

Texas Register

Volume 16, Number 53, July 16, 1991

Pages 3915-3965

In This Issue...

Proposed Sections

Texas Department of Commerce

3925-Texas Community Development Program
Railroad Commission of Texas

3930-Liquefied Petroleum Gas Division
Texas Workers' Compensation
Commission

3933-Medical Benefits
Comptroller of Public Accounts

3933-Tax Administration
Texas Department of Human Services

Withdrawn Sections

Texas Workers' Compensation
Commission

3937-Compliance and Practices-Administrative Violations
and Penalties

Adopted Sections

State Board of Insurance

3939-Property and Casualty Insurance
Texas Workers' Compensation
Commission

3939-General Provisions-Practices and Procedures

3940-Compliance and Practices-Administrative Violations
and Penalties

Teacher Retirement System of Texas

3943-Benefits

Texas Department of Human Services

3943-Purchased Health Services

3944-Child Protective Services
State Board of Insurance

3950-Notification Pursuant to the Texas Insurance Code,
Chapter 5, Subchapter L

Open Meetings

3953-Texas State Board of Public Accountancy

3953-Texas Department of Agriculture

3953-State Aircraft Pooling Board

3953-Texas Alcoholic Beverage Commission

3953-Bond Review Board

3953-Texas Catastrophe Property Insurance Association

3953-Court Reporters Certification Board

3954-Texas Employment Commission

3954-Texas Public Finance Authority

3954-Texas Historical Commission

3954-Texas Department of Human Services

3955-Department of Information Resources

3955-State Board of Insurance

3955-Texas Commission on Jail Standards

3956-Judicial Districts Board

3956-Polygraph Examiners Board

3956-Public Utility Commission of Texas

3957-Texas Rehabilitation Commission

3957-Texas National Research Laboratory Commission

3957-Teacher Retirement System of Texas

CONTENTS CONTINUED INSIDE

Texas Register

The *Texas Register* (ISSN 362-4781) is published semi-weekly 100 times a year except January 4, July 9, September 6, December 3, December 31, 1991. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711.

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

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

Information Available: The eight 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

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 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 accumulative quarterly and annual indexes to aid in researching material published.

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

In Order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 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, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, sections number, or TRD number.

Texas Administrative Code

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

How to Cite: Under the TAC scheme, each agency 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 rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).



Texas Register Publications

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

Secretary of State
John Hannah, Jr.

