care facilities for the mentally retarded (ICF-MR); and skilled nursing facilities (SNF) for children under age 21.

(iii) Medicaid waiver services. Under the provisions of 1915(c) of the Social Security Act, states have the option to provide certain home and community-based services to individuals who would otherwise require long-term institutional care. Pending approval of the waiver requests by the Health Care Financing Administration (HCFA), states may define the home and community-based services and make them available to a limited number of individuals on less than a statewide basis. The cost of these additional home and community-based services must be no greater than the cost of Medicaid services without a waiver. Texas currently has four 1915(c) Medicaid waiver programs which serve persons with disabilities.

(I) The waiver program for medically-dependent children provides Medicaid benefits and in-home skilled nursing services to children under age 18 who would otherwise require nursing home care in an ICF or a SNF. Currently, this waiver program serves 517 children statewide. Eligible children are served on a first-come, first-served basis.

(II) The 1915(c) waiver program for mentally-retarded individuals is designed to provide 11 different home and community-based services to individuals living in their own home or with family members, as alternatives to institutional care in an ICF-MR. Eligible clients use their SSI to pay room and board costs. Home and community-based services are delivered based on an individual plan of care. This waiver program is in its 11th year of operation and can serve a maximum of 1,350 clients located in 31 geographic catchment areas. This waiver program is administered through an inter-agency contract between DHS and the Texas Department of Mental Health and Mental Retardation (TXMHMR). The state matching funds are provided by TXMHMR.

(2) Office on Services to Persons with Disabilities (OSPD).

(A) In January 1991, the Texas Board of Human Services adopted a proactive position statement on community-based services to persons with disabilities. The philosophy of DHS became "... people with disabilities of all ages can live in the community when provided appropriate services and supports." DHS committed itself to take all appropriate and necessary actions to ensure the development of a system of community-based services and supports for persons with disabilities, and committed itself to the development of specific plans and policies whereby this philosophy would be implemented in all areas of DHS. The OSPD is responsible for coordination of this

effort.

(B) To specify how OSPD would facilitate the implementation of this philosophy organization wide, an OSPD strategic plan with specific goals, objectives, timeframes, and products was developed. Although it is located in the Health Care Services Division, which is one major program area of DHS, the OSPD's scope is within all DHS programs and services for persons with disabilities.

(C) OSPD staff have five major roles:

(i) advocating for persons with disabilities within DHS and externally;

(ii) advocating for the implementation of the DHS position statement organization wide;

(iii) facilitating and coordinating the development of community-based programs and supports for persons with disabilities;

(iv) serving as a focal point for DHS staff, consumers, providers, advocates, and other agencies to raise issues and concerns; and

(v) providing technical assistance and education on disability-related issues.

(3) Client self-support services. Client self-support services is a group of DHS programs that provides basic maintenance services such as food stamps, AFDC, Medicaid coverage, nutrition, and energy assistance for eligible individuals, as well as services aimed at making clients self-sufficient, such as education, job training, child care, and transportation.

(4) Community care services for aged and disabled persons. Community care services are provided to low-income, elderly persons; persons with disabilities; and persons with chronic health conditions, to help these persons remain at home or in community settings. These services also provide a support system to families caring for their elderly or disabled members. Eligibility for community care services is based on age; income; financial resources; the degree of functional impairment; and, in some cases, medical need. The income eligibility ceiling for community care services is \$1,302 per month and the resource limit is \$5,000.

(A) In-home community care services.

(i) Primary home care (PHC) provides medically necessary personal care or supportive care, supervised by

a registered nurse, in the client's home. DHS contracts with licensed home health agencies to provide these services to individuals for up to 50 hours per week.

(ii) Family care (FC) provides personal care, housekeeping, escort service, and meal preparation in the client's own home. These services are provided through contracts with home health agencies for up to 50 hours per week.

(iii) Congregate and home-delivered meals provide nutritious meals in a central location or a client's home through community-based provider agencies. All menus are approved by a registered dietician or nutritionist.

(iv) The Emergency Response System (ERS) is a 24-hour electronic monitoring service that permits quick response to emergencies using a network of volunteers and remote telephone-calling capability to a base station. Services are available to functionally impaired elderly or disabled adults who live alone or who are physically isolated from the community.

(v) The In-home and Family Support Program (IHFSPP) provides direct grant benefits to people with physical disabilities and their families who choose and purchase services which enable the person with the disability to remain in the community. Allowable services include pre-approved items and services that are directly related to the person's disability, such as special equipment; architectural modification of a home to improve access or facilitate the care of a person with a disability; medical services; counseling and training programs which help provide proper care for a person with a disability; attendant care; respite care; and transportation.

(vi) Respite services up to 336 hours per year of short-term care to elderly or disabled adults whose caregivers need temporary relief.

(B) Out-of-home community care services.

(i) Adult foster care (AFC) provides supervision and assistance with daily living to eligible adults in 24-hour living arrangements provided in enrolled foster homes, for up to four clients, and licensed group homes, for four to eight clients. Clients pay their own room and board costs, and DHS pays the caregiver for personal care and supervision.

(ii) Day activity and health services (DAHS) provide personal care, nursing services, physical rehabilitation, and nutrition and supportive services in adult day-care facilities licensed by the Texas Department of Health (TDH) and certified by DHS. These services are avail-

able at least 10 hours per weekday and can provide respite for families.

(iii) Special services for persons with disabilities provide counseling, personal care, help with independent living skills, and transportation.

(iv) Residential care services are provided to eligible adults who require access to personal care services on a 24-hour basis, but not daily nursing intervention. Services may include board, protective supervision, personal care, social and recreational services, housekeeping, laundry, and transportation.

(C) Client Managed Attendant Services Program. The Client Managed Attendant Services Program is targeted to the needs of younger persons with physical disabilities who need personal care services to continue living in the community. It allows clients to hire and supervise their own attendants and schedule care according to their daily routines. This project serves approximately 690 clients in nine sites throughout the state. The fiscal year 1993 budget is \$5.5 million.

(5) Long-Term Care Program.

(A) The purpose of the statewide Long-Term Care Program of DHS is to assure that quality care is provided to persons in long-term care and related facilities and that these facilities are properly utilized. DHS inspects and licenses nursing homes, custodial care homes, personal care homes, certain facilities for the mentally retarded, and certain adult day care and adult health care facilities. DHS surveys and certifies nursing homes and facilities for the mentally retarded that participate in Medicaid, and surveys and recommends certification of nursing home's participation in Medicare. DHS performs inspection of care visits relating to care and services provided to each Medicaid recipient in nursing homes and facilities for the mentally retarded and determines the appropriate level of care needed for each recipient.

(B) The contact for program information is the Associate Commissioner for Long-Term Care, (512) 450-4971.

(C) DHS will continue the following memoranda of understanding with:

(i) the Texas Department on Aging (TDoA) regarding that agency's ombudsman program and the responsibilities of both agencies in complaint investigations; and implementing the state long-term care plan for the elderly;

(ii) the Texas Board of

Licensure for Nursing Home Administrators for training of nursing home administrators; and

(iii) TDoA to train ombudsmen and TDoA representatives on nursing facility standards and complaint investigation procedures.

(D) In addition, DHS has entered into an inter-agency contract with the Texas Department of Corrections (TDC) to microfiche old records.

(6) Other DHS services. All DHS services are available to low-income persons with disabilities based on the eligibility criteria associated with the various funding sources.

(b) Service delivery data. DHS has a variety of data identifying the type of services, the number of clients receiving services, and expenditure data for all programs. The most comprehensive DHS documents that contain service delivery and expenditure data are:

(1) Legislative appropriations request (LAR). The LAR is a document prepared and submitted to the Legislative Budget Board and the Governor's Budget Office prior to each legislative session. It contains DHS's request for appropriations for the next biennium based on four levels of funding for each program and activity. It also provides a summary of DHS's request. Specifically, it provides the objective and a description of each program and activity as well as data for need indicators, performance measures, object of expense, and method of finance for a five-year period. This period includes two years of the appropriations request and the three previous years.

(2) Fiscal year operating plan. The fiscal year operating plan is the budget for DHS based on appropriations received. It contains a breakdown of budgeted dollars by program area and activity at the state level. For each program, the document states the need, the description of program activities, the budget allocation for each activity, the performance measures or units of service, and the method of finance. The allocation covers a three-year period consisting of the current fiscal year and two previous years.

(3) Annual report. The annual report is a fiscal-year description of DHS services, a review of the services, and an accounting of DHS's expenditures. The report contains a section of statistics that depicts estimated expenditures by method of finance; benefit expenditures by region; a summary by county of agency information; aged and disabled benefits, and families and children benefits; and data concerning the regulation of child care facilities.

(A) In addition to client data, DHS has demographic data from the 1990 U.S. Census, the 1989 Special Texas Census, and population estimates and projections from the State Comptroller's Office and Texas A&M University. The 1989 Special Texas Census was a mailout survey to the general population of Texas. It was a data-collection effort comprising a sample of 44,000 Texas households to identify human service needs in support of the DHS budget and planning process. With an adjusted response rate of about 66% of the valid sample, data was collected for more than 23,000 households. The data collected for each person concentrated on money; income; demographics (age, sex, race/ethnicity, marital status, language, and education); employment status; medical insurance coverage; medical utilization; disability; functional impairment; help available for persons with disabilities; child care; child support payment; knowledge about run-aways; child abuse and/or neglect; and family violence shelters. Based on the response rate and the selection of data variables, data may provide adequate representation for the state and for DHS regions. DHS service delivery and demographic data may be requested from the Budget Management Services Department.

(B) The OSPD also develops an annual report containing the yearly activities of implementing the DHS position statement and recommendation of the task force on services to persons with disabilities and DHS advisory committee for the aged and disabled (ADAC). It describes the accomplishments toward achieving goals, objectives, and products detailed in the OSPD strategic plan.

§72.203. *Texas Department of Health (TDH).*

(a) Financial and service responsibilities to persons with disabilities.

(1) Chronically Ill and Disabled Children's Services Bureau.

(A) The Chronically Ill and Disabled Children's Services Bureau provides diagnosis and evaluation; restorative and corrective medical treatment; speech, occupational, and physical therapy; transportation; meals and lodging; and case management through purchased services for children below the age of 21 years who meet medical, financial, and residency requirements. Persons with the diagnosis of cystic fibrosis are eligible regardless of age.

(B) The Chronically Ill and Disabled Children's Services Bureau also administers:

(i) the Hemophilia Assistance Program, which provides assistance to adult hemophilia patients (over age 21) for the purchase of blood products;

(ii) the Epilepsy Assistance Program, which provides diagnosis, treatment, and support services for persons with epilepsy, through contracts with private organizations; and

(iii) the Children's Outreach Heart Program, which provides pre-diagnostic and follow-up evaluation services for cardiovascular disorders for children in south Texas who meet financial eligibility requirements, through a contract with the Children's Heart Institute of Texas.

(C) The Chronically Ill and Disabled Children's Services Bureau also administers the Supplemental Security Income Disabled Children's Services Program (SSI-DCP).

(D) The contact for program information is the Manager for Field and Provider Relations, Chronically Ill and Disabled Children's Services Bureau, (512) 458-7355.

(E) The Chronically Ill and Disabled Children's Services Bureau has written agreements with the Texas Commission for the Blind (TCB), the Texas Rehabilitation Commission (TRC), the Texas Education Agency (TEA), the Texas Youth Council, and the Texas Department of Human Services (DHS). These agreements specify that the Chronically Ill and Disabled Children's Services Bureau and the other agency which is party to the agreement must:

(i) coordinate service delivery, and

(ii) provide services only to persons who have been determined eligible for services by both parties.

(2) Supplemental Security Income Disabled Children's Program (SSI-DCP)

(A) The SSI-DCP provides case management services for all children with disabilities who are below the age of 16 and receiving SSI benefits. Services provided directly include diagnostic, counseling, and referral services; inter-agency liaison; follow-up through case management provided by medical social workers; and the purchase of services and adaptive equipment, if these services are not available through any other resource.

(B) The contact for program information is the Manager for Field and Provider Relations, Chronically Ill and Disabled Children's Services Bureau, (512) 458-7355.

(C) As the SSI-DCP program is administered by the Chronically Ill and Disabled Children's Services Bureau, inter-agency agreements are described in subsection (a)(1) of this section.

(3) Kidney Health Program.

(A) The Kidney Health Program provides assistance to Texas residents with end-stage renal disease (ESRD), as certified by a licensed nephrologist, with assistance in paying for drugs, hospitalization, medical services and supplies, and transportation. Clients are reimbursed directly for drugs and travel; reimbursement is made directly to the provider for medical services and supplies. The Kidney Health Program does not pay for services covered by Medicare, Medicaid, or private insurance.

(B) The contact for program information is the Director of the Kidney Health Program, (512) 458-7796.

(4) Vision, hearing, and speech services (VHSS).

(A) VHSS has legal authority to establish standards and regulate screening for special senses and communication disorders, primarily vision and hearing problems, and to assure standardized performance of audiometric testing devices statewide. Legislation permits VHSS to provide services to identify individuals, in need if services are not otherwise available. VHSS provides hearing aids and attendant services to medically indigent children, ages 0-20.

(B) The contact for VHSS program information is the Director for Vision, Hearing, and Speech Services, Division of Maternal and Child Health, (512) 458-7420.

(C) VHSS and the DHS have entered into a contract for reimbursement of hearing aid services to Medicaid clients age 0-20. In order to carry out DHS's memorandum of understanding with the Commission for the Deaf, the VHSS developed and maintains a contract with DHS for the acquisition of interpreter services for Texas Department of Health's (TDH's) deaf and hearing-impaired patients, clients, and staff.

(5) Mandatory Medicaid services. Mandatory Medicaid services in-

clude: physician services; inpatient and outpatient hospital; laboratory and X-ray; home health care; ambulance; rural health clinic; nurse midwife; early and periodic screening, diagnosis, and treatment (EPSDT) services for children up to age 21; certified pediatric nurse practitioners; certified family nurse practitioners; dentist's services; family planning; federally qualified health centers; ICF-MR dental; medical transportation; and renal dialysis services.

(6) Optional Medicaid services. Optional Medicaid services include: eyeglasses, optometric, podiatric, and chiropractic services; ambulatory surgical centers; hearing aid services; limited oral surgery; post-surgical lenses; vendor drug services; primary home care; emergency hospital services; birthing center services; certified registered nurse anesthetist's services; diagnostic and evaluation services (MR); hospice care; in-home total parenteral hyperalimentation services; in-home respiratory care services; maternity clinic services; outpatient counseling for chemical dependency; physical therapist; psychologist services; targeted case management services; mental health rehabilitation services; and services provided by Christian Science sanitoriums.

(b) Service delivery data.

(1) TDH produces several documents and reports on a department-wide basis either annually or biennially. These are:

(A) Legislative appropriations request (LAR). The LAR is published biennially and includes program needs indicators for each TDH program, program objectives, descriptions of program performance measures, the TDH budget and expenditures, and activity profiles.

(B) Texas hospital data inventory. Hospital data is collected annually, and routine and special reports are developed from the data.

(C) Bureau of Health Data and Policy Analysis: Population Projection to the year 2000. Data is available by age, sex, and race/ethnicity for each year.

(D) Bureau of Disease Control and Epidemiology: Epidemiology in Texas. This report is published annually.

(E) Texas Vital Statistics. This report is published annually.

(2) To examine these documents, contact the TDH Library, (512) 458-7559.

(3) In addition, bureaus and pro-

grams of TDH generate annual reports for their programs specifically tailored to their program needs. Additional information may be requested by contacting the Office of the Commissioner, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7375.

§72.204. Texas Department of Mental Health and Mental Retardation (TXMHMR).