Director
Dan Procter

Assistant Director
Dee Wright

Documents Section Supervisor
Patty Parris

Documents Editors
Lisa Brull
Janlene Allen

Open Meetings Clerk
Jill S. Dahnert

Production Section Supervisor
Ann Franklin

Production Editor

Typographers
Sherry Rester
Janice Rhea
Carla Carter

Circulation/Marketing

Roberta Knight

TAC Editor
Dana Blanton

TAC Typographer
Madeline Chrisner

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

3957-Texas State Treasury Department

3857-University of Texas System, M.D. Anderson Cancer Center

3958-Texas Water Commission

3958-Texas Water Development Board

3959-Texas Water Resources Finance Authority

3959-Texas Workers' Compensation Insurance Facility

3959-Regional Meetings

In Addition

Texas Air Control Board

3961-Notice of Contested Case Hearing

Texas Department of Human Services

3961-Correction of Public Notice

3961-Correction to Notice of Public Hearing

3962-Public Notice of Closed Solicitation

3962-Request for Proposals

State Board of Insurance

3962-Company Licensing

Texas Parks and Wildlife Department

3962-Notice of Public Hearing

Texas Water Commission

3963-Correction of Error

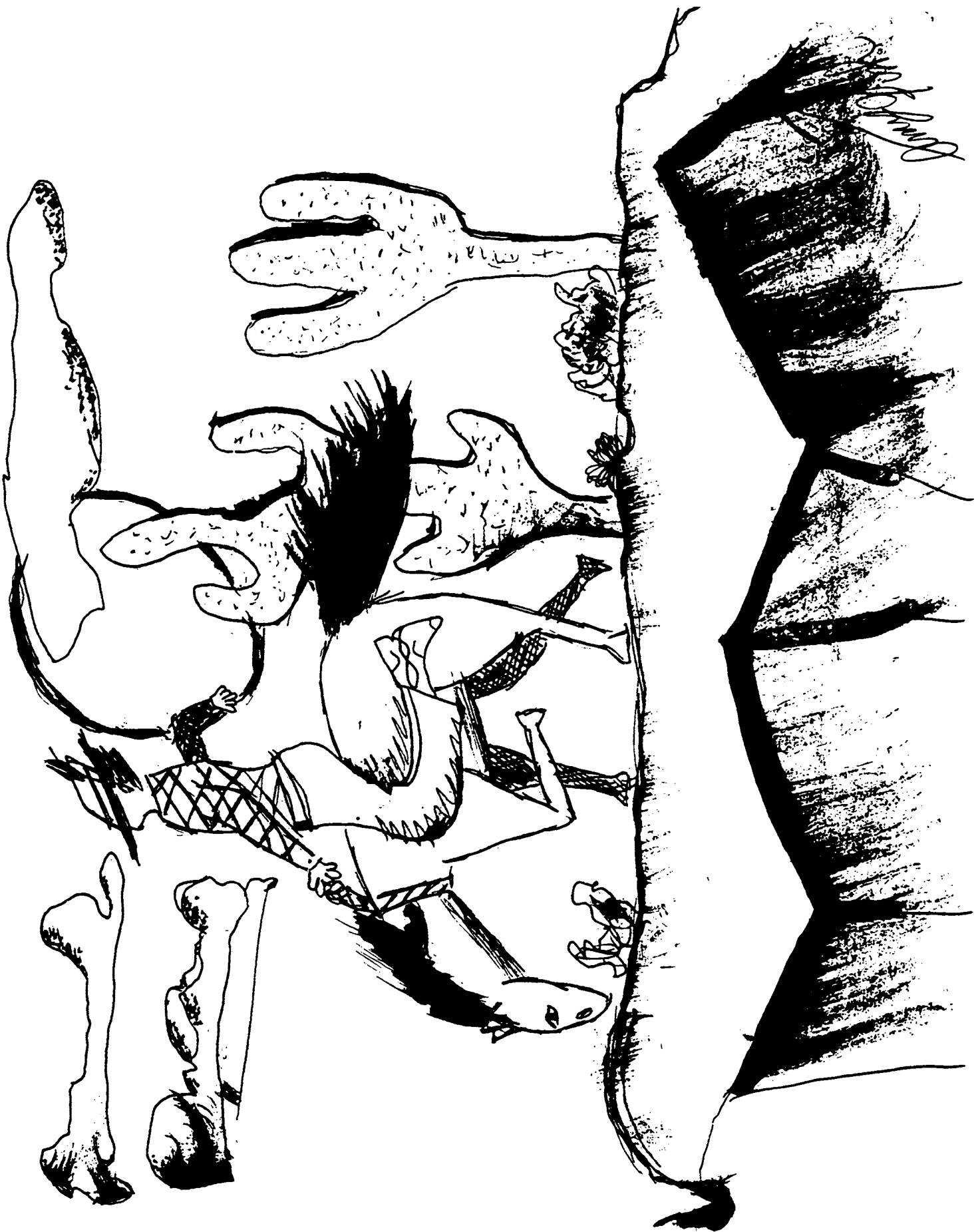
3965-Enforcement Orders

Texas Workers' Compensation
Commission

3965-Announcement of Public Hearing and Extension of
Public Comment Period

3965-Correction of Error

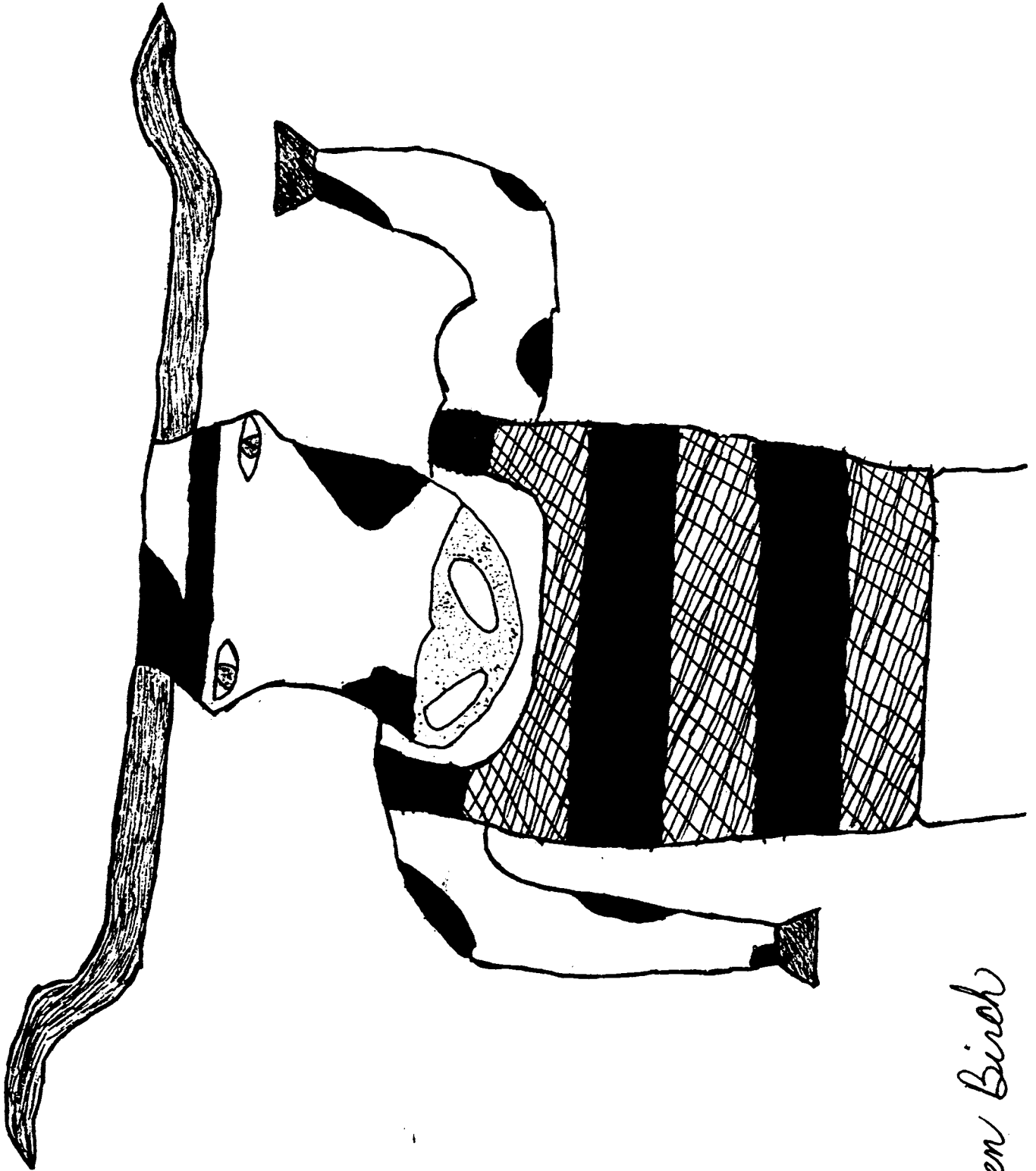
Note: The *Texas Register*, Volume 16, Number 52, July 12, 1991, was bound incorrectly with pages out of sequence. Subscribers will be mailed a replacement issue from the printer. Please notify the *Register* office if you fail to receive your replacement issue. (512) 463-5561.