(a) Mission. The mission of the Texas Department of Mental Health and Mental Retardation (TXMHMR) is to offer an array of services which respond to the needs of people with mental illness and mental retardation and which enable them to make choices that result in lives of dignity and increase independence. Our vision is that the TXMHMR service system will become one that is permeated with a commitment to Continuous Quality Improvement (CQI) that is truly customer-driven. It embraces the belief that large public systems even with their inherent regulatory roles and resource limitations can become highly personalized, highly responsive, and highly innovative.

(b) Financial and service responsibilities to persons with disabilities. The Texas MHMR Act requires that TXMHMR identify its priority populations and the minimum array of services necessary to address the needs of persons within these priority populations. This legislation also requires that services be offered first to those most in need and that state dollars be used only for services provided to the priority population

(1) Mental retardation services.

(A) Mental retardation priority population.

(i) The priority population for mental retardation services consists of the 70,840 persons considered to be the most in need. That is approximately 15% of the 480,000 Texans with mental retardation. TXMHMR estimates that there are approximately 26,000 persons with mental retardation in the priority population who currently require our agency's services and are not receiving them.

(ii) TXMHMR's priority population for mental retardation services includes those persons who request and need services and possess one or more of the following conditions:

(I) mental retardation, as defined by Health and Safety Code, Title 7, §591.003(13).

(II) autism, as defined

in the current edition of the Diagnostic and Statistical Manual (DSM);

(III) eligibility for Early Childhood Intervention Services; or

(IV) eligibility for Omnibus Budget Reconciliation Act of 1987-mandated services for mental retardation or a related condition as per specific legislation.

(iii) The presence of mental retardation must be determined through a recognized diagnosis and evaluation process or through the use of assessments performed by qualified professionals as per interagency memoranda of understanding. Results of evaluations by appropriately credentialed professionals can be used to determine the presence of autism. For persons with mental retardation or autism, the priority population includes only those individuals whose needs for services can be most appropriately met through programs currently or potentially offered by TXMHMR rather than some other service system. Services are to be offered in coordination with efforts of other agencies to ensure that all services are provided by agencies as required by laws, rules, and regulations. The priority population does not include persons whose service needs may be most appropriately met through other means, as determined by TXMHMR.

(iv) Persons who are members of the priority population are eligible to receive services from TXMHMR. Since resources are insufficient to meet all the service needs of all the members of the priority population, services should be provided to meet the most intense needs first.

(v) Service participant groups include only members of the priority populations. The purpose of grouping service participants is to provide a structure for gathering data about members of the priority population who have specific characteristics which seem to influence the type and intensity of services required to meet their needs. These groups are mutually exclusive. If an individual has characteristics of more than one group, assignment should be made to the group that most accurately characterizes the person's most intense service needs. No one group has priority over any other group.

(vi) Service participant groups are comprised of members of the priority population who:

(I) have a challenging behavior (CB) (with or without a mental illness diagnosis) or which requires frequent intervention or regular monitoring. The severity of the behavior is such that it inter-

feres significantly with daily living or learning activities.

(II) have a severely challenging behavior (SB) (with or without a mental illness diagnosis). The severity of the behavior is such that it seriously threatens the health and safety of this persons or others. The management of the behavior is a primary consideration in planning the individual's activities.

(III) have a severe physical disability (PD) as evidenced by a need for an ongoing program designed and monitored by a professionally qualified habilitation therapist or specialist. Such programs are designed to alleviate the primary condition and decrease the effects of any secondary disability. These disabilities may include, but are not limited to, eating problems, ambulation problems, severe sensory (tactile, visual, or auditory) impairments, and other major physical disabilities.

(IV) have a health care (HC) need so severe that its treatment and monitoring are the foremost considerations in planning the individual's activities. Immediate 24-hour response form nursing staff, weekly physician intervention, and monitoring of a health care plan by a professional nurse is often needed.

(V) need either training or support (TS) to enable or maintain their community arrangements for living, working, or training.

(VI) are eligible to receive early childhood intervention (ECI) services according to the following criteria:

(-a-) A child is eligible for ECI services if the child is under three years of age, including those children authorized for services as visually or auditory impaired children under the Texas Education Code.

(-b-) A child is eligible for ECI services if the child is documented as developmentally delayed or has a medically diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(B) Community center services.

(i) TXMHMR contracts with community MHMR centers to provide mental retardation services. Community MHMR centers are locally staffed and governed by a local board of trustees. The centers are usually designated as the Mental Retardation Authority (MRA) for their local

service area and are responsible for the provision of a wide range of services as a condition for receiving state funds. These services include case management, emergency services, medical treatment, and respite care. Other services that may be provided are work-related activities including vocational training, vocational assessments, sheltered workshops, supported work programs, and job placements. Short and long-term residential care and developmental programs may also be a part of services.

(ii) Eligible individuals receive care at 31 of the 35 community MHMR centers across the state. The four centers that provide care only to persons with mental illness are the Life Resource Center, Texas Panhandle Mental Health Authority, Navarro County MHMR Center, and Riceland Regional Mental Health Authority. Priority is given to clients who are most in need of treatment and support services from the TXMHMR system.

(C) State center services.

(i) Community services. State centers provide community-based services to persons with mental retardation in areas of the state not served by state schools or community MHMR centers. Services include in-home support services, respite services, family support, case management services, diagnosis and screening, and training and treatment to enhance the individual's ability to function as independently as possible. Individuals may request services by contacting state centers located in Amarillo, Beaumont, El Paso, Harlingen, and Laredo.

(ii) Campus-based services. Four of the five state centers provide short and/or long-term residential care and nonresidential service in areas of the state not served by state schools or community MHMR centers. The range of services includes vocational, medical and dental services, and physical, occupational, and recreational therapy. Also included are support services such as maintenance, food services, and laundry. Individuals have the opportunity to participate in activities occurring in the local community. Persons with special needs are served by qualified professionals with consultation from specialists in the medical, dental, and habilitation fields. The five state centers delivering inpatient services are located in Amarillo, Beaumont, El Paso, Harlingen, and Laredo. All of these centers except Beaumont have facilities that are certified as Intermediate Care Facilities for the Mentally Retarded (ICF/MR).

(D) State school services.

(i) Community services.

(I) Community services provided by state schools are designed to meet the needs of persons who have returned to the community from institutional placement and/or to prevent eligible persons from requiring institutionalization. These services include in-home support services, respite services, family support services, case management services, and diagnostic and evaluation services designed to help the individual live independently. Vocational programs also offered include work adjustment training, pre-vocational services, sheltered workshops, support work, and independent employment. Services are both residential and nonresidential.

(II) TXMHMR provides these services directly through 13 state schools located throughout Texas. The 13 state schools are certified as Intermediate Care Facilities for the Mentally Retarded (ICF-MR). Persons' needs are assessed by interdisciplinary teams, then the services are provided which best meet their individual needs.

(ii) Campus-based services.

(I) Campus-based services include residential services, therapeutic care and treatment, meals, education, medical care, and recreation for persons with mental retardation. Because many individuals have visual and hearing problems, muscular and/or skeletal anomalies or metabolic and nervous disorders, the facility also helps them cope with or correct their physical disabilities.

(II) Under the Social Security Act (Medicaid), the federal government reimburses the state for a significant portion of the costs of providing ICF-MR services to eligible persons at a matching rate of approximately 36% state and 64% federal. The Texas State Legislature appropriates general revenue funds to TXMHMR to cover the costs of operating the schools. The reimbursement obtained from the federal government is returned to the state treasury and is not reflected in TXMHMR's budget.

(2) Mental health services.

(A) Mental health priority population.

(i) There are an estimated 2.6 million persons with mental illness in Texas. TXMHMR's priority population consists of approximately 15% of these persons. It is estimated that in 1993, 347,248 of those were persons with a major diagnosis of mental illness and func-

tional impairment. TXMHMR's estimates suggest that there are approximately 90,000 persons in the priority population who currently need our agency's services but are not receiving them.

(ii) The department's priority population for mental health services consist of:

(I) children and adolescents under age 18 who have a diagnosis of mental illness, exhibit severe emotional or social disabilities which are life-threatening, or require prolonged intervention; and

(II) adults who have severe and persistent mental illnesses, such as schizophrenia, major depression, manic depressive disorders, or other severely disabling mental disorders which require crisis resolution or ongoing and long-term support and treatment.

(iii) In targeting services to the priority populations, the choice of and admission to services is determined jointly by the person seeking service and the provider. Factors used to make these determinations are the level of functioning of the individual, the need of the individual, and the availability of resources. TXMHMR funding is directed to provide the identified core services which are designed to meet the needs of these priority populations. Providers who wish to offer services to people other than those in the priority populations may do so using non-department funds.

(iv) The agency's Strategic Plan also identifies groups within the priority population with special needs. These include:

(I) children and adolescents,

(II) older adults;

(III) minorities; and

(IV) persons with mental illness in the criminal justice system.

(B) Campus-based services.

(i) Campus-based services include residential; therapeutic care and treatment; meals; medical care; and recreation for persons with mental illness. These services are provided at eight state hospitals, two state centers, and one state center for youth. The average daily census in these state facilities is approximately 3,3000. Nearly 18,000 persons receive residential services annually.

(ii) All state hospitals are accredited by the Joint Commission on Ac-

creditation of Hospitals (JCAH). Certain units providing services for elderly patients are also certified to receive Medicare funds.

(C) Community services.

(i) Community mental health services are provided by 63 mental health authorities. Included in these authorities are 35 community mental health and mental retardation centers which provide mental health services under contract with TXMHMR. The remaining mental health authorities are state hospital or state center programs provided through community service centers which are located in the local service areas of the hospitals or state centers. These programs currently provide services to over 150,000 individuals annually.

(ii) Other programs include 24-hour emergency screening and assessment; community and state hospital liaison; family support programs; medication related services; psychosocial rehabilitation programs; day treatment; and case management services.

(iii) Services provided by the local mental health authorities consist of individual support services; family support services; psychosocial rehabilitation services; service coordination; and residential services and housing, which may include supervised living arrangements. The crisis stabilization component of the residential services must be available to the residents of a mental health authority.

(D) Legislative mandates.

(i) The Texas State Legislature and TXMHMR require the provision of core services aimed at meeting individual needs and enhancing personal skills for optimum community living.

(ii) The Texas Mental Health and Mental Retardation Act specifies the core services as:

(I) 24-hour emergency screening and rapid crisis stabilization services;

(II) community-based crisis residential service or hospitalization;

(III) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation;

(IV) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication;

(V) family support services, including respite care;

(VI) psychosocial rehabilitation services, including social support activities, independent living skills, and vocational training; and

(VII) case management services.

(c) Service delivery data. The following data may be obtained by contacting the administrative head of the section or by contacting the Director of Planning and Policy Development, at (512) 465-4698 or STS 824-4698.

(1) Public Information Office. This office produces the annual report and a directory of TXMHMR services. Telephone: (512) 465-4540.

(2) Strategic planning. This office is responsible for demographic data and long-range planning. Telephone: (512) 465-4620.

(3) Financial services. This area publishes the TXMHMR Annual Operating Budget and the Biennial Legislative Appropriations Request. Telephone: (512) 465-4550.

(4) Information services. This office processes client data information from client assignment and registration system (CARE). Telephone: (512) 465-4570.

(5) Mental health services. Questions regarding mental health services program and/or policy issues can be directed to this section. Telephone: Adults-(512) 465-4511 and adolescents and children-(512) 465-4832.

(6) Mental retardation services. This section responds to inquiries about Mental Retardation Services Program and/or policy issues. Telephone: (512) 465-4521.

(7) Consumer services and rights protection services. This area is responsible for information regarding issues or statistics regarding client rights. Telephone: (512) 323-3242

§72.207. Texas Commission for the Deaf and Hearing Impaired.

(a) Financial and service responsibilities to disabled persons.

(1) The Texas Commission for the Deaf and Hearing Impaired (TCDHI) is authorized to provide direct delivery services to persons who are deaf or hearing-impaired. These services are rendered through annual contracts with local service providers. TCDHI currently has contracts

with service providers located in 16 cities: Abilene, Amarillo, Austin, Beaumont, Big Spring, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Lubbock, McAllen, San Antonio, Sherman, Tyler, and Waco.

(2) The number of staff, types of direct services, and number of clients at each service provider vary considerably. Many provide other direct services in addition to those authorized and subsidized by the state through TCDHI. The range of TCDHI-contracted services include:

(A) Interpreter services. Interpreters are provided for clients who are deaf or hearing impaired to assist them in obtaining, medical, legal, governmental, and economic services. Interpreters are also available through the local service providers for state agencies, courts, and businesses; however, these entities must reimburse the service provider. Payment for interpreters is reimbursed monthly by TCDHI on an hourly basis for services provided. The rate of payment is determined by the fee schedule recommended for interpreters by TCDHI.

(B) Information and referral services. Service providers disseminate information regarding general and specialized community services to persons who are deaf or hearing impaired, as well as information about deafness to the general public.

(C) Services to older hearing impaired Texans (SOHIT). Clients who are age 60 or older and deaf or hearing impaired are assisted in obtaining information and/or services from agencies such as the Texas Department on Aging, local agencies on aging, social security offices, and local parks and recreation departments. Services provided may include case management, transportation assistance, nutrition, social interaction, and communication. This program reduces the need for long-term care, provides information to concerned individuals, and provides training to other personnel serving the elderly. These programs are referred to as Services to Older Hearing Impaired Texans (SOHIT). Currently, 11 local service providers offer SOHIT services.

(D) Other services. In addition to the services described in subparagraphs (A)-(D) of this paragraph, TCDHI has service and financial responsibilities to:

(i) develop and implement a state-wide advocacy and education program to ensure the continuity of services to Texans who are deaf or hearing impaired.

(ii) ensure more effective coordination/cooperation among public and

nonprofit entities that serve persons who are deaf or hearing impaired.

(iii) establish a board for the evaluation of interpreters which commission approval, conducts interpreter exams, prescribes qualifications, evaluates, and certifies interpreters at varying levels of skill. TCDHI is required to charge fees for these services. In addition, statutes require that the Board for Evaluation of Interpreters work with the Texas Rehabilitation Commission to develop a communication competency evaluation for TRC's vocational rehabilitation counselors and other staff who work with clients who are deaf or hearing impaired. Commission (TRC) a communication competency evaluation for vocational rehabilitation counselors who work at TRC with clients who are deaf or hearing impaired;

(iv) establish a system to approve courses and workshops for the instruction and continuing education of interpreters;

(v) annually review fees recommended by TCDHI for the payment of interpreters and adopt a schedule of reasonable fees for interpreters at varying levels of skill. This schedule of fees must be made available to and recommended for adoption by other state agencies;

(vi) prescribe the qualifications for, and compile a list of, qualified interpreters available for assignment by state agencies, courts, and political subdivisions. This list is to be disseminated to these entities and the general public;

(vii) adopt a schedule of reasonable fees recommended for the payment of interpreters required by law to be provided in proceedings of state agencies, courts, and political subdivisions;

(viii) adopt a sliding fee scale for persons who are deaf or hearing impaired who receive interpreter services in non-governmental settings which are reimbursed by TCDHI. The fee scale is based on the requestor's financial ability to pay; however, a client may not be denied this service because of his/her inability to pay;

(ix) design and provide a decal to be attached to motor vehicles regularly operated by persons who are deaf or hearing-impaired with a cost of not more than \$2 per decal;

(x) offer a one-week summer camp session for children and youth who are deaf or hearing-impaired to participate in barrier-free recreational and instructional activities. TCDHI annually contracts with a private facility for this program. Eligibility requirements are that students must be deaf or hearing-impaired, ages 8-17;

(x) charge reasonable fees for TCDHI publications. Fees for publications may be waived for a client who is deaf or hearing-impaired if he/she is unable to pay; and

(xi) publish an annual Directory of Services and an agency newsletter (based on available funding) and make available a Registry of Interpreters.

(E) Interagency Contracts. Currently, TCD has interagency contracts primarily concerning interpreter services with the Texas Employment Commission, Texas Commission on Alcohol and Drug Abuse, Texas Department of Criminal Justice, Texas Department of Mental Health and Mental Retardation, and the Texas Department of Health.

(F) Memorandum of Understanding. House Bill 550, passed by the 70th Legislature, required TCDHI to write (and adopt by rule) memoranda of understanding to coordinate the delivery of services to persons who are deaf and hearing impaired and to reduce duplication of services with each of the following agencies: Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Employment Commission, Texas Department of Health, Texas Higher Education Coordinating Board, Texas Education Agency, Texas Department on Aging, Texas School for the Deaf, Texas Rehabilitation Commission, and the institutional division of the Texas Department of Criminal Justice, and other state agencies that provide services to persons who are deaf or hearing impaired. TCDHI also participates in two multi-agency memoranda of understanding which facilitate the coordination of services to persons with disabilities and to inmates of the Texas prison system who have disabilities.

(b) Service delivery data.

(1) The contact person for TCD may be reached at (512) 444-3323 (Voice/TDD) and (512) 326-9639 (Fax machine).

(2) Information regarding councils for the deaf is provided in:

(A) the TCDHI Contracted Services Listing that provides lists of services provided by each service provider;

(B) the Registry of Interpreters that makes available, on request, the names, locations, phone numbers, and interpreting skill levels of TCDHI-certified (or National Registry of Interpreters for the Deaf-certified) interpreters in Texas;

(C) the Legislative Appropriations Request (LAR) which is the agency's request for biennium funding (and information about its program activities, goals, and objectives). The LAR is prepared and submitted to the Legislative Budget Office.

(D) Resource Handbook on Interpreting, Interpreter Certification, and Principles of Ethical Behavior explains the interpreter certification procedure, the use of interpreters, and the laws relating to the use of interpreters.

§72.209. *Texas Department of Protective and Regulatory Services (PRS).*

(a) Financial and service responsibilities to persons with disabilities.

(1) Protective services for children and adults.

(A) Child protective services (CPS) is the branch of the Texas Department of Protective and Regulatory Services (PRS) that provides services to children at risk of abuse or neglect and to their families. These services include: intake/investigation of abuse/neglect referrals, in-home services, truant and runaway services, removal services, substitute care, family reunification, and adoption. Child protective services are provided without regard to income. If the court orders removal of a child from the child's home and places the child in the conservatorship of the state, foster care maintenance payments are made to the substitute care provider. Children in foster care are also eligible for Medicaid.

(B) The Adult Protective Services (APS) Program of PRS investigates reports of abuse, neglect, or exploitation of elderly adults and adults with disabilities. When a report is validated, APS provides or arranges for services to remedy the situation in the least restrictive manner possible. Ongoing APS services provided include direct casework, specialized support services, and guardianship services. All services provided are voluntary, except in cases in which a client:

(i) requires services to alleviate a threat to life,

(ii) the client is refusing services, and

(iii) the client does not appear to have the capacity to understand the situation.

(C) PRS also has the responsibility of overseeing investigations of abuse, neglect, or exploitation conducted by other state agencies which operate, license, certify, or register facilities for persons with

disabilities. PRS receives and reviews complaints about these investigations. Of the 30,235 clients served in fiscal year (FY) 1992, 34% (10,171) were nonelderly persons with disabilities. PRS expects to provide APS services to approximately 11,518 nonelderly persons with disabilities in FY 1993.

(2) Licensing.

(A) The Licensing Department of PRS regulates facilities that provide out-of-home care for children and regulates child-placing agencies that place children for foster care, residential child care, and adoption. The Child Day Care Licensing Program is responsible for regulating day care centers, kindergartens, and nursery schools; schools, grades kindergarten and above; drop-in care centers; group day care homes; and registered family homes.

(B) The Residential Child Care Licensing Program is responsible for regulating institutions providing basic child care, residential treatment centers, halfway houses, therapeutic camps, institutions serving mentally retarded children, emergency shelters, foster group homes, foster family homes, child-placing agencies, and maternity homes.

(C) The Licensing Program develops minimum standards, evaluates applications for licensure, certification and registration, and monitors regulated facilities on an ongoing basis for compliance with minimum standards. Licensing staff investigate complaints and serious incidents in regulated facilities and allegations of illegal operation. Specialized staff investigate allegations of abuse and neglect in regulated child care facilities and allegations of illegal child-placing activities.

(b) Service delivery data.

(1) PRS has a variety of data identifying the type of services, the number of clients receiving services, and expenditure data for all programs. The most comprehensive PRS documents that contain service delivery and expenditure data are:

(A) The Legislative Appropriations Request (LAR), a document prepared and submitted to the Legislative Budget Board and the Governor's Budget Office prior to each legislative session. It contains PRS's request for appropriations for the next biennium based on four levels of funding for each program and activity. It also provides a summary of PRS's request. Specifically, it provides the objective and a description of each program and activity as well as data for need indicators, performance measures, object of expense, and

method of finance for a five-year period. This period includes two years of the appropriations request and the three previous years.

(B) The fiscal year operating plan is the budget for PRS based on appropriations received. It contains a breakdown of budgeted dollars by program area and activity at the state level. For each program, the document states the need, the description of program activities, the budget allocation for each activity, the performance measures or units of service, and the method of finance. The allocation covers the current fiscal year and the two previous years.

(C) The annual report is a fiscal-year description of PRS services, a review of the services, and an accounting of PRS expenditures. The report contains a section of statistics that depicts estimated expenditures by method of finance, benefit expenditures by region, a summary of agency information by county; aged and disabled benefits by county, families and children benefits by county, and data concerning the regulation of child care facilities. In addition to client data, PRS has demographic data from the 1985 Special Texas Census and population estimates and projections from the Texas Department of Health. The 1985 Special Texas Census was a mailout survey to the general population of Texas. It was a data collection effort comprising a sample of 22,000 Texas households to identify human service needs in support of the Texas Department of Human Services' (DHS's) budget and planning process. With a response rate of over 64% of the valid sample, data was collected for more than 12,300 households or over 33,000 individuals. The data collected for each person concentrated on money income; demographics (age, sex, race/ethnicity, marital status, language, and education); employment status; medical insurance coverage; medical utilization; disability; functional impairment; help available for persons with disabilities; child care; child support payment; knowledge about run-aways; child abuse and/or neglect; and family violence shelters. Based on the response rate and the selection of data variables, data may provide adequate representation for the state and for DHS regions.

(2) PRS service delivery and demographic data may be requested from the Office of Public Information, (512)450-3645.

§72.212. Effective Date. This agreement is effective September 1, 1993.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 11, 1993.

TRD-9327159

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Effective date: September 1, 1993

Proposal publication date: February 12, 1993

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

◆ ◆ ◆
Part III. Texas
Commission on Alcohol
and Drug Abuse

Chapter 145. Treatment
Alternatives to Incarceration
Programs

General Provisions

• **40 TAC §§145.1-145.7**

The Texas Commission on Alcohol and Drug Abuse adopts new §145.1-145.7 concerning Treatment Alternatives to Incarceration Programs (TAIP). Section 145.1 is adopted with changes to the proposed text as published in the March 26, 1993, issue of the *Texas Register* (18 TexReg 1921) and §§145.2-145.7 are adopted without changes and will not be republished.

The rules establish minimum provisions and criteria for the operation of approved TAIP programs designed to provide substance abuse offenders with screening, assessment, referral, and placement into licensed and approved chemical dependency program if applicable. The rules are adopted to define what programs must do to become a TAIP program approved by the Texas Commission on Alcohol and Drug Abuse. In §145.1, the definition of treatment has been changed, replacing the term illegal drugs with chemical dependency. Without this change, it appears that only illegal drugs are being addressed.

The rules establish quality programming in the Treatment Alternatives to Incarcerated Programs approved by the commission.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Acts, of the 72nd Legislature, 1991, Chapter 490, §2, effective December 31, 1991, amending the Texas Health and Safety Code, Chapter 461, by adding §461.017, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of Treatment Alternatives to Incarceration Programs which are designed to provide substance abuse offenders with screening, assessment, referral, and placement into licensed and approved chemical dependency programs if appropriate.

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

Approved TAIP Program—A treatment alternatives to incarceration program (TAIP) approved by the Texas Commission on Alcohol and Drug Abuse as set forth under this chapter.

Assessment—The process of determination of treatment needs by prescribed evaluation procedures.

Commission—The Texas Commission on Alcohol and Drug Abuse.

Education—A system of instruction provided in courses, which is based on a curriculum that provides alcohol and drug information and enhances life skills, and is comprehensive in scope and intent.

Reporting period—That period of time beginning with the date the approval of the TAIP program was granted by the commission and ending August 31 of each year.

Screening, Assessment, and Referral Unit (SAR)—A unit of the approved TAIP program assigned the task of administering and interpreting the screening instrument, performing the assessments, and making the indicated referrals to treatment providers.

Screening instrument—A written device administered to each approved TAIP program participant for the purpose of:

(A) identification of the existence of a substance abuse problem; and

(B) making recommendations for further evaluation, counseling or treatment where indicated.

TAIP—Treatment Alternatives to Incarceration Program

Target Population—Persons arrested for an offense, other than a Class C misdemeanor, in which an element of the offense is the use or possession of alcohol or the use, possession, or sale of a controlled substance; persons arrested for an offense against property who are referred to an approved TAIP program by a judge; persons referred by the community supervision and corrections department; and persons referred to treatment who are determined to be in need of treatment.

Treatment—A planned, structured, and organized program designed to initiate and promote a person's chemical-free status to maintain the person free of chemical dependency.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 11, 1993.

TRD-9327153

Bob Dickson
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 1, 1993

Proposal publication date: March 26, 1993

For further information, please call: (512) 867-8720

◆ ◆ ◆
Performance Standards

◆ ◆ ◆
• **40 TAC §§145.20-145.30**

The Texas Commission on Alcohol and Drug Abuse adopts new §145.20-145.30 concerning Treatment Alternatives to Incarceration Programs (TAIP), without changes to the proposed text as published in the March 26, 1993, issues of the *Texas Register* (18 TexReg 1923) and will not be republished.

The rules establish minimum standards and criteria for the operation of approved TAIP programs which are designed to provide substance abuse offenders with screening, assessment, referral and placement into licensed and approved chemical dependency program if appropriate. This section is being adopted to define what programs must do to become a TAIP program approved by the Texas Commission on Alcohol and Drug Abuse.

The rules establish quality programming in the Treatment Alternatives to Incarceration Programs approved by the commission.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Acts of the 72nd Legislature, 1991 Chapter 490, §2, effective December 31, 1991, amending the Texas Health and Safety Code, Chapter 461, by adding §461.017, which provides the Texas Commission on Alco-

hol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of Treatment Alternatives to Incarceration Programs designed to provide substance abuse offenders with screening, assessment, referral, and placement into licensed and approved chemical dependency programs if appropriate.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 11, 1993.

TRD-8327154

Bob Dickson
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 1, 1993

Proposal publication date: March 26, 1993

For further information, please call: (512) 867-8720

◆ ◆ ◆
Texas Department of Insurance Exempt Filing
◆ ◆ ◆

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note. As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 333 Guadalupe, Austin)

The State Board of Insurance, of the Texas Department of Insurance, at a public hearing held at 9:00 a.m. on July 22, 1993, under continuation of Docket Number 2002, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, adopted the Texas Statistical Plan for Commercial Lines (the Plan) as proposed by Staff of the Texas Department of Insurance. The Plan collects data for regulatory purposes. The Plan is adopted in accordance with the Insurance Code, Articles 5.96, 5.05, 5.25, 17.25, 18.12, 19.08, and 21.69 which authorizes the Board to adopt statistical plans for motor vehicle insurance, fire and allied lines insurance, and multi-peril insurance. Article 5.05(a) requires the Board to promulgate statistical plans for the reporting of loss experience and other necessary data for use in the evaluation of rates and rating systems. Article 5.25 authorizes the Board to designate an agent to gather, audit, and compile experience of insurers writing fire and allied lines. Article 17.25, §18, authorizes the Board to compel written reports from county mutual insurance companies. Article 18.12 requires

underwriters of a Lloyds Insurance Company to file with the Board on an annual basis such information as the Board may demand. Article 19.08 requires reciprocal exchanges to report information required by the Board. Article 21.69 authorizes the Board to contract with any qualified entity to collect historical premium and loss data as defined by the Board and pursuant to statistical plans promulgated or approved by the Board. Staff's proposal (Reference Number 0-0693-11-1), was published in the June 22, 1993, issue of the *Texas Register* (18 TexReg 4132).

The State Board of Insurance has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96, 5.05, 5.25, 17.25, 18.12, 19.08, and 21.69.

The Plan as adopted by the State Board of Insurance is filed with the Chief Clerk under Reference Number 0-0693-11-1 and is incorporated by reference by Board Order Number 60447.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, the Board will notify all insurers writing commercial lines insurance.

Issued in Austin, Texas, on August 16, 1993.

TRD-9327395

Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

For further information, please call: (512) 463-6328

◆ ◆ ◆
The State Board of Insurance of the Texas Department of Insurance, at a public meeting held at 9:00 a.m. on August 4, 1993 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas has adopted a filing by the Texas Workers' Compensation Commission ("Commission") consisting of new forms for its new Self-Insurance Program. Reference No. 0-0793-15 was published in the July 23, 1993, issue of the *Texas Register* (18 TexReg 4868).

The Texas Workers' Compensation Act (Act), Texas Civil Statutes, Article 8308, §3.51 (b)(2)(f), provide that the applicant (self-insured employer) must provide security for incurred liabilities for workers' compensation. One method of providing that security is a surety bond that names the director of the Commission as payee. The Commission's Rule 28 TAC §114.4(a)(1) provides for a security to be a surety bond. Other methods of meeting this security requirement are a deposit of cash or securities, or an irrevocable letter of credit issued by either a Texas chartered bank or a federally chartered bank.

The Commission's new proposed forms consist of a surety bond entitled "Surety Bond, Form SI-210," two endorsements entitled "Surety Bond Increase/Decrease Rider, Form SI-215" and "Surety Bond Name Change Rider, Form SI-216." The Surety Bond is conditioned on the principal (self-insured employer) paying and furnishing compensation, pursuant to the terms, provisions and limitations of the Act. The term of the Surety Bond is continuous and the surety may terminate coverage on the 61st day after filing notice with the director of the Commission for any of the reasons stated in the bond. However, no

termination will be effective for obligations or liabilities incurred prior to termination. If the principal is declared impaired by the Commission, then the surety becomes liable for their principal's obligations and liabilities. In that event the surety shall pay to the director of the Commission within ten days of receipt of demand the entire penal sum of the bond or any portion thereof which the director demands.

The State Board of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.13, 5.15 and 5.97.

The full text of the filing for the new bond and endorsement forms for the Self-Insurance Program as adopted by the State Board of Insurance is filed with the Chief Clerk under (Reference Number O-0793-15) and is incorporated by reference by Board Order Number 60443.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on August 16, 1993.

TRD-9327394

Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

For further information, please call: (512)
463-6328

◆ ◆ ◆

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

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

Posting of open meeting notices. All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Air Control Board

Monday, August 23, 1993, 10:00 a.m. The Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 201S, Austin. According to the revised agenda summary, the board will meet in executive session; consider and possibly act on the calling of a contested case hearing regarding Gibraltar Chemical Resources, Inc.; application for Amendment of TACB Permit Number 9429; consider and possibly act regarding CITGO Petroleum Corporation, Austin Terminal; notice of violation, April 13, 1992 and policy regarding local enforcement action; and calling of a contested case hearing regarding Feathercrest Farms, Inc., Application for TACB Permit Number 22515.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: August 13, 1993, 3:41 p.m.