Name: Amy Gish

Grade: 7

School: Clear Lake Intermediate School, Clear Creek ISD



Carmen Birch

Name: Carmen Birch

Grade: 7

School: Clear Lake Intermediate School, Clear Creek ISD



Name: Hiba Badr

Grade: 8

School: Clear Lake Intermediate School, Clear Creek ISD

TAC Titles Affected

TAC Titles Affected—July

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

TITLE 1. ADMINISTRATION

Part V. State Purchasing and General Services Commission

- 1 TAC §113.10—3665
- 1 TAC §113.13—3691
- 1 TAC §113.17—3691
- 1 TAC §§113.21, 113.23, 113.25—3692
- 1 TAC §125.47—3693
- 1 TAC §§125.61, 125.63, 125.65, 125.67—3693

Part XIII. Texas Incentive and Productivity Commission

- 1 TAC §§275.1, 275.3, 275.5, 275.7, 275.9, 275.11, 275.13, 275.15, 275.17, 275.19, 275.21—3665

TITLE 10. COMMUNITY DEVELOPMENT

Part IV. Texas Housing Agency

- 10 TAC §§149.1-149.13—3813

Part V. Texas Department of Commerce

- 10 TAC §§178.10, 178.11, 178.12, 178.14, 178.16—3925

- 10 TAC §178.17, 178.18—3928

- 10 TAC §178.20—

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

- 16 TAC §3.1—3767
- 16 TAC §3.14—3765
- 16 TAC §5.181—3667
- 16 TAC §7.1—3668
- 16 TAC §7.2—3668
- 16 TAC §7.3—3669
- 16 TAC §7.4—3671
- 16 TAC §7.5—3671
- 16 TAC §7.6—3671