TRD-9327357

Texas Commission on Alcohol and Drug Abuse

Tuesday, August 17, 1993, 10:00 a.m. The Offender Credentialing Committee of the Texas Commission on Alcohol and Drug Abuse held an emergency meeting at 301 Commerce Street, Fort Worth. According to the complete agenda, the committee called the meeting to order; reviewed applications for the Licensed Chemical Dependency counselor; and adjourned.

Contact: Mike Ezzell, 720 Brazos Street, Suite 403, Austin, Texas 78701-2576, (512) 867-8110.

Filed: August 13, 1993, 2:20 p.m.

TRD-9327318

Texas Alcoholic Beverage Commission

Tuesday, August 24, 1993, 9:30 a.m. The Texas Alcoholic Beverage Commission will meet at 5806 Mesa Drive, Room 180, Austin. According to the agenda summary, the commission will discuss approval of the minutes of June 22, 1993; hear administrators report; consider authorization of contract with Comptroller of Public Accounts for post audits and electronic transfers; discuss computerized telephone system in Houston TABC office; consider new 16 TAC §33.23; consider emergency adoption of new 16 TAC §33.23; consider Retailer Advisory Committee; discuss contract between TABC and U.S. IMPACT; review change in goals for HUB purchases; Power Bingo of Corona Del Mar, California regarding use of electronic bingo players aid; hear public comment; and meet in executive session.

Contact: Dick Durbin, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: August 17, 1993, 12:32 p.m.

TRD-9327401

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Friday, August 27, 1993, 9:00 a.m. The Pricing Subcommittee of the Texas Com-

mittee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet at the General Services Commission, Central Services Building, Room 402, 1711 San Jacinto Street, Austin. According to the agenda summary, the subcommittee will call the meeting to order; introduce subcommittee members and guests; acceptance of minutes from May 28, 1993 meeting; discuss and possibly make recommendation for action on new services; renewal services; catalog purchase procedures for automated information systems; new products; product changes and revisions; Office Quality Furniture Fast Ship versus Quantity Discounts; and adjourn

Contact: Michael T Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2605.

Filed: August 16, 1993, 9:37 a.m.

TRD-9327392

Coastal Coordination Council

Friday, August 20, 1993, 9:00 a.m. The Executive Committee of the Coastal Coordination Council will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of minutes of the July 16, 1993, meeting; review of outline and development schedule for Coastal Management Program document (CMP); discuss boundary recommendation to be presented to the Coastal Coordination Council (CCC) on September 2, 1993; discuss Coastal Natural Resource Areas; status reports on CMP Policy Development document to be presented to the CCC on September 2, 1993; state consistency review

process; public comment period; and adjourn.

Contact: Janet L. Fatheree, 1700 North Congress Avenue, Room 831, Austin, Texas 78701, (512) 463-5385.

Filed: August 12, 1993, 2:31 p.m.

TRD-9327248

Credit Union Department

Monday, August 23, 1993, 10:00 a.m. The Credit Union Commission of the Credit Union Department will meet at the Credit Union Department Building, 914 East Anderson Lane, Austin. According to the complete agenda, the commission will invite public input for future consideration; discuss approval of the minutes of August 2, 1993 meeting; communications, and committee reports from the Texas Share Guaranty Credit Union Oversight, Task Force Advisory, and Commissioner Search Committees; consider proposed partial distribution of Texas Share Guaranty Credit Union's equity; contract offers for Firewheel property; selection of a broker for listing Firewheel property; selection of a commissioner; interview applicants for commissioner; conduct an executive session to discuss credit unions and problem cases; consult with legal counsel regarding contemplated legal actions; and consider qualifications of applicants for the position of commissioner.

Contact: Harry L. Elliott, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: August 12, 1993, 1:05 p.m.

TRD-9327222

Interagency Council on Early Childhood Intervention

Thursday, August 26, 1993, 9:00 a.m. The Interagency Council on Early Childhood Intervention will meet in Room 201-A, Texas Department of Health, 4412 Spicewood Springs, Austin. According to the complete agenda, the council will receive public comments; discuss and possibly act on: the minutes from the meetings of July 14, 1993 and August 5, 1993; proposal to cancel Children's Enterprises' contract during fiscal year 1994; award for early childhood intervention (ECI) marketing plan; request for funding of the community resource coordination group; recommendations regarding the qualifications of early intervention specialists; memorandum of understanding and interagency agreements related to the establishment of ECI as a separate agency; update on liability insurance purchase; reissue the request for proposals to serve Montgom-

ery, Walker and Liberty counties; update on Fort Worth/Tarrant County transfers; post rule amendment to §§621.61-621.64 relating to the payment of childcare for Advisory Committee members on official ECI business.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7673. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 17, 1993, 8:29 a.m.

TRD-9327432

Texas Education Agency

Thursday, September 2, 1993, 9:00 a.m. The Minority Recruitment Advisory Committee of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Room 1-109, Austin. According to the complete agenda, the Minority Recruitment Advisory Committee, established by Texas Education Code, Chapter 51, Subchapter M, Engineering and Science Recruitment Fund, will elect a chairperson; hear presentations about programs proposed for funding; decide which programs to recommend to the Commissioner of Education for funding; discuss proposals to be submitted for program evaluation; and consider yearly redistribution of expended funds. Other unscheduled, but related matters may be addressed.

Contact: Dr. Philip Gehring, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9823.

Filed: August 16, 1993, 11:14 a.m.

TRD-9327398

Texas Employment Commission

Tuesday, August 24, 1993, 9:00 a.m. The Texas Employment Commission will meet at the TEC Building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; meet in executive session to consider relocation of agency headquarters; actions, if any, resulting from executive session; hear staff reports; consider and possibly approve bid for: construction of building addition at Bryan agency-owned building; upgrade purge system and repair leak at Trinity building; cleaning HVAC system at headquarters annex building; recommendation to increase architect's fee for services in connection with construction of building addition at Bryan agency-owned building; proposal to purchase land in El Paso; and

proposal for architectural services in connection with construction of agency-owned building in Tyler; internal procedures of commission appeals; consider and possibly act on higher level appeals in unemployment compensation cases listed on Commission Docket 34; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: August 16, 1993, 4:02 p.m.

TRD-9327429

Texas Department of Health

Friday, August 20, 1993, 3:00 p.m. The Environmental Health Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-652, 1100 West 49th Street, Austin. According to the agenda summary, the committee will discuss approval of the minutes of the June 18, 1993, meeting; discuss and possibly act on emergency and proposed rules concerning licensure of food wholesalers and manufacturers of food; and environmental and consumer health briefing.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 12, 1993, 4:17 p.m.

TRD-9327261

Saturday, August 21, 1993, 8:00 a.m. The Budget and Finance Committee and Health Executive Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-741, 1100 West 49th Street, Austin. According to the complete agenda, the committees will jointly meet to discuss and possibly act on: items of procedure for the August 21, 1993 Texas Board of Health meeting; hear report on poison control centers-implementation of Senate Bill 773; and the Fiscal Year 1994 operating budget and capital asset procurement plan.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 13, 1993, 2:21 p.m.

TRD-9327323

Saturday, August 21, 1993, 9:00 a.m. The Long Term Care Committee of the Texas Board of Health of the Texas Department of

Health will meet at the Texas Department of Health, Room M-721, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the July 24, 1993, meeting; discuss and possibly act on final adoption of the amendment to the long term care nursing facility requirements for licensure and Medicaid certification.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 13, 1993, 2:21 p.m.

TRD-9327322

Saturday, August 21, 1993, 9:30 a.m. The Disease Control Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-741, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: emergency and proposed rules concerning the Texas HIV medication program to expand the formulary to include Rifabutin; amend the criteria for Interferon-Alpha; and delete specified drugs reimbursed to the Tuberculosis Elimination Division.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 13, 1993, 2:20 p.m.

TRD-9327321

Saturday, August 21, 1993, 10:00 a.m. The Family Health Services Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-652, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the July 24, 1993 meeting; discuss and possibly act on: Chronically Ill and Disabled Children's Services (CIDC) recommendations for continued approval as CIDC cardiovascular diagnostic treatment centers; and family health services update.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 13, 1993, 2:20 p.m.

TRD-9327320

Saturday, August 21, 1993, 10:30 a.m. The Personnel Committee of the Texas

Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-721, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss and possibly act on appointments to the Trauma Technical Advisory Committee; and appointments to the Code Enforcement Advisory Committee.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 13, 1993, 2:20 p.m.

TRD-9327319

Saturday, August 21, 1993, 11:30 a.m. The Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-739, 1100 West 49th Street, Austin. According to the agenda summary, the board will discuss approval of minutes of the July 24, 1993 meeting; discuss and possibly act on: commissioner's report; rules (Texas HIV medication program; licensure of food wholesalers and manufacturers of food; long term care nursing facility requirements for licensure and Medicaid certification); hear committee reports (budget/finance; disease control; emergency and disaster; environmental health; family health services; health provider, licensure and certification; hospital and ambulatory care services; long term care; public health promotion; legislative committee; strategic planning; and personnel); approval of the Fiscal Year 1994 operating budget and the capital asset procurement plan; recommendation for continued approval of the Chronically Ill and Disabled Children's cardiovascular diagnostic and treatment centers; appointments to the Trauma Technical Advisory Committee and the Code Enforcement Advisory Committee; environmental and consumer health briefing; hear announcements and comments; and the meeting date for September, 1993.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 13, 1993, 2:21 p.m.

TRD-9327324

Tuesday, August 31, 1993, 9:00 a.m. The Sanitarian Advisory Committee of the Texas Department of Health will meet in Room N-218, The Exchange Building, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: update on environmental and consumer health programs; budget

and activity report; review of pending applications; revision of the registration examination; other business not requiring action; travel vouchers; and hear announcements and comments.

Contact: David K. Lacker, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 17, 1993, 8:29 a.m.

TRD-9327433

Texas Historical Commission

Friday, September 17, 1993, 9:30 a.m. The Texas Antiquities Committee of the Texas Historical Commission met at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the committee discussed approval of minutes of previous meeting of June 18, 1993; approval of amendment to Chapter 41; designate State Archeological Landmarks (SALs) in Harris, Galveston, Marion, Martin, Hays, and Wharton Counties; nominate SALs in Wharton, Hansford, Martin, El Paso, Live Oak and Webb Counties; Zilker Park project update; GIS presentation; State Marine Archeologist report; and heard public comment and staff reports.

Contact: Lillie Thompson, P.O. Box 12276, Austin, Texas 78711, (512) 463-1858.

Filed: August 17, 1993, 9:17 a.m.

TRD-9327436

Texas Department of Housing and Community Affairs

Monday, August 23, 1993, 8:00 a.m. The Programs Committee of the Texas Department of Housing and Community Affairs will meet at the Texas Law Center, 1414 Colorado Street, Austin. According to the complete agenda, the committee will consider and possibly act upon the following: approval of single family new money bond issue; single family lease purchase program approval of guidelines and RFP; appeals process; HOME program rules; HOPE 3-recommendations of private non-profit organizations; multi-family financing rules; and adjourn. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA responsible employee, at (512) 475-3822 or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: August 13, 1993, 3:38 p.m.

TRD-9327354

Monday, August 23, 1993, 11:00 a.m. The Finance Committee of the Texas Department of Housing and Community Affairs will meet at the Texas Law Center, 1414 Colorado Street, Austin. According to the complete agenda, the committee will consider and possibly act upon the following: approval of the TDHCA budget for 1993-1994; RFP for arbitrage calculations; selection of bond counsel; co-bond counsel; disclosure counsel; real estate counsel; multi-family financing inducement resolution; single family new money bond issue; and adjourn. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA responsible employee, at (512) 475-3822 or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: August 13, 1993, 3:38 p.m.

TRD-9327353

Tuesday, August 24, 1993, 9:00 a.m. The Board of Directors of the Texas Department of Housing and Community Affairs will meet at the Texas Law Center, 1414 Colorado Street, Austin. According to the complete agenda, the committee will consider and possibly act upon the following: approval of minutes; single family new money bond issue; single family lease purchase program; appeals process; multi-family financing inducement resolution; multi-family financing rules: HOME program rules, HOPE 3 program recommendations; TDHCA budget for 1993-1994; RFP for arbitrage calculations; selection of bond counsel, co-bond counsel, disclosure counsel and real estate counsel; appointments to committees; and adjourn. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA responsible employee, at (512) 475-3822 or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: August 13, 1993, 3:38 p.m.

TRD-9327352

Department of Information Resources

Friday, August 20, 1993, 9:00 a.m. The Board of the Department of Information Resources will meet at 300 West 15th Street, Suite 1300, Fifth Floor, Committee Room One, Austin. According to the agenda summary, the board will hear executive director's report: division summaries; financial statements; discuss and possibly adopt Fiscal Year 1994 operating budget; actions related to the Computer Service Bureau resulting from certain provisions contained in Senate Bill 381; discuss and possible emergency adoption and/or publication in the *Texas Register* of: 1 TAC, §201.1, Definitions; 1 TAC 201.3, Information Resources Managers; 1 TAC 201.5, Agency Planning; 1 TAC 201.7, Annual Performance Reports; 1 TAC 201.9, Review of Acquisition Specifications; 1 TAC 201.11, Procedure for Adoption of Information Resources Standards and Policies; 1 TAC 201.13, Information Resources Standards; 1 TAC 201.15, Interagency Contracts for Information Resources; and discuss other business.

Contact: John Hawkins, 300 West 15th Street, Suite 1300, Austin, Texas 78701, (512) 475-4514.

Filed: August 12, 1993, 4:22 p.m.

TRD-9327264

Texas Department of Insurance

Tuesday, August 24, 1993, 9:00 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Columbia Universal Life Insurance Company, which holds a Certificate of Authority.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: August 13, 1993, 8:54 a.m.

TRD-9327277

Thursday, August 26, 1993, 9:00 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will consider commercial general liability endorsement CCP-1A (April 1993); sexual abuse endorsement, CCP (September 1992); nurses and emergency medical technicians; and CL-102 (August 1987); supplement to Section IV-"Commercial General Liability Conditions", filed by Insurance Company of

Evanston, pursuant to the Insurance Code, Article 5.13-2; and a commercial multi-peril form filing, Greenhouse Package Policy, filed by Florist Mutual Insurance Company pursuant to Article 5.81 and 28 TAC §5.9101.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 13, 1993, 4:00 p.m.

TRD-9327363

Wednesday, September 8, 1993, 11:00 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will consider the Administrative Law Judge Proposal for Decision in the matter of an appeal of Terry Walker Construction Company from a decision of the Texas Workers' Compensation Insurance Facility.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 16, 1993, 1:25 p.m.

TRD-9327402

Tuesday, September 14, 1993, 1:30 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a public hearing to consider Docket Number 2052 concerning a homeowners rate filing decrease filed by State Farm General Insurance Company pursuant to Article 5.101, §3(g)(2) requesting use of a rating manual, relative to classifications and territories of risks, different from that promulgated by the Board that will be a decrease from their current rate. The Board will also consider Docket Number 2053 concerning a homeowners rate filing decrease filed by State Farm Fire and Casualty Company pursuant to Article 5.101, §3(g)(2) requesting use of a rating manual, relative to classifications and territories of risks, different from that promulgated by the Board that will be a decrease from their current rate.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 16, 1993, 1:26 p.m.

TRD-9327403

Lamar University System

Wednesday, August 18, 1993, 1:30 p.m. The Board of Regents of Lamar University System met at 855 Florida Street, John Gray Institute, Map Room, Beaumont. According to the complete agenda, the board

called the meeting to order; gave invocation; heard chair's report; chancellor's report; item 818-considered approval of internal audit plan for Fiscal Year 1994; item 819-considered approval of revision to Garland Scholarship Fund at Lamar University-Beaumont; item 795-consider approval of Fiscal Year 1994 budgets at Lamar University-Beaumont, Lamar University-Port Arthur, Lamar University-Orange, Lamar University of Technology, John Gray Institute and Lamar University System Office.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: August 13, 1993, 11:15 a.m.

TRD-9327310

◆ ◆ ◆ Texas National Guard Armory Board

Friday, August 20, 1993, 3:00 p.m. The Texas National Guard Armory Board will meet at the Brownwood National Guard Armory, 5601 FM 45 South, Brownwood. According to the agenda summary, the board will discuss administrative matter; hear executive director's update; construction/renovation/maintenance update; discuss property/leases; and establish date of next meeting.

Contact: Sandra Hille, P.O. Box 5426, Austin, Texas 78763, (512) 406-6907.

Filed: August 12, 1993, 2:44 p.m.

TRD-9327244

◆ ◆ ◆ Texas Board of Pardons and Paroles

Monday-Friday, August 23-27, 1993, 1:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 2503 Lake Road, Suite 2, Huntsville. According to the agenda summary, the panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: August 13, 1993, 8:42 a.m.

TRD-9327275

Tuesday-Wednesday, August 24-25, 1993, 1:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will

meet at 1550 East Palestine, Suite 100, Palestine. According to the agenda summary, the panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: August 13, 1993, 8:59 a.m.

TRD-9327278

Tuesday-Wednesday, August 24-25, 1993, 9:00 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 202 Airport Plaza, Midland. According to the agenda summary, the panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: August 13, 1993, 8:42 a.m.

TRD-9327274

Thursday, August 26, 1993, 9:00 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1212 North Velasco, Suite 201, Angleton. According to the agenda summary, the panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: August 13, 1993, 8:41 a.m.

TRD-9327272

Thursday-Friday, August 26-27, 1993, 9:00 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine, Suite 100, Palestine. According to the agenda summary, the panel(s) composed of three board mem-

ber(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: August 13, 1993, 8:43 a.m.

TRD-9327276

Friday, August 27, 1993, 9:00 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at Route 5, Box 258A, Gatesville. According to the agenda summary, the panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: August 13, 1993, 8:42 a.m.

TRD-9327273

◆ ◆ ◆ Texas Parks and Wildlife Department

Tuesday, August 24, 1993, 2:00 p.m. The Policy and Planning Committee of the Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road, Austin. According to the agenda summary, the committee will discuss approval of the minutes from the July 8, 1993 meeting; make recommendation to commission on Deputy Game Wardens Regulation changes; review proposal for commission policy on travel and expenses reimbursements; update on policy inventory contract; update on commission policy manual review; and discuss other business.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1993, 2:03 p.m.

TRD-9327414

Tuesday, August 24, 1993, 4:00 p.m. The Finance Committee of the Texas Parks and

Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road, Austin. According to the agenda summary, the committee will discuss approval of the minutes of July 8, 1993 meeting; discuss fiscal year 1994 operating budget; and other business.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1993, 2:03 p.m.

TRD-9327415

Wednesday, August 25, 1993, 8:00 a.m. The Regulations Committee of the Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road, Austin. According to the agenda summary, the committee will discuss approval of regulations committee minutes from the July 7, 1993 meeting; proposed late season migratory game bird regulations; statutory rule changes concerning: stamp exemptions, vessel registration agents; mussels and clams; and fur-bearing animals and trapping; proposed amendments to wildlife management plan for antlerless deer permits and deer herd control tag; petition for rulemaking; closure of San Bernard River to crab traps; proposed regulations setting fees for permits; and briefing items: new rules concerning netting in public fresh waters and turkey regulations.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1993, 2:03 p.m.

TRD-9327416

Wednesday, August 25, 1993, 9:00 a.m. The Aquaculture Executive Committee of the Texas Parks and Wildlife Department will meet at the General Land Office Conference Room, Eighth Floor, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the committee will call the meeting to order; review and discuss approval of the minutes of March 25, 1993 committee meeting; election of aquaculture executive committee chairman; appointment of TPWD representative to aquaculture advisory committee; briefing and discussion regarding "Hurricane Effects Management Plan"; discussion regarding aquaculture liaison officer; and adjourn.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1993, 2:04 p.m.

TRD-9327417

Wednesday, August 25, 1993, 10:00 a.m. The Capital Projects Committee of the Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road, Austin. According to the agenda summary, the committee will discuss approval of committee minutes from the May 19, 1993 meeting; grants program overview; Big Bend Ranch planning update; Capital Program briefing; San Jose Mission land exchange; and staff update.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1993, 2:04 p.m.

TRD-9327418

Wednesday, August 25, 1993, 10:00 a.m. The Capital Projects Committee of the Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road, Austin. According to the agenda summary, the committee will discuss approval of minutes from the May 19, 1993 meeting; land sale-Houston County; and land acquisition program update.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1993, 2:04 p.m.

TRD-9327419

Wednesday, August 25, 1993, 2:00 p.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road, Austin. According to the agenda summary, the commission will hold annual public hearing concerning any issue relating to Parks and Wildlife matters.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1993, 2:04 p.m.

TRD-9327420

Wednesday, August 25, 1993, 6:00 p.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at Ruth's Chris Steakhouse, 3010 Guadalupe Street, Austin. According to the agenda summary, the members of the commission plan to have dinner at 6:00 p.m. Although this function is primarily a social event and no formal action is planned, the Commission may discuss items on the public hearing scheduled for 9:00 a.m., August 26, 1993.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1993, 2:04 p.m.

TRD-9327421

Thursday, August 26, 1993, 9:00 a.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters, Commission Hearing Room, 4200 Smith School Road, Austin. According to the agenda summary, the commission will discuss approval of minutes from the July 8, 1993 meeting; presentation of retirement certificates and service awards; presentation by Coors for Expo '93; recognition of Cinda Davis; presentation to Dow Chemical; Design award by AIA-Sebastopol State Historical Park; local park funding; boat ramp funding; National Recreational Trails Grant funding; discuss fiscal year 1994 operating budget; proposed amendments to Wildlife Management plans for antlerless permits and antlerless deer control permits; late season migratory game bird proclamation, 1993-1994; statutory rule changes; deputy game warden training rule; contested case hearing: Parker LaFarge Dredging settlement, San Jose Mission land exchange-Bexar County; land sale-Houston County; and nomination for oil and gas lease-Village Creek Park site-Hardin County.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1993, 2:04 p.m.

TRD-9327422

Thursday, August 26, 1993, 9:00 a.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters Complex, Executive Office Conference Room, 4200 Smith School Road, Austin. According to the agenda summary, the commission will meet in executive session; discuss approval of minutes from May 20, 1993 executive session; and discuss land sale-Houston County.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 16, 1993, 2:04 p.m.

TRD-9327423

◆ ◆ ◆
Texas State Board of Pharmacy

Wednesday-Friday, August 25-27, 1993, 9:00 a.m. The Texas State Board of Pharmacy will meet at 1812 Centre Creek, Room 203, Austin. According to the agenda summary, the board will commence in open

session to: consider for approval board business meeting minutes for November 17-18, 1992, February 23, 1993, February 27, 1993; consider for proposal amendments to §283.9 and §283.10; §281.73, §281.48(a), §281.58(i); consider for adoption amendments to §§291.72-291.76, 291.5, 291.7, 291.12, 291.15, 291.16, 291.17, repeal of 291.11; amendments to §§291.32, 291.34, 291.36, 303.1 and 303.2; hear report on legislation passed by the 73rd Legislative Session relating to TSBP or pharmacy practice; report on Pharmacists Recovery Network (PRN) Program; review and approve Fiscal Year 1994 contract with TPA for the PRN program; discuss financial reports, including Fiscal Year 1992 annual report, Fiscal Year 1993 expenditures to date, Fiscal Year 1993 performance and workload, Fiscal Year 1994 goals and objectives; Fiscal Year 1994-1995 appropriations bill and riders, Fiscal Year 1994 operating budget and cash flow; Article V provisions (General Appropriations Act-73rd Legislature); contract airline fares, management control audit of TSBP; report on advisory committee appointments; discuss TSBP appointment to Technical Advisory Committee appointments; discuss TSBP appointment to Technical Advisory Committee of Texas Optometry Board; discuss Health Professions Council and TSBP appointment of representative (Senate Bill 674); hear report on cross-licensing of pharmaceutical products and their effects on generic substitutions; presentations followed by discussion of compounding of Positron Emission Tomography (PET) Radiopharmaceutical by Nuclear Pharmacies, FDA's position on compounding by Nuclear Pharmacies, and enforcement policy for OBRA regulations; American Council on Pharmaceutical Education (ACPE) proposed revision of accreditation standards and guidelines for professional program in pharmacy leading to the Doctor of Pharmacy Degree; review and approve Texas College of Pharmacy Internship Programs for Texas Southern University, University of Houston, and University of Texas; hear reports on recent meetings; discuss upcoming conference and events; presentation of proposal for decision prepared by the State Office of Administrative Hearings in the matter of TSBP versus Oscar Leon Ortiz; consider and possibly take action on proposed agreed board orders; discuss board member and staff recognition of appointments and awards; election of officers; and meet in executive session to consider proposal for decision and sanctions in the matter of TSBP versus Oscar Leon Ortiz, personnel matters and agreed board orders involving impaired pharmacists.

Contact: Gay Dodson, 8505 Cross Park Drive, #110, Austin, Texas 78754, (512) 832-0661.

Filed: August 12, 1993, 11:53 a.m.

TRD-9327221

Texas State Board of Podiatry Examiners

Wednesday, August 18, 1993, 8:00 a.m.

The Executive Director Search Committee of the Texas State Board of Podiatry Examiners met at the Driskill Hotel, 604 Brazos Street, Austin. According to the emergency revised agenda summary, the committee changed the location of the meeting to the Driskill Hotel, 604 Brazos, Driskill Room, Second Floor, Austin. The committee convened in open session; met in executive session (§2(g)) to screen applicants for the executive director position. The executive session was held in accordance with Article 6252-172(g). The emergency status was necessary due to the number of people participating in the interviewing process and it was determined that a larger location was needed.

Contact: Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

Filed: August 16, 1993, 8:09 a.m.

TRD-9327381

Thursday-Friday, August 26-27, 1993, 10:00 and 8:00 a.m. respectively. The Texas State Board of Podiatry Examiners will meet at the Embassy Suites Downtown, 300 South Congress Avenue, Austin. According to the agenda summary, the board will inspect credentials; appearance by Robert D. Leisten, D.P.M.; appearance by Paul Resignato, D.P.M.; board discussion in executive session (Article 6252-17, §2(g)) with candidates for executive director position and possible board action concerning evaluation, employment, duties or expectations of the board; cancellation of delinquent licenses; discuss CME requirement change request; malpractice claims discussion; discuss FPMB dues; Beaumont Foot Clinic-shoe store; PMLexis grading criteria; review newsletter; report on complaint status; appearance by Dr. Bellacosa and Mark Hanna; rehearing-Dr. Gregson Edwards 512-92-245; and set time, place and date for next scheduled board meeting.

Contact: Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

Filed: August 16, 1993, 8:09 a.m.

TRD-9327382

Texas State Board of Examiners of Psychologists

Wednesday-Friday, September 8-10, 1993, 8:00 a.m. The Texas State Board of

Examiners of Psychologists will meet at 9101 Burnet Road, Suite 212, Austin. According to the agenda summary, the board will consider public comments; discuss approval of minutes; hear reports from the acting executive director, chair, personnel, complaint and enforcement, oral examination, search, newsletter, and budget committees; review and discuss applications; proposed and adopted rules; agreed orders; complaints; opinion letters; planning issues; written examinations; policies and procedures; reciprocity; and legislative matters; board will enter in executive session to meet with Assistant Attorneys General to seek legal advice pursuant to Texas Civil Statutes, Article 6252-17, §2(E).

Contact: Rebecca E. Forkner, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

Filed: August 12, 1993, 2:42 p.m.

TRD-9327243

Public Utility Commission of Texas

Tuesday, August 24, 1993, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 12206-petition of Texas Utilities Electric Company for Authority to surcharge an undercollection of fuel cost revenues.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 13, 1993, 4:01 p.m.

TRD-9327364

Tuesday, August 24, 1993, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 12176-petition of Southwestern Bell Telephone Company for waiver of certain requirements of Substantive Rule 23.12.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 13, 1993, 4:01 p.m.

TRD-9327365

Tuesday, August 24, 1993, 1:30 p.m. The Administrative Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will discuss Texas Utilities Electric Company's proposal for Integrated Resource Planning.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 16, 1993, 3:35 p.m.

TRD-9327428

Thursday, August 26, 1993, 10:00 a.m.
The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 12213-petition of Southwestern Electric Power Company for authority to implement experimental economic development rider.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 16, 1993, 3:34 p.m.

TRD-9327425

Thursday, September 2, 1993, 10:00 a.m.
The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a second prehearing conference in Docket Number 10265-complaint of Kenneth D. Williams against Houston Lighting and Power Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 12, 1993, 3:04 p.m.

TRD-9327253

Thursday, September 2, 1993, 10:00 a.m.
The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a second prehearing conference in Docket Number 12065-complaint of Kenneth D. Williams against Houston Lighting and Power Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 16, 1993, 3:34 p.m.

TRD-9327426

Tuesday, September 7, 1993, 9:00 a.m.
The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will hold a hearing on the merits updated revised requirements phase in Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 12, 1993, 3:03 p.m.

TRD-9327251

Monday, September 20, 1993, 10:00 a.m.
The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10831-application of Southwestern Bell Telephone Company to revise its tariff to redefine the point of demarcation ("DEMARC") and the location of the Network Interface (NI).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 12, 1993, 3:05 p.m.

TRD-9327254

Tuesday, September 21, 1993, 9:00 a.m.
The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a hearing on the merits rate case expenses in Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 12, 1993, 3:04 p.m.

TRD-9327252

Monday, September 27, 1993, 9:00 a.m.
The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11972-petition of Texas Utilities Electric Company to show commercial operation date for Comanche Peak Steam Electric Station Unit 2.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 16, 1993, 3:35 p.m.

TRD-9327427

Thursday, October 21, 1993, 10:00 a.m.
The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold hearing on the merits in Docket Number 12118-application of Southwestern Bell Telephone Company to provide call identification service (Caller ID).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 16, 1993, 3:34 p.m.

TRD-9327424

◆ ◆ ◆
Railroad Commission of Texas

Monday, August 23, 1993, 9:30 a.m. The Railroad Commission of Texas will meet in the First Floor Conference Room 1-111, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the administrative services division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711, (512) 463-7257.

Filed: August 13, 1993, 11:10 a.m.

TRD-9327301

The commission will consider and act on the personnel division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6981.

Filed: August 13, 1993, 11:10 a.m.

TRD-9327303

The commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: August 13, 1993, 11:11 a.m.

TRD-9327307

The commission will meet in consideration of category determinations under sections 102 (c)(1)(B), 102(c)(1)(c), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: August 13, 1993, 11:11 a.m.

TRD-9327306

The commission will consider and act on the investigation division director's report on division administration, investigations, budget, and personnel matters.

Contact: Marcello R. Montemayor, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: August 13, 1993, 11:10 a.m.

TRD-9327302

The commission will consider various applications and other matters within the jurisdiction of the agency including oral arguments. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921

Filed: August 13, 1993, 11:12 a.m.