- 16 TAC §7.7—3672

- 16 TAC §7.8—3673

- 16 TAC §7.9—3673

- 16 TAC §7.10—3674

- 16 TAC §§7.10, 1.15, 7.20, 2.22, 7.25, 7.27, 7.35—3673

- 16 TAC §7.11—3674

- 16 TAC §7.48—3675

- 16 TAC §§9.3, 9.15, 9.24—3930

- 16 TAC §9.4—3931

- 16 TAC §9.33—3932

- 16 TAC §9.501—3932

- 16 TAC §11.221—3675

TITLE 19. EDUCATION

Part II. Texas Education Agency

- 19 TAC §75.4—3865

- 19 TAC §78.1—3823

- 19 TAC §105.71—3823

- 19 TAC §141.431—3865

- 19 TAC §141.433—3865

- 19 TAC §149.21—3824

- 19 TAC §157.98—3865

- 19 TAC §185.15—3825

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

- 22 TAC §§176.1-176.3—3759

- 22 TAC §188.1, 188.2—3765

- 22 TAC §193.7—3767

Part XXII. Texas State Board of Public Accountancy

- 22 TAC §527.1—3866

- 22 TAC §527.2—3866

- 22 TAC §527.3—3866

- 22 TAC §527.4—3866

- 22 TAC §527.5—3866

22 TAC §527.6—3866

22 TAC §527.7—3867

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

25 TAC §401.53—3760

25 TAC §§405.1-405.18—3697

25 TAC §§410.101-410.122—3704

Part V. Center for Rural Health Initiatives

25 TAC §§500.21-500.42—3659, 3675

TITLE 28. INSURANCE

Part I. State Board of Insurance

28 TAC §5.6171-5.6183—3939

28 TAC §9.11—3867

Part II. Texas Workers' Compensation Commission

28 TAC §42.105—3933

28 TAC §42.110—3863

28 TAC §102.5—3939

28 TAC §134.2—3868

28 TAC §134.4—3869

28 TAC §133.3—3708

28 TAC §134.400—3863

28 TAC §180.1, §180.3—3940

28 TAC §180.2—3937

28 TAC §§180.4-180.8—3941

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

31 TAC §59.2, §59.3—3863

Part III. Texas Air Control Board

31 TAC §101.27—3761

31 TAC §115.10—3676, 3708

31 TAC §§115.112, 115.114, 115.116, 115.119—3713

31 TAC §§115.122, 115.126, 115.129—3676, 3713

31 TAC §115.126, §115.129—3676

31 TAC §§115.132, 115.136, 115.139—3718

31 TAC §115.136, §115.139—3677

31 TAC §§115.212, 115.215, 115.216, 115.219—3719

31 TAC §115.222, §115.229—3720

31 TAC §115.224, §115.229—3678

31 TAC §115.239—3721

31 TAC §§115.315, 115.316, 115.319—3721

31 TAC §115.317—3722

31 TAC §§115.322, 115.324, 115.325, 115.327, 115.329—3722

31 TAC §§115.332, 115.334, 115.335, 115.337, 115.339—3723

31 TAC §§115.342, 115.344, 115.345, 115.347, 115.349—3724

31 TAC §115.417, §115.419—3725

31 TAC §§115.421-115.427, 115.429—3726

31 TAC §§115.422, 115.423, 115.425, 115.426, 115.429—3678

31 TAC §§115.432, 115.435, 115.436, 115.437, 115.439—3728

31 TAC §§115.435, 115.436, 115.439—3679

31 TAC §115.512, §115.519—3729

31 TAC §§115.532, 115.536, 115.537, 115.539—3729

31 TAC §116.11—3680

Part IX. Texas Water Commission

31 TAC §331.481, §334.482—3689

31 TAC §335.112—3730

31 TAC §335.431—3731

Part X. Texas Water Development Board

31 TAC §§363.1-363.3—3769

31 TAC §§363.1-363.5—3769

31 TAC §§363.11-363.15—3769

31 TAC §§363.31-363.32—3769

31 TAC §§363.31-363.38—3769

31 TAC §§363.41-363.43—3769

31 TAC §§363.51-363.57—3770

31 TAC §§363.52-363.60—3770

31 TAC §363.71—3770

31 TAC §§363.71, §363.72—3770
31 TAC §§363.81-363.85—3771
31 TAC §§363.91, §363.92—3771
31 TAC §§363.101-363.108—3771
31 TAC §§363.111, 363.112—3771
31 TAC §§363.121-363.126—3771
31 TAC §§363.141—3771
31 TAC §§363.161-363.165—3771
31 TAC §§363.181—3772
31 TAC §§363.201, §363.202—3772
31 TAC §§363.201-363.208—3772
31 TAC §§363.221-363.224—3772
31 TAC §§363.231-363.235—3775
31 TAC §§363.241, §363.242—3775
31 TAC §§363.251-363.257—3776
31 TAC §§363.281-363.283—3776
31 TAC §§363.291-363.295—3776
31 TAC §§363.301, §363.302—3776
31 TAC §§363.301-363.303—3776
31 TAC §§363.311-363.314—3776
31 TAC §§363.311-363.321—3776
31 TAC §§363.321—3776
31 TAC §§363.331—3776
31 TAC §§363.331-363.333—3777
31 TAC §§363.401-363.404—3777
31 TAC §§363.501-363.508—3777
31 TAC §§363.601-363.610—3777
31 TAC §§370.1, §370.2—3826, 3863
31 TAC §§379.21-370.35—3827, 3863
31 TAC §§370.41-370.43—3828, 3863
31 TAC §§370.51-370.53—3829, 3863
31 TAC §§370.61—3829, 3864