TRD-9327309

The commission will consider and act on the division director's report on budget, personnel and policy matters related to operation of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: August 13, 1993, 11:10 a.m.

TRD-9327300

The commission will consider and act on the office of information service's director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6701.

Filed: August 13, 1993, 11:11 a.m.

TRD-9327304

The commission will consider and act on the Surface Mining and Reclamation Division Director's report on division administration, budget, procedures, and personnel matters. The commission will consider and act on the director's recommendations to award the Christmas Mountains Abandoned Mine Reclamation Project contract and the Smith Abandoned Mine, Phase I Regrade contract.

Contact: Melvin Hodgkiss, P.O. Box 12967, Austin, Texas 78701, (512) 463-6901.

Filed: August 13, 1993, 11:11 a.m.

TRD-9327305

The commission will discuss budget, fiscal, administrative or procedural matters, strategic planning; personnel and staffing; contracts and grants; may discuss comionetas operations; and may meet in executive session on any items listed above as authorized by the Open Meetings Act; approval of guidelines on records charges; and implementation of House Bill 1009 amending Texas Open Records Act.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: August 13, 1993, 11:12 a.m.

TRD-9327308

Texas Savings and Loan Department

Thursday, August 26, 1993, 9:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will hold a hearing to accumulate a record of evidence in regard to the application of AmWest Savings Association, Olney, for a loan office to be located at 4010 West Park Boulevard, Plano, Collin County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: August 13, 1993, 12:48 p.m.

TRD-9327315

Texas State Soil and Water Conservation Board

Friday, August 23, 1993, 8:00 a.m. The Texas State Soil and Water Conservation Board will meet at 311 North Fifth Street, Conference Room, Temple. According to the complete agenda, the board will discuss approval of the minutes from the July 21, 1993 board meeting; district director appointments; fiscal year 1994 operating budget; report on district bookkeepers training sessions; conservation awards program; memorandum of understanding with Texas Water Commission; draft rules for Senate Bill 503; annual meeting of soil and water conservation district directors; hear reports from agencies and guests; board member travel; next regular board meeting, September 15, 1993; and discuss coastal zone management program.

Contact: Robert G. Buckley, P.O. Box 658, Temple, Texas 76503, (817) 773-2250, TEX-AN 820-1250.

Filed: August 13, 1993, 3:56 p.m.

TRD-9327362

Structural Pest Control Board

Tuesday, August 24, 1993, 1:30 p.m. The Committee on Advertising of the Structural Pest Control Board will meet at the Joe C.

Thompson Conference Center, 2405 East Campus Drive, Room 2.110, Austin. According to the complete agenda, the committee will review advertising guidelines of the Pest Control Industry.

Contact: Benny M. Mathis, Jr., 9101 Burnet Road, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: August 12, 1993, 4:16 p.m.

TRD-9327260

Texas Surplus Property Agency

Thursday, August 26, 1993, 9:30 a.m. The Board of the Texas Surplus Property Agency will meet at the Central Services Building, 1711 San Jacinto Street, Room 402, Austin. According to the complete agenda, the board will call the meeting to order; introduce staff, guests and members present; discuss approval of minutes; hear final report on the assimilation of the Federal Surplus Property Program into the General Services Commission.

Contact: John Poulard, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3446.

Filed: August 16, 1993, 9:37 a.m.

TRD-9327391

Board of Tax Professional Examiners

Monday, August 30, 1993, 5:00 p.m. The Board of Tax Professional Examiners will meet at the Marriott Bayfront Hotel, Corpus Christi. According to the agenda summary, the board will administer the oath of office to Darla Doss and Cora Viescas; discuss approval of the April 5, 1993 minutes; discuss and possibly act on certification and recertification; budget Fiscal Year 1994; interagency contract; 120 comment outline; setting hearing to State Office of Administrative Hearings; hear report from professional standards committee; request for professional standards committee to review board exam failure policy and/or classification systems; meet in executive session to discuss personnel pertaining to applications for the position of executive director; reconvene in open session; announcement by the chairman of persons selected for interview; hear public comment; and adjourn.

Contact: Sam H. Smith, 4301 Westbank Drive, Building B, Suite 140, Austin, Texas 78746-6565, (512) 329-7981.

Filed: August 16, 1993, 9:20 a.m.

TRD-9327390

The Texas A&M University System, Board of Regents

Thursday, September 2, 1993, 10:00 a.m. The Committee for Academic Campuses of the Board of Regents of the Texas A&M University System will meet at the Sheraton Plaza Hotel, Santa Fe Room, 1721 Central Texas Expressway, Killeen. According to the complete agenda, the committee will meet with representatives of the Killeen/Fort Hood area to discuss the educational programs and facilities in Central Texas.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 13, 1993, 2:25 p.m.

TRD-9327325

University of Texas, M.D. Anderson Cancer Center

Tuesday, August 17, 1993, 9:00 a.m. The Institutional Animal Care and Use Committee of the M.D. Anderson Cancer Center of the University of Texas will meet at the M.D. Anderson Cancer Center, Conference Room AW7.707, Seventh Floor, 1515 Holcombe Boulevard, Houston. According to the agenda summary, the committee will review protocols for animal care and use and modifications thereof.

Contact: Anthony Mastromarino, Ph.D., 1515 Holcombe Boulevard, Box 101, Houston, Texas 77030, (713) 792-3220.

Filed: August 13, 1993, 8:25 a.m.

TRD-9327271

Texas Water Commission

Wednesday, August 25, 1993, 9:00 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: water quality enforcements; petroleum storage tank enforcements; district bankruptcy; rules; examiner's proposal for decision; environmental equity and justice task force final report; meet in executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: August 16, 1993, 1:56 p.m.

TRD-9327409

Wednesday, August 25, 1993, 9:00 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: new Hazardous Waste Permits; Class 2 modifications to Hazardous Waste permits; new water quality permits; amendment to water quality permits; minor amendment to water quality permits; water quality permit renewals; water right permits; water district matters; water utility matters; superfund contract; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: August 16, 1993, 1:56 p.m.

TRD-9327410

Thursday, September 2, 1993, 10:00 a.m. The Texas Water Commission will meet at the Brenham Community Hall, 101 North Chappell Hill Street, Brenham. According to the agenda summary, the commission will consider an application for a municipal solid waste transfer station registration by the City of Brenham, Proposed Registration Number MSW40018. The transfer station is to be at the City of Brenham's sewage treatment site on County Road 80, approximately 1,400 feet east of Highway 577 in Washington County.

Contact: Charles Stavelly, P.O. Box 13087, Austin, Texas 78711, (512) 908-6687.

Filed: August 16, 1993, 1:56 p.m.

TRD-9327411

Tuesday, September 14, 1993, 7:00 p.m. The Office of Hearings Examiner of the Texas Water Commission will meet at Southwest High School, 11690 Dragon Lane, San Antonio. According to the agenda summary, the commission will consider an application to amend a municipal solid waste management facility permit by the City of San Antonio, Permit Number MSW1237. This application has been designated Application Number MSW1237-A. The facility is located 2.5 miles west of the intersection of IH-410 and FM 2536, four miles southwest of the intersection of IH-410 and U.S. Highway 90 within the City of San Antonio, Bexar County.

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

Filed: August 16, 1993, 1:57 p.m.

TRD-9327413

Wednesday, September 15, 1993, 10:00 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at Beethoven Hall, 420 South Alamo Street, San Antonio. According to the agenda summary, the commission will hold a public hearing to consider an application to amend a municipal solid waste management facility permit by the City of San Antonio, Permit Number MSW1237. This application has been designated Application Number MSW1237-A. The facility is located 2.5 miles west of the intersection of IH-410 and FM 2536, four miles southwest of the intersection of IH-410 and U.S. Highway 90, 3.5 miles southeast of the intersection of U.S. Highway 90 and FM 1604, and 2.5 miles north of the intersection of FM 1604 and FM 2536 within the City of San Antonio, Bexar County.

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

Filed: August 16, 1993, 1:56 p.m.

TRD-9327412

Regional Meetings

Meetings Filed August 12, 1993

The Austin Travis County Mental Health and Mental Retardation Board of Trustees, Human Resources Committee met at 1430 Collier Street, Board Room, Austin, August 18, 1993, at 6:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764, (512) 440-4031. TRD-9327259.

The Colorado River Municipal Water District Board of Directors met at 400 East 24th Street, Big Spring, August 16, 1993, at 11:00 a.m. Information may be obtained from O. H. Ivie, P.O. Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9327218.

The Comal Appraisal District Board of Directors met at 430 West Mill Street, New Braunfels, August 16, 1993, at 5:30 p.m. Information may be obtained from Lynn Rodgers, P.O. Box 311222, New Braunfels, Texas 78130, (210) 625-8597. TRD-9327242.

The County Education District Number 11 Board of Trustees met at the Snyder ISD Administration Building, 3901 37th Street, Snyder, August 19, 1993, at 7:00 p.m. Information may be obtained from L. R.

Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549, Fax (915) 573-8459. TRD-9327246.

The Education Service Center, Region II Board of Directors met at the Joe Cotten's Bar-B-Que, Highway 77, Robstown, August 18, 1993, at 5:30 p.m. Information may be obtained from Dr. Ernest Zomora, 209 North Water Street, Corpus Christi, Texas 78401, (512) 883-9288, Ext. 2200. TRD-9327314.

The Education Service Center, Region II Board of Directors, Regional Advisory Committee met at the Joe Cotten's Bar-B-Que, Highway 77, Robstown, August 18, 1993, at 7:00 p.m. Information may be obtained from Dr. Ernest Zomora, 209 North Water Street, Corpus Christi, Texas 78401, (512) 883-9288, Ext. 2200. TRD-9327313.

The Education Service Center, Region XV Board of Directors met at the ESC Region XV, 612 South Irene Street, Conference Room Number One, San Angelo, August 19, 1993, at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571. TRD-9327247.

The Edwards County Appraisal District Board of Directors met at the New County Annex Building, Rocksprings, August 16, 1993, at 9:00 a.m. Information may be obtained from Natalie McNealy, P.O. Box 378, Rocksprings, Texas 78880, (210) 683-4189. TRD-9327219.

The Golden Crescent Private Industry Council Oversight Committee met at 2401 Houston Highway, Victoria, August 16, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9327258.

The Golden Crescent Private Industry Council Executive Committee met at 2401 Houston Highway, Victoria, August 18, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9327257.

The Hale County Appraisal District Board of Directors met at 302 West Eighth Street, Plainview, August 19, 1993, at 8:00 p.m. Information may be obtained from Linda Jaynes, P.O. Box 29, Plainview, Texas 79072, (806) 293-4226. TRD-9327217.

The Harris County Appraisal District Board of Directors met at 2800 North Loop West, Eighth Floor, Houston, August 18, 1993, at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9327220.

The Harris County Appraisal District Board of Directors met at 2800 North Loop

West, Eighth Floor, Houston, August 18, 1993, at 9:30 a.m. (Revised agenda). Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9327255.

The Hays County Appraisal District Appraisal Review Board met at 632 A East Hopkins, Municipal Building, San Marcos, August 17, 1993, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9327250.

The Hays County Appraisal District Board of Directors met at 632 A East Hopkins, Municipal Building, San Marcos, August 18, 1993, at 3:00 p.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9327263.

The Hays County Appraisal District Board of Directors met at 632 A East Hopkins, Municipal Building, San Marcos, August 18, 1993, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9327262.

The Hays County Appraisal District Appraisal Review Board met at 632 A East Hopkins, Municipal Building, San Marcos, August 19, 1993, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9327249.

The Johnson County Rural Water Supply Corporation Board met at the JCRWSC Office, Highway 171 South Cleburne, August 17, 1993, at 6:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9327245.

The Kendall Appraisal District Board of Directors Personnel Subcommittee met at 121 South Main Street, Boerne, August 16, 1993, at 4:00 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9327256.

The Lamar County Appraisal District Appraisal Review Board will meet at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, August 17, 1993, at 9:30 a.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (903) 785-7822. TRD-9327312.

The Liberty County Central Appraisal District Appraisal Review Board met at 315 Main Street, Liberty, August 19, 1993, at 9:30 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722.

The Sabine River Authority of Texas Toledo Bend Joint Operating Board will meet at the Damsite Office, Burkeville, August

24, 1993, at 10:30 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-3200. TRD-9327241.

◆ ◆ ◆
**Meetings Filed August 13,
1993**

The Atascosa County Appraisal District Board of Directors met at Fourth and Avenue J, Poteet, August 19, 1993, at 1:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065-0139, (210) 742-3591. TRD-9327377.

The Bastrop Central Appraisal District Board of Directors met at 1200 Cedar Street, Bastrop, August 19, 1993, at 6:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9327294.

The Brazos Valley Solid Waste Management Agency Board of Trustees met at 1101 Texas Avenue, College Station, August 17, 1993, at 1:30 p.m. Information may be obtained from Cathy Locke, 1101 Texas Avenue, College Station, Texas 77840, (409) 764-3507. TRD-9327311.

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, August 16, 1993, at noon. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9327293.

The Coryell Appraisal District Board of Directors met at the Coryell County Appraisal District Office, 113 North Seventh Street, Gatesville, August 19, 1993, at 5:30 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD-9327350.

The Coryell Appraisal District Board of Directors met at the Coryell County Appraisal District Office, 113 North Seventh Street, Gatesville, August 19, 1993, at 6:30 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD-9327351.

The County Education Number 20 Board of Trustees will meet at the Dumas High School Library, Third and Kline, Dumas, August 25, 1993, at 7:00 p.m. Information may be obtained from Dwain Walker, 7200 I-40 West, Amarillo, Texas 79106-2598, (806) 354-4252. TRD-9327299.

The Dallas Area Rapid Transit DART Dallas Delegation met at 1401 Pacific Avenue, Conference Room B, Dallas, August 17, 1993, at noon. Information may be obtained from Nancy McKethan, 1401 Pacific

Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9327298.

The Dallas Area Rapid Transit Committee of the Whole met at 1401 Pacific Avenue, Dallas, August 17, 1993, at 1:00 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9327296.

The Dallas Area Rapid Transit Committee of the Whole will meet at 1401 Pacific Avenue, Dallas, August 20, 1993, at 8:30 a.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9327295.

The Dallas Area Rapid Transit Committee of the Whole will meet at 1401 Pacific Avenue, Dallas, August 21, 1993, at 9:00 a.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9327297.

The East Texas Council of Governments Private Industry Council met at the ETCOG Offices, Kilgore, August 19, 1993, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9327326.

The Gulf Coast State Planning Region Transportation Policy Council will meet at 3555 Timmons Lane, Second Floor Conference Room A, Houston, August 27, 1993, at 9:30 a.m. Information may be obtained from Rosalind Hebert, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9327316.

The Heart of Texas Council of Governments Private Industry Council met at 300 Franklin Avenue, Waco, August 19, 1993, at 5:30 p.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9327327.

The High Plains Underground Water Conservation District Number One Board of Directors met at 2930 Avenue Q, Conference Room, Lubbock, August 19, 1993, at 11:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9327328.

The Hockley County Appraisal District Board of Directors met at 1103-C Houston Street, Levelland, August 13, 1993, at 7:00 p.m. The emergency was necessary as board had to approve resolutions before August 16, 1993. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9327373.

The Jack County Appraisal District Board of Directors met at 210 North Church

Street, Jacksboro, August 17, 1993, at 7:00 p.m. Information may be obtained from Gary L. Zeitler, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9327355.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, August 19, 1993, at 7:00 p.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9327317.

The Lower Colorado River Authority Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 17, 1993, at 1:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9327285.

The Lower Colorado River Authority Audit Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 18, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9327292.

The Lower Colorado River Authority Finance and Administration Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 18, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9327291.

The Lower Colorado River Authority Energy Operations Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 18, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9327290.

The Lower Colorado River Authority Finance and Environmental Protection Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 18, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9327289.

The Lower Colorado River Authority Natural Resources Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 18, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9327288.

The Lower Colorado River Authority Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 18, 1993, at 9:00 a.m. Information may be ob-

tained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9327287.

The Lower Colorado River Authority Board of Directors met at 3701 Lake Austin Boulevard, Hancock Building, Board Room Austin, August 18, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9327286.

The North Texas Private Industry Council Nortex Regional Planning Commission will meet at 4309 Jacksboro Highway, Wichita Falls, August 25, 1993, at 12:15 p.m. Information may be obtained from Earl Nunneley, 601 West Cedar Street, Nocona, Texas 76255, (817) 824-3222. TRD-9327279.

The Riceland Regional Mental Health Authority Board of Trustees met at 3007 North Richmond Road, Wharton, August 19, 1993, at noon. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098. TRD-9327283.

The Tarrant Appraisal District Board of Directors met at 2301 Gravel Road, Fort Worth, August 16, 1993, at 4:00 p.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005. TRD-9327349.

◆ ◆ ◆
**Meetings Filed August 14,
1993**

The West Central Texas Municipal Water District met at 410 Hickory Street, Abilene, August 19, 1993, at 9:30 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254. TRD-9327379.

◆ ◆ ◆
**Meetings Filed August 16,
1993**

The Austin-Travis County Mental Health and Mental Retardation Center Planning and Operations Committee will meet at 1430 Collier Street, Board Room, Austin, August 20, 1993, 11:30 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9327400.

The Central Texas Council of Governments Executive Committee will meet at 302 East Central, Belton, August 26, 1993, at 12:30 p.m. Information may be obtained from A. C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD-9327399.

The Coryell City Water Supply District Board of Directors met at the District Office, FM 929, Coryell City, August 19,

1993, at 7:30 p.m. Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089. TRD-9327397.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis, Sherman, August 25, 1993, at 7:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9327388.

The Grayson Appraisal District Appraisal Review Board will meet at 205 North Travis, Sherman, August 31, 1993, at 9:00 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9327389.

The Kaufman County Education District Board of Trustees will meet at 3950 South Houston Street, Kaufman, August 24, 1993, at 7:30 p.m. Information may be obtained from Carolyn Harrison, P.O. Box 819,

Kaufman, Texas 75142, (214) 932-6081. TRD-9327431.

The Northeast Texas Municipal Water District Board of Directors will meet at Highway 250 South, Hughes Springs, August 23, 1993, at 10:00 a.m. Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (214) 639-7538. TRD-9327408.

The North Texas Municipal Water District Board of Directors will meet at 505 East Brown Street, Administrative Offices, Wylie, August 26, 1993, at 4:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (214) 442-5405. TRD-9327387.

The Region VIII Education Service Center Board of Directors will meet at the Region VIII Education Service Center, FM 1734, Mt. Pleasant, August 26, 1993, at 7:00 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt.

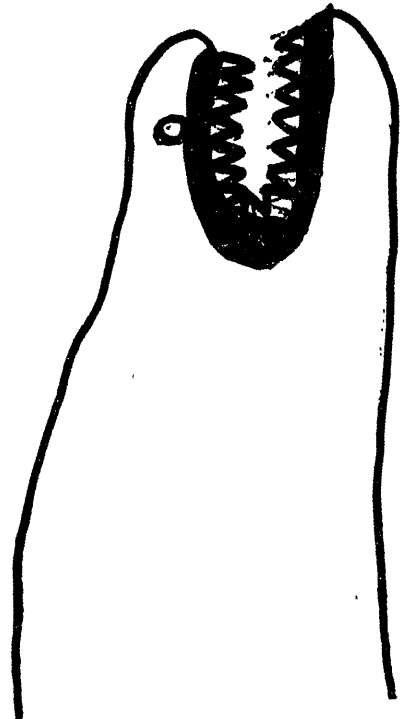
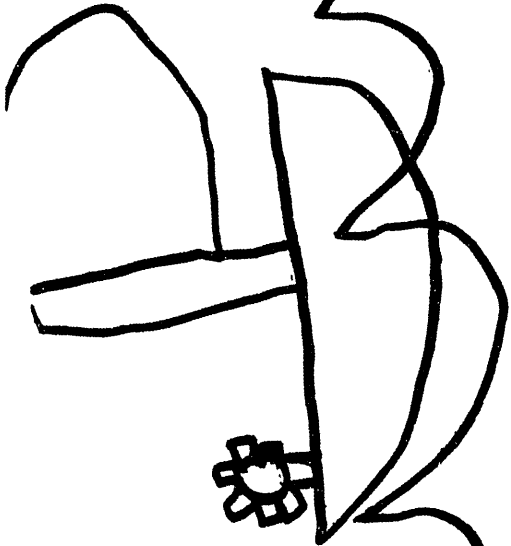
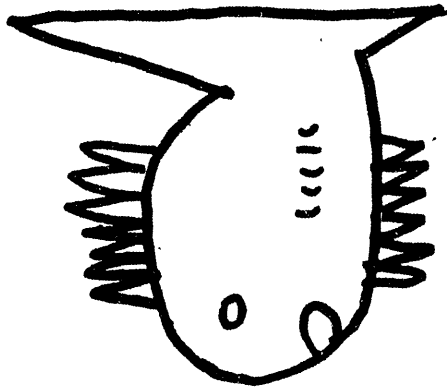
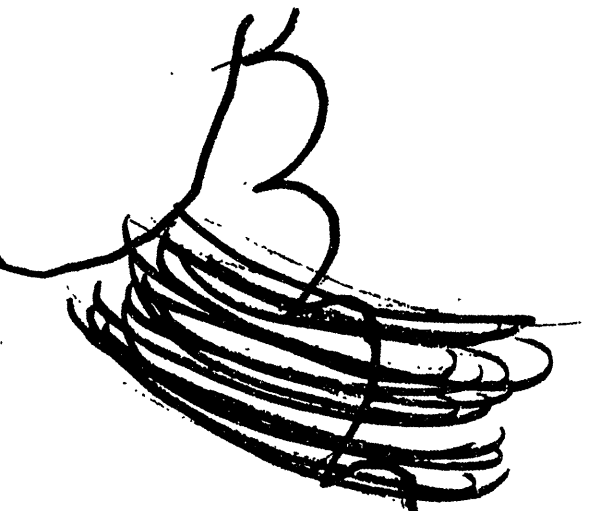
Pleasant, Texas 75456-1894, (903) 572-8551. TRD-9327406.

The San Jacinto River Authority Board of Directors will meet at the Bluebonnet Room, Ninth Floor, Houston Club Building, 811 Rusk, Houston, August 25, 1993, at 12:30 p.m. Information may be obtained from James R. Adams, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9327407.

◆ ◆ ◆
**Meetings Filed August 17,
1993**

The Coleman County Water Supply Corporation Board of Directors will meet at the Corporation Office, 214 Santa Anna Avenue, Coleman, August 20, 1993, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9327437.

◆ ◆ ◆



In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board

Extension of Comment Period

In the July 9, 1993, issue of the *Texas Register* (18 TexReg 4523), the Texas Air Control Board (TACB) published a notice of public hearing on proposed State Implementation Plan revisions to be held August 5, 1993. The purpose of the hearing was to receive testimony on proposed revisions to the 1990 base year emissions inventory for the Houston/Galveston ozone nonattainment area. The deadline of August 13, 1993, for receipt of written comments has been extended to August 18, 1993. All comments at the hearing, as well as written comment received by 4:00 p.m. on August 18, 1993, at the TACB central office in Austin, will be considered by the Board prior to any final decision on the proposed changes.

Copies of the proposed revisions are available at the TACB, Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753, and at all regional offices of the agency. For further information, contact the TACB Emissions Inventory Division in Austin at (512) 908-1457.

Issued in Austin, Texas, on August 11, 1993.

TRD-9327383 Cyril Durrenberger
Assistant Deputy Director, Air Quality
Planning
Texas Air Control Board

Filed: August 16, 1993

Texas Commission on Alcohol and Drug Abuse

Correction of Errors

The Texas Commission on Alcohol and Drug Abuse adopted new 40 TAC §§147. 1-147.9 and §§147.31-147.44, concerning Approved Drug Offender Education Programs. The rules were published in the July 2, 1993, *Texas Register* (18 TexReg 4331). Due to proofreading errors by the *Texas Register* corrections are noted as follows.

The TAC numbers in the heading were misprinted as "§§147.1-149.9." The numbers should read "§§147.1-147.9."

In §147.5(d) the word "upon" should be capitalized.

In 147.42(7) the word "instructors" should be possessive as follows. "(7) names of all certified instructors employed

by the program and number of courses each conducted during each year of the *instructors'* certification period;".

The proposed publication date for §§147.31-147.44 should be April 20, 1993, not August 20, 1993, as printed.

State Banking Board

Notice of Hearing Cancellation

As no opposition has been noted in the application for domicile change by the Savings and Community Bankers Trust Company, Dallas, the hearing previously scheduled for Thursday, August 19, 1993, has been cancelled.

Issued in Austin, Texas, on August 10, 1993.

TRD-9327165 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: August 11, 1993

Texas Department of Banking

Correction of Error

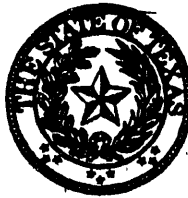
The Banking Department of Texas proposed new 7 TAC §26.1, concerning fees and assessments for perpetual care cemeteries. The rule was published in the July 20, 1993, *Texas Register* (18 TexReg 4724).

The section title to §26.1 was misprinted as "§25.26."

Texas State Board of Registration for Professional Engineers

Joint Policy Statement Between the Texas Board of Architectural Engineers and the Texas State Board of Registration for Professional Engineers

The Texas State Board of Architectural Examiners and the Texas State Board of Registration for Professional Engineers have recently made an agreement in order to clarify and define the relationships between the practices of architecture and engineering. The following joint statement has been issued to Public Officials from the chairmen of the two agencies.



February 15, 1991

Dear Public Officials:

In order to clarify and define the relationships between the practices of engineering and architecture, the two Boards which regulate these respective professions have officially adopted the following Joint Policy Statement:

"The Texas Board of Registration for Professional Engineers and the Texas Board of Architectural Examiners were both created by the Legislature to protect the health, safety and welfare of the public.

"Questions have arisen which indicate there is a need to define the relationship between the practices of engineering and architecture.

"It is the policy of both Boards that clients, both public and private, have the option to choose a member of either profession as the prime professional on their building projects.

"The professionals in each profession are enjoined by their respective practice acts to practice only in the area of their expertise and if the particular project requires the services of another professional, that professional's services shall be obtained.

"It is, therefore, the sole responsibility of both professional engineers and professional architects to obtain whatever additional professional services they need for the project at hand.

"It shall be the responsibility of each respective Board, to regulate the practice of engineering and architecture in Texas to protect the health, safety and welfare of the public. If either Board determines that a member of the profession other than the one they regulate is practicing outside the area of his or her expertise, the Board shall immediately notify the Board regulating the offending member and supply information to support their allegation. Each Board has the responsibility to pursue any appropriate action to cause an unqualified person to cease and desist from practicing in violation of its respective statute. If either Board determines that one of its registered professionals is practicing outside the area of his or her expertise, it shall be the duty of that Board to appropriately discipline the offender."

If you have any questions concerning this Statement, please contact either board for assistance.

Handwritten signature of Robert H. Norris in black ink.

ROBERT H. NORRIS, AIA
Executive Director
Texas Board of Architectural Examiners
8213 Shoal Creek Boulevard, Suite 107
Austin, Texas 78758
(512) 458-1363

Handwritten signature of Charles E. Nemir in black ink.

CHARLES E. NEMIR, P.E.
Executive Director
Texas State Board of Registration
for Professional Engineers
P.O. Drawer 18329
Austin, Texas 78760
(512) 440-7723

TEXAS BOARD OF
ARCHITECTURAL
EXAMINERS



TEXAS STATE BOARD OF
REGISTRATION FOR
PROFESSIONAL ENGINEERS

August 5, 1993

Dear Public Officials:

In order to further clarify and define the relationships between the practices of architecture and engineering the Texas Board of Architectural Examiners and the Texas State Board of Registration for Professional Engineers have unanimously ratified an agreement which:

(a) reaffirmed their commitment to the Joint Policy Statement contained in a letter to public officials dated February 15th, 1991, a copy of which is enclosed. Furthermore, professionals must practice only in the area of their qualifications and each regulatory Board is exclusively charged with regulating its own licensees.

(b) established a procedure through which questions concerning professional practice can be resolved as follows:

"The Executive Directors of each respective Board will review and attempt to resolve any questions concerning professional practice. Any questions concerning professional practice which cannot be resolved by the Executive Directors will be referred to a joint committee. The joint committee will be composed of one member of each respective Board, to be appointed by the Chairman of the Board; one former member of each respective Board, to be appointed by the Chairman of the Board; the Executive Director of each Board; and one member of the Texas Society of Architects and the Texas Society of Professional Engineers, to be appointed by the President of each respective society. The committee findings will be reported to the respective Boards."

(c) pursuant to the ratification of this agreement by the two Boards all requests for reconsideration of opinions on this question by the Attorney General have been withdrawn.

We are pleased to be able to finally clarify this policy and process for the benefit of owners of buildings to be designed and the health and safety of all Texans. Any further questions about this issue should be addressed to the undersigned.

A handwritten signature in black ink, appearing to read "Theodore S. Maffitt, Jr.", written over a horizontal line.

Theodore S. Maffitt, Jr., FALA
Chairman
Texas Board of Architectural
Examiners
8213 Shoal Creek Blvd., Suite 107
Austin, Texas 78758
(512) 458-1363

A handwritten signature in black ink, appearing to read "Earnest F. Gloyna", written over a horizontal line.

Earnest F. Gloyna, P.E.
Chairman
Texas State Board of Registration
for Professional Engineers
P. O. Drawer 18329
Austin, Texas 78760
(512) 440-7723

Issued in Austin, Texas, on August 10, 1993.

TRD-9327164

Charles E. Namir, P.E.
Executive Director
Texas State Board of Registration for
Professional Engineers

Filed: August 11, 1993

◆ ◆ ◆
Finance Commission of Texas
Correction of Error

The Finance Commission of Texas proposed new 7 TAC §1.305, concerning procedures for requesting clarification of aspects of Title 79 from the Consumer Credit Commissioner. The rule was published in the August 6, 1993, *Texas Register* (18 TexReg 5190).

Due to a proofreading error by the *Texas Register* garbled text appears in the third paragraph of the preamble. The first sentence should read as follows. "Mr. Endsley, also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be that the public will be advised through definitions contained in the rule of the distinctions between interpretations and advisory letters and the proper procedure for requesting and receiving clarification of Title 79 from the Consumer Credit Commissioner."

In subsection (b)(6) the word "Within" was misprinted as "With". The sentence should read as follows. "Within 10 days of the Finance Commission's approval of an interpretation or other response, a summary of the interpretation or other response will be filed with the *Texas Register* for publication."

◆ ◆ ◆
Texas Department of Health
Notices of Emergency Cease and Desist
Orders

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Texoma Urology (registrant-R18243) of Wichita Falls to cease and desist using any sources of radiation in their possession at the facility until all health-related and repeat violations have been corrected. The bureau determined that the continued use of radiation sources at this facility constitutes an immediate threat to public health and safety. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct these violations found during a recent inspection of the facility, and the methods to prevent the recurrence of the violations.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on August 12, 1993.