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

34 TAC §§3.253—3681
34 TAC §§3.282—3682

34 TAC §§3.286—3683
34 TAC §§3.287—3933
34 TAC §§3.375—3684
34 TAC §§3.425—3686
34 TAC §§29.11—3943

Part IV. Employees Retirement Systems of Texas

34 TAC §§81.1, §81.7—3777
34 TAC §§81.7—3765
34 TAC §§85.3, 85.5, 85.7, 85.9—3779

Part V. Texas County and District Retirement System

34 TAC §§107.2—3869

Part VI. Texas Municipal Retirement System

34 TAC §§123.1—3779
34 TAC §§127.3—3779

Part VII. State Property Tax Board

34 TAC §§153.2—3821, 3829

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

37 TAC §§81.111, 81.113, 81.118—3830
37 TAC §§81.114, 81.116, 81.117, 81.120, 81.121—3830
37 TAC §§81.401, 81.402, 81.403, 81.404, 81.405, 81.406, 81.407—3830
37 TAC §§85.1, §85.3—3831
37 TAC §§85.21, 85.23, 85.25, 85.29, 85.35—3833
37 TAC §§85.23, §85.29—3839
37 TAC §§85.27, 85.31, 85.33, 85.43—3840
37 TAC §§87.1, 87.3, 87.7, 87.9, 87.21, 87.23—3843
37 TAC §§87.7, 87.9, 87.21, 87.23—3843, 3847
37 TAC §§87.53—3846, 3847
37 TAC §§87.75—3846, 3847
37 TAC §§91.1, 91.3, 91.5, 91.7, 91.9, 91.11, 91.13—3847
37 TAC §§91.31—
37 TAC §§91.55, 91.57, 91.59, 91.63, 91.65, 91.69—3855

37 TAC §§91.55, 91.57, 91.59, 91.63, 91.65, 91.69, 91.73—3855

37 TAC §81.113—3757

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704—3869

40 TAC §3.902—3731, 3870

40 TAC §11.107—3871

40 TAC §15.433—3763

40 TAC §15.455, §15.465—3763

40 TAC §15.500—3763

40 TAC §§29.201-29.207—3871

40 TAC §29.603, §29.606—3943

40 TAC §29.112—3944

40 TAC §29.2401—3872

40 TAC §48.2203, §48.2205—3731

40 TAC §§48.2801-48.2810—3860

40 TAC §48.2904, §48.2924—3862

40 TAC §48.2906, §48.2918—3764

40 TAC §48.2908—3764

40 TAC §§49.1801-49.1806—3944

40 TAC §79.1603-79.1605, 79.1607, 79.1608, 79.1610, 79.1612, 79.1614—3779

40 TAC §§79.1701, 79.1705, 79.1714, 79.1716—3780

40 TAC §§85.4001, 85.4013, 85.4018—3780

40 TAC §85.6016—3780

Part VI. Texas Commission on Human Rights

40 TAC §327.1—3872



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 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 178. Texas

Community Development Programs

Subchapter A. Allocation of Program Funds

• 10 TAC §§178.10, 178.11, 178.12, 178.14, 178.16

The Texas Department of Commerce (Commerce) proposes amendments to §§178.10, 178.11, 178.12, 178.14, and 178.16, concerning the allocation of Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP). The proposed sections establish the standards and procedures by which Commerce will allocate Community Development funds to eligible units of general local government in Texas beginning with the expenditure of federal fiscal year 1991 funds. The proposed sections include application requirements, and selection procedures and criteria.

Sedora Jefferson, general counsel, 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.

Ruth Cedillo, TCDP director, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the equitable distribution of funds to eligible units of general local government. 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 Sedora Jefferson, General Counsel, P.O. Box 12728, Austin, Texas 78711 within 30 days after the date of this publication.

The amendments are proposed under the Texas Government Code Annotated, Chapter 481, Subchapter N, which provides Commerce with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities according to department rules.

§178.10. General Provisions.

(a) Definitions and abbreviations. The following words and terms, when used

in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(14) (No change.)

(15) State review committee—The State Community Development Review Committee established pursuant to the Texas Government Code, Chapter 481, Subchapter N [Texas Civil Statutes, Article 4413(201)].

(16)-(18) (No change.)

(b) Overview. Community development block grant nonentitlement area funds are distributed by the Texas Community Development Program to eligible units of general local government in the following program areas:

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

(6) governor's special assistance fund for small and minority businesses [special impact fund];

(7) colonia fund [housing development fund].

(c) (No change.)

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the Texas Community Development Program. The only exception is Hidalgo County, an entitlement county, which is eligible for the colonia fund.

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code, §5301 et seq) is ineligible for funding under the Texas Community Development Program. Specific ineligible activities include but are not limited to construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current Texas Community Development Program application guides [housing development fund]; the financing of political activities; purchases of construction equipment; income payments, such as housing allowances; most operation and maintenance expenses; pre-contract costs, such as application preparation fees paid prior to submittal of the application prisons; and racetracks.

(f)-(k) (No change.)

(l) Unobligated and recaptured funds. Any additional funds resulting from the recapture of dollars from a prior year's allocation, recapture of program income, unobligated funds from a program area specified in subsection (b) of this section, or reallocated funds which the United States Department of Housing and Urban Development has recaptured from small cities grantees will be redistributed to eligible communities on a priority basis with eligible emergency and urgent need projects and projects benefitting public housing as the highest priorities [priority]. Any additional remaining funds may be redistributed to eligible communities at the discretion of the executive director of the department within such program areas.

(m) (No change.)

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program year 1991 funds. A contract is considered executed for the purposes of this subsection on the date stated in §2 of such contract:

(1) (No change.)

(2) expend all but the audit funds awarded under a contract (except for texas capital fund contracts) executed at least 24 months prior to the program year 1991 application deadline and submit to the department the close-out documents required by the most recent edition of the *Texas Community Development Program Project Implementation Manual*.

§178.11. Regional Review Committees.

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

(c) General requirements. In the performance of its responsibilities, each regional review committee shall comply with all federal and state laws and regulations relating to the administration of community development block grant nonentitlement area funds including, but not limited to, requirements of this subchapter, the scoring procedures specified in the current Regional Review Committee Guidebook, and the procedures established by the regional review committee under the Texas Community Development Program.

(1) (No change.)

(2) Conflicts of interest. No member of a regional review committee shall [participate in the deliberations concerning an application or] vote on an application if the member is on the governing body of the applicant. A county judge or county commissioner may not score an application from an incorporated city within the county, unless specifically authorized by the regional review committee.

(3)-(4) (No change.)

(d) (No change.)

§178.12. Community Development Fund.

(a) General provisions. This fund covers housing, public facilities, and public service projects. Eligible units of general local government may apply for funding of a single purpose project such as housing assistance, sewer improvements, water improvements, drainage, roads, or community centers, or for a multi-purpose project which consists of any combination of such eligible activities.

(1) An applicant may not submit an application under this fund and also under the colonia fund [special impact fund, housing development fund] or urgent need fund during the same program year if the proposed activity under each application is the same or substantially similar.

(2) In addition to the threshold requirements of §178.10(h) of this title (relating to General Provisions) and the requirements of §178.10(n), in order to be eligible to apply for community development funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(b) (No change.)

(c) Allocation plan.

(1) (No change.)

(2) Each state planning region is provided with a target allocation of funds for applications in its region that are ranked in accordance with a shared scoring system involving the department and the regional review committees. Where the remainder of the target allocation is insufficient to completely fund the next ranked application, the department works with the affected applicant to determine whether partial funding is feasible. If partial funding is not feasible, the remaining funds from all the target allocations are pooled to fund projects from among the highest ranked, unfunded applications from each of the 24 state planning regions. Selection criteria for such applications will consist of the selection criteria scored by the department under this fund. Marginal applicants' scores are recomputed based on the applicants competing in the

marginal pool competition only. [Funds remaining unobligated under the special impact fund and housing development fund are repooled to fund marginal projects under this paragraph.]

(d) (No change.)

(e) Selection criteria. The following is an outline of the selection criteria used by the department and the regional review committees for scoring applications under the community development fund. Seven hundred points are available.

(1) (No change.)

(2) Benefit to low- and moderate-income persons (total-40 [30] points). An application in which at least 60% of the Texas Community Development Program funds requested benefit low- and moderate-income persons receives 40 [30] points.

(3) (No change.)

(4) Project impact (total-170 [165] points). Each application is scored on how the proposed project resolves the identified need and the severity of the need within the applying jurisdiction. Information submitted in the application or presented to the regional review committees is used by a committee composed of staff of the department to generate scores on this factor.

(5) Match (total-60 [75] points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services of equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored depends on the project type and the beneficiary population served. If the project benefits residents of the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the residents of the entire unincorporated area of the county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which joint applications are scored is based on the combined populations of the joint applicants according to the 1990 [1980] census. Applications for housing rehabilitation and for affordable new permanent housing for low- and moderate-income persons receive the 60 [75] points without

including any matching funds. This exception is for housing activities only. Sewer or water service line/connections are not counted as housing rehabilitation. Demolition/clearance and code enforcement, when done in the same target area are counted as part of the housing rehabilitation activity. When demolition/clearance and code enforcement are proposed without housing rehabilitation activities, then the match score is still based on actual matching funds committed by the applicant. Applications which include additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities. The terms used in this paragraph are further defined in the current application guide for this fund.

(A) Applicants with populations equal to or less than 750 according to the 1990 census:

(i) match equal to or greater than 5.0% of grant request-60;

(ii) match at least 4.0% but less than 5.0% of grant request-40;

(iii) match at least 3.0% but less than 4.0% of grant request-20;

(iv) match at least 2.0% but less than 3.0% of grant request-10;

(v) match less than 2.0% of grant request-0.