TRD-9327267

Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: August 12, 1993

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered M. A. Groff, III, D.O. (registrant-R01613) of Pilot Point to cease and desist using the fluoroscopic system of the General Electric x-ray unit at the registrant's facility until actions are taken to either disable the fluoroscopic system or equip it with an image intensification system. The bureau determined that the continued use of this radiation source at the facility constitutes an immediate threat to public health and safety. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct the violation.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on August 12, 1993.

TRD-9327268

Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: August 12, 1993

◆ ◆ ◆
Notice of Intent to Revoke Certificates
of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrants: Lake Cliff Hospital, Dallas, R00831; Joel Halbert, D.P.M., San Antonio, R04011; Frank Velez, Jr., D.D.S., De Soto, R08086; Merle C. Ewton, D. D.S., Spring, R09339; Woodson M. Tottenham, Jr., D.D.S., Houston, R10936; Las Palmas Veterinary Hospital, Falfurrias, R11696; Glen Lakes Orthopedic Clinic, Dallas, R12882; Garza County Medical Clinic, Inc., Post, R15655; R. Larry Kauffman, D.D.S., Garland, R17175; Canton Family Practice Clinic, Canton, R17886; Gainesville Family Chiropractic, Gainesville, R18680; Fred Blythe, D.D. S., Dallas, R19297; Rathjen Clinic, Garland, R18091; Ernest L. Drake, D.D.S., Houston, R15235.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau 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 certificates of registration 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, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on August 12, 1993.

TRD-9327265 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: August 12, 1993

◆ ◆ ◆
**Notice of Intent to Revoke Radioactive
Material Licenses**

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensees: Linda Singer Webb, M.D., Dallas, G01048; Medical & Pathology Laboratory Services, Longview, G01546; University of Saint Thomas, Houston, L00460; Mesquite Wireline Service, Inc., Andrews, L03911; Diagnostic Medicine, Inc., San Antonio, L03993; Bandas Industries, Inc., Temple, L04191.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau 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, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on August 12, 1993.

TRD-9327266 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: August 12, 1993

**Statewide Request for Proposal-Case
Management Services**

The Texas Department of Health (TDH) is soliciting proposals for the provision of case management services to eligible children in Galveston County. Case management is the assessment of a clients's overall service needs, and the development and implementation of a course of action or plan for meeting those needs, which is family centered, community-based, culturally competent, comprehensive, and is intended to assist those clients who need a variety

of services. The purpose of case management is to access, organize and assure services and resources for clients through the activities of advocacy, mutual goal setting, monitoring and tracking, education, information and referral, family empowerment, and system development. To be eligible for services, a resident must under the age of 21, a resident of Texas, and have a special health need.

Case management services will be reimbursed through contractual arrangements with TDH, Bureau of Chronically Ill and Disabled Children's Services (CIDC). Contracts will be awarded for an 11-month period from October 1, 1993-August 31, 1994. Contract awards will be based on available funding. Contracts will be in accordance with Texas law, TDH policies, CIDC policies, and the Uniform Grant and Contract Management Act (UGCMA) manual, which is available from TDH, Grants Management Division, 1100 West 49th Street, Austin, Texas 78756-3199.

Contracts will be awarded on the basis of the most cost-effective and professionally appropriate plan of operation. Proposals must contain service delivery systems that promote family-centered, community-based, culturally competent, coordinated care for children with special health needs and their families. Proposals will be evaluated on the following criteria: the extent to which the proposal will meet identified needs; the provision of comprehensive services delivered in a culturally competent environment in unserved or underserved areas of the state; the cost of initiating or operating a program (cost effectiveness, allocation of direct services, elimination of duplication of services); the availability of other funding sources including general agency funds, program income, and foundation and community support; the assurance of community support as exhibited by cooperative service agreements or letters of support documenting coordination of services among local agencies and resources, community volunteers, and parent advocacy groups; equal distribution of resources across the state; and for funded projects, past contract performance.

Proposals submitted will include a comprehensive needs assessment; the identification of the target population and area, the estimated number of clients to be served, the medical conditions of children to be served, and the specific needs to be addressed by the proposed service; a comprehensive description of the project's purpose, goals, services, objectives, and strategies; an evaluation plan to assess process and outcome measures of the program's performance objectives; and documented evidence of support from local parent groups, the Regional CIDC Director of Social Work Services, and area service providers.

All income generated from third party payments and clients fees must be utilized by the contract recipient in accordance with TDH policy interpreting the UGCMA regulations. Proposal packets may be obtained by contacting Marjorie Simmons, Bureau of Chronically Ill and Disabled Children's Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3179, (512) 458-7355, extension 3028. Proposals must be received in the CIDC office by 5:00 p.m. on Friday, September 17, 1993, or postmarked on or before Wednesday, September 15, 1993. Proposals which do not meet this deadline will not be considered.

Issued in Austin, Texas, on August 13, 1993.

TRD-9327358 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: August 13, 1993

◆ ◆ ◆
**Texas Health and Human Services
Commission**
Public Notices

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 93-02, Amendment Number 387.

The amendment creates a new disproportionate share hospital program. The amendment is effective September 1, 1993.

If additional information if needed, please contact Henry Welles at (512) 794-6858.

Issued in Austin, Texas, on August 11, 1993.

TRD-9327359 Bryan P. Sperry
 Deputy Commissioner
 Texas Health and Human Services
 Commission

Filed: August 13, 1993

◆ ◆ ◆
The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-45, Amendment Number 384.

The amendment establishes a reimbursement methodology for inpatient psychiatric services provided to EPSDT recipients. The amendment is effective October 1, 1992.

If additional information is needed, please contact Janet Kres at (512) 338-6465.

Issued in Austin, Texas, on August 11, 1993.

TRD-9327380 Bryan P. Sperry
 Deputy Commissioner
 Texas Health and Human Services
 Commission

Filed: August 13, 1993

◆ ◆ ◆
The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 93-20, Amendment Number 405.

The amendment adds the administrative activities at the Texas Department of Protective and Regulatory Services to the Health and Human Services Medicaid program. The amendment is effective April 1, 1993.

If additional information is needed, please contact Cathy Rossberg at (512) 502-3219.

Issued in Austin, Texas, on August 11, 1993.

TRD-9327361 Bryan P. Sperry
 Deputy Commissioner
 Texas Health and Human Services
 Commission

Filed: August 13, 1993

◆ ◆ ◆
Texas Department of Human Services
Correction of Error

The Texas Department of Human Services (DHS) proposed an amendment to 40 TAC §48.2703 in its Community Care for Aged and Disabled chapter. The amendment contained errors as published in the July 23, 1993, *Texas Register* (18 TexReg 4864).

On page 4865 the paragraph concerning who receives the comments is incorrect. It should read as follows.

"Questions about the content of the proposal may be directed to Jim Essler at (512) 450-3223 in DHS's Community Care Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-181, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication of the *Texas Register*.

On page 4867, after the chart proposed for deletion, the rule should read as follows.

"(e)-(i) (No change.)"

◆ ◆ ◆
Notice of Public Hearing

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursement rates for the Community Living Assistance and Support Services (CLASS) Waiver program. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on September 3, 1993 at 9:00 a.m. in the Public Hearing Room, 125E, of the John H. Winters Center (701 West 51st Street, Austin, First Floor, East Tower). Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on or after August 19, 1993, by contacting Sherri Williams, M/C E-601, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4817.

Issued in Austin, Texas, on August 16, 1993.

TRD-9327386 Nancy Murphy
 Agency Liaison, Policy Development
 Services
 Texas Department of Human Services

Filed: August 16, 1993

◆ ◆ ◆
Texas Department of Insurance
Company Licensing

The following applications have been filed with the Texas Department of Insurance and are under consideration.

Application for name change in Texas for Acordia Local Government Benefits, Inc., a foreign third party administrator. The proposed new name is Acordia Local Government Services, Inc. The home office is in Indianapolis, Indiana.

Application for admission in Texas for Campmed Casualty and Indemnity Company, Inc. of Maryland, a foreign fire and casualty company. The home office is in Chevy Chase, Maryland.

Application for name change in Texas for English and American Insurance Corporation, a foreign fire and casualty company. The proposed new name is Chatham Reinsurance Corporation. The home office is in San Francisco, California.

Application for admission in Texas for Harco National Insurance Company of Illinois, a foreign fire and casualty company. The home office is in Rolling Meadows, Illinois.

Application for admission in Texas for Home Owners Life Insurance Company, a foreign life, accident, and health company. The home office is in Chicago, Illinois.

Application for admission in Texas for MVP Select Care, Inc., a foreign third party administrator. The home office is in Schenectady, New York.

Application for admission in Texas for Specialty Risk Insurance Company, a foreign fire and casualty company. The home office is in Memphis, Tennessee.

Application for name change in Texas for Transamerica Insurance Company of Texas, a domestic fire and casualty company. The proposed new name is TIG Insurance Company of Texas. The home office is in Dallas.

Application for name change in Texas for Transamerica Lloyds Insurance Company, a domestic lloyds company. The proposed new name is TIG Lloyds Insurance Company. The home office is in Dallas.

Application for name change in Texas for Eastern Aviation and Marine Insurance Company, a foreign fire and casualty company. The proposed new name is United States Specialty Insurance Company. The home office is in Frederick, Maryland.

Application for admission in Texas for Xenia Title Insurance Company, a foreign title company. The home office is in Phoenix, Arizona.

Issued in Austin, Texas, on August 16, 1993.

TRD-9327393 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: August 16, 1993

◆ ◆ ◆
**Texas State Board of Examiners of
Psychologists**
Correction of Error

The Texas State Board of Examiners of Psychologists proposed an amendment to 22 TAC §473.5, concerning miscellaneous fees. The rule was published in the July 16, 1993, *Texas Register* (18 TexReg 4616).

In subsection (d) on page 4617 the reference to "[§50]" should read "[§15]" as follows. "(d) Returned check fee-\$25 [§15]."

◆ ◆ ◆

Public Utility Commission of Texas
Notice of Application to Amend
Certificates of Convenience and
Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on July 30, 1993, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 18(b), 37, 50, 52, and 54. A summary of the application follows.

Docket and Title Number. Application of Southwestern Bell Telephone Company to amend Certificate of Convenience and Necessity within Collin and Denton Counties, Docket Number 12196, before the Public Utility Commission of Texas.

The Application. In Docket Number 12196, Southwestern Bell Telephone Company seeks approval to amend the exchange area boundary between its Frisco exchange and GTE Southwest, Inc.'s (GTE-SW's) Plano and Carrollton exchanges. In addition, Southwestern Bell Telephone Company seeks approval to revise The Colony Island base rate area of its Frisco exchange. The proposed application will: allow Southwestern Bell Telephone Company to serve the entire Wolf Creek Estates subdivision; and allow GTE Southwest, Inc. to serve all of the Midway subdivision and all of the Franklin Life Insurance Company property.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before September 30, 1993.

Issued in Austin, Texas, on August 12, 1993.

TRD-9327366 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 13, 1993

◆ ◆ ◆
Notices of Intent to File Pursuant to
Public Utility Commission Substantive
Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27(j) for approval of a customer-specific contract to provide 100 megabits (MBPS) Service to the Dallas/Fort Worth International Airport Board.

Tariff Title and Number. Application of GTE Southwest, Incorporated to Provide MBPS Service to the Dallas/Fort Worth International Airport Board Pursuant to Public Utility Commission Substantive Rule 23.27(j). Tariff Control Number 12224.

The Application. GTE Southwest, Inc. is requesting approval of a customer specific contract to provide 100 megabits Service to the Dallas/Fort Worth International Airport Board. The geographic service market for this

specific service is the business operations of the DFW Airport Board at the DFW Airport, Dallas/Fort Worth Airport, Texas 75261.

Persons who wish to comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf.

Issued in Austin, Texas, on August 13, 1993.

TRD-9327371 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 13, 1993



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific PLEXAR-Custom Service for Fredonia State Bank, Nacogdoches.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Fredonia State Bank pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 12210.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Fredonia State Bank. The geographic service market for this specific service is Nacogdoches area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf.

Issued in Austin, Texas, on August 13, 1993.

TRD-9327370 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 13, 1993



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific PLEXAR-Custom Service for Neiman Marcus, Farmers Branch.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Neiman Marcus pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 12216.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Neiman Marcus. The geographic service market for this specific service is the Farmers Branch area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas

78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf.

Issued in Austin, Texas, on August 13, 1993.

TRD-9327369 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed August 13, 1993



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific PLEXAR-Custom Service for Dallas ISD, Dallas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Dallas ISD. The geographic service market for this specific service is the Dallas are.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Dallas ISD. The geographic service market for this specific service is the Dallas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf.

Issued in Austin, Texas, on August 13, 1993.

TRD-9327368 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 13, 1993



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific PLEXAR-Custom Service for Highland Park ISD, University Park.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Highland Park ISD pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 12211.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Highland Park ISD. The geographic service market for this specific service is the University Park area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf.

Issued in Austin, Texas, on August 13, 1993.

TRD-9328367 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 13, 1993

Railroad Commission of Texas

Corrections of Error

The Railroad Commission of Texas proposed amendments to 16 TAC §§9.1-9.7, 9.14, 9.21, 9.23-9.25, and 9.28-9.30, concerning Liquefied Petroleum Gas. The rules were published in the July 16, 1993, *Texas Register* (18 TexReg 4557).

In the preamble to §9.1-9.7, 9.14, 9.21, 9.23-9.25, 9.28-9.30, line 16, first paragraph the word "limitation" was misprinted as "imitation" and should read as follows. "...changes in ownership and/or form of dealership; dealership name change; application for an exception to a safety rule; insurance endorsement requirements; insurance requirements; limitation/avoidance of licensee liability...."

In §9.4(1) the dollar sign was omitted. It should read "...annual renewal fee is \$100."

In §9.4(2) the dollar sign was omitted. It should read "...annual renewal fee is \$150."

In §9.6(A)(4) a comma was omitted after the word "number". It should read "...employee social security number, name of previous licensee-employer,...."

In §9.6(c)(1)(B) the word "commission" was misprinted in the sentence "... LPG Form 16 is on file with the commission for each employee...."

In §9.36 the section title was printed without the language proposed for deletion. It should read "§9.36. *Appurtenances and Equipment*. [Approval of Valves, Fittings, and Equipment.]"



1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 issues of the *Texas Register*. Because of printing schedules, material after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week preceding publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
34 Tuesday, May 4	Wednesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19

65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 Friday, September 10	Friday, September 3	Tuesday, September 7
70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues requested. Each copy of a back issue is \$5 including postage. You may use your Mastercard or Visa to purchase back issues or subscription services. To order by credit card, please call the *Texas Register* at (512) 463-5561. All purchases made by credit card will be subject to an additional 2.1% service charge. For more information, please write to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824 or call (512) 463-5561.

Change of Address

(Please print)

Back Issues Requested

(Please specify dates)



YES, I want to learn about the latest changes in Texas regulations that may affect the daily operation of my business. Please begin my subscription to the *Texas Register* today.

Name
Organization
Address
City, ST Zip

I would like my subscription to be the printed electronic version.
I'm enclosing payment for 1 year 6 months 7 week trial
7 week trial subscription not available for electronic subscriptions
Bill me for 1 year 6 months

Cost of a subscription is \$90 yearly or \$70 for six months for the electronic version. Cost for the printed version is \$95 yearly or \$75 for six months. Trial subscriptions cost \$14. Please make checks payable to the Secretary of State. Subscription fees will not be refunded. Do not use this form to renew subscriptions. Return to *Texas Register*, P.O. Box 13824 Austin, TX 78711-3824. For more information, please call (512) 463-5561.

Second Class Postage

PAID

Austin, Texas

and additional entry offices