(B) [(A)] Applicants with populations equal to or less than [under] 1,500 but over 750 according to the 1990 [1980] census:

(i) match equal to or greater than 10% of grant request-60 [75];

(ii) match at least 7.5% but less than 10% of grant request-40 [50];

(iii) match at least 5.0% but less than 7.5% of grant request-20 [25];

(iv) match at least 2.5% but less than 5.0% of grant request-10;

(v) match less than 2.5% of grant request-0.

(C)[(B)] Applicants with populations equal to or less than [under] 5,000 but over 1,500 according to the 1990 [1980] census:

(i) match equal to or greater than 15% of grant request-60 [75];

(ii) match at least 11.5% but less than 15% of grant request-40 [50];

(iii) match at least 7.5% but less than 11.5% of grant request-20 [25];

(iv) match at least 3.5% but less than 7.5% of grant request-10;

(v) match less than 3.5% of grant request-0.

(D)(C) Applicants with populations over 5,000 according to the 1990 [1980] census:

(i) match equal to or greater than 20% of grant request—60 [75];

(ii) match at least 15% but less than 20% of grant request—40 [50];

(iii) match at least 10% but less than 15% of grant request—20 [25];

(iv) match at least 5.0% but less than 10% of grant request—10;

(v) match less than 5.0% of grant request—0.

(6) (No change.)

§178.14. Planning/Capacity Building Fund.

(a) General provisions. This fund is intended to provide an opportunity for units of general local government to prepare comprehensive community development plans, develop strategies, assess needs, and build or improve local capacity to undertake future community development projects or to prepare other needed planning elements. Eligible units of general local government are to be the direct recipients of planning contracts. Units of general local government may submit one application for planning funds annually if all previous planning/capacity building contracts with the department have been totally reimbursed by the department.

(1) A cash match equal to or greater than 20% of the total Texas Community Development Program funds requested is required of all applicants having a population over [of] 5,000 [or more], a cash match equal to or greater than 15% of the total Texas Community Development Program funds requested is required of all applicants having a population over 1, 500 but equal to or less than 5,000, a cash match equal to or greater than 10% of the total Texas Community Development Program funds requested is required of all applicants having a population over 750 but equal to or less than 1, 500, [of less than 5,000.] and a cash match equal to or greater than 5.0% of the total Texas Community Development Program funds requested is required of all applicants having a population of less than 750. The population of an applicant is based on the 1990 [1980] census unless an applicant submits a survey conducted in accordance with §178.1(k) of this title (relating to General Provisions). The percentage of match required from a county applicant is based on the actual target area population benefiting from the proposed planning project. In lieu of providing the cash match specified in this paragraph, and as further described in the most recent application guide for this fund, an applicant may agree to pay out of its own resources for other

eligible planning activities described on the matrix included in such application guide.

(2) In addition to the threshold requirements of §178.10(h) and the requirements of §178.10(n), in order to be eligible to apply for planning/capacity building funding, an applicant under this section must document that at least 51% of the persons in the area who would benefit from the implementation of the proposed planning activity are of low and moderate income.

(b) (No change.)

(c) Selection procedures. Scoring and the recommended ranking of projects is done by staff and a [project review] committee composed of department staff with input from the regional review committees. [The Project Review Committee is composed of Texas Community Development Program managers and other members designated by the director of the Texas Community Development Program.] The application and selection procedures consist of the following steps.

(1) Prior to the application deadline, each eligible jurisdiction may submit one application for funding under the planning/capacity building fund. An applicant may not submit an application under this fund and also under the colonia fund if the proposed activity under each application is the same or substantially similar. One copy of the application must be provided to the applicant's regional review committee and two copies must be submitted to the department.

(2) (No change.)

(3) Each regional review committee may, at its option, review and comment on a planning/capacity building proposal from a jurisdiction within its state planning region. These comments will become part of the application file [and are considered by the Project Review Committee], provided such comments are received by the department prior to scoring of the applications.

(4) The department staff and the department staff committee [Project Review Committee] generate scores on factors related to planning strategy and products. Each application is scored on how the proposed planning activities resolve the identified community development needs of the local government. This information, as well as any comments made by the regional review committee, will be used by the department staff committee [Project Review Committee] and department staff to generate scores on the planning strategy and products factors.

(5)-(9) (No change.)

(d) Selection criteria. The following is an outline of the selection criteria used by the department [the Project Review Committee, and the State Review

Committee] for selection of the projects under the planning/capacity building fund. Four hundred twenty-five points are available.

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

(3) Project design (total—100 points).

(A) (No change.)

(B) Areawide proposals (50 points). An applicant must propose to conduct all activities described in its application throughout the entire jurisdiction of the applicant to receive the maximum 50 points. An applicant proposing target area planning will receive zero points.

(4) (No change.)

§178.16. Urgent Need Fund.

(a) General provision. Assistance under this fund is provided only to eliminate existing water and sewer conditions which pose a serious and immediate threat to the health or welfare of the residents of the applicant where other financial resources are not available to meet such conditions. A unit of general local government that wishes to receive assistance under this fund must submit an application, as provided by the department, to the department. There is no application deadline. An applicant may not submit an application under this fund and also under the community development fund or the colonia fund [special impact fund] during the same program year if the proposed activity under each application is the same or substantially similar. An applicant may submit only one application under this fund in any one program year. The department may negotiate the level of funding to be provided to an applicant and the scope of work to be performed by the applicant.

(b) Threshold requirements. In addition to the requirements set forth in §178.10(h) of this title (relating to General Provisions) and the requirements of §178.10(n), each of the following requirements must be satisfied in order to be eligible for funding under this fund:

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

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

Issued in Austin, Texas, on June 8, 1991.

TRD-9108103

Cathy Bonner
Interim Executive Director
Texas Department of
Commerce

Earliest possible date of adoption: July 8, 1991

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

• 10 TAC §178.17, §178.18

(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 Commerce or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brasos Street, Austin.)

The Texas Department of Commerce (Commerce) proposes the repeal of §178.17 and §178.18, concerning the special impact fund and the housing development fund under which a portion of federal fiscal years 1986-1990 community development block grant (CDBG) nonentitlement area funds were allocated to units of general local government. In accordance with Commerce federal fiscal year 1991 final statement submitted to the United States Department of Housing and Urban Development, the repeal deletes the special impact fund and the housing development fund as separate sources of funding under the Texas Community Development Program (TCDP).

Sedora Jefferson, general counsel, 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 repeals.

Ruth Cedillo, TCDP director, 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 repeal will be greater availability of funds for projects benefiting the residents of severely distressed unincorporated areas. 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 Sedora Jefferson, General Counsel, P.O. Box 12728, Austin, Texas 78711, within 30 days after the date of this publication.

The repeals are proposed under the Texas Government Code Annotated, Chapter 481, Subchapter N, which provides Commerce with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities according to department rules.

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

Issued in Austin, Texas, on June 8, 1991.

TRD-9108104

Cathy Bonner
Interim Executive Director
Texas Department of
Commerce

Earliest possible date of adoption: August 16, 1991

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

◆ ◆ ◆
• 10 TAC §178.20

The Texas Department of Commerce (Commerce) proposes new §178.20, concerning the establishment of a colonia fund under the Texas Community Development Program (TCDP). The colonia fund will be available to eligible counties for water, sewer, and plan-

ning projects in severely distressed unincorporated areas. The proposed section establishes the standards and procedures by which Commerce will allocate colonia funds to eligible units of general local government in Texas beginning with the expenditure of federal fiscal year 1991 funds. The proposed section includes application requirements, and selection procedures and criteria.

Sedora Jefferson, general counsel 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.

Ruth Cedillo, TCDP director, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the equitable distribution of funds to eligible units of general local government. 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 Sedora Jefferson, General Counsel, P.O. Box 12728, Austin, Texas 78711, within 30 days after the date of this publication.

The new section is proposed under the Texas Government Code Annotated, Chapter 481, Subchapter N, which provides Commerce with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities according to department rules.

§178.20. Colonial Fund.

(a) General provisions. This fund covers the payment of assessments, access fees, and capital recovery fees for low and moderate income persons for eligible water and sewer improvements projects and eligible planning activities projects to serve severely distressed unincorporated areas of counties which meet the definition of a colonia under this fund. A colonia is defined as: any identifiable unincorporated community that is designated as such by the department; is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence and generally recognized as a colonia prior to November 28, 1990. For an eligible county to submit an application on behalf of eligible colonia areas, the colonia areas must be within 150 miles of the Texas-Mexico border region, except that any county that is part of a standard metropolitan statistical area with a population exceeding one million is not eligible under this fund.

(1) An applicant may not submit an application under this fund and also under the community development fund, planning/capacity building fund or urgent need fund during the same program year if the proposed activity under each application is the same or substantially similar.

(2) In addition to the threshold requirements of §178.10(h) of this title (General Provisions) and the requirements of §178.10(n) in order to be eligible to apply for colonia funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Applicants submitting proposals for colonia fund planning activities are not required to provide a cash match in support of the project.

(b) Eligible activities. The only eligible activities under the colonia fund are:

(1) the payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public water and/or sewer improvement;

(2) payment of the cost of planning community development (including water and sewage facilities) and housing activities; costs for the provision of information and technical assistance to residents of the area in which the activities are located and to appropriate nonprofit organizations and public agencies acting on behalf of the residents; and costs for preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans.

(c) Types of applications. Eligible applicants may submit one application for the payment of assessments activities and one application for eligible planning activities. The two eligible activities (payment of assessments activities and planning activities) cannot be included in one application, but must be applied for under separate applications. Priority for funding will be given to applications for payment of assessments activities. If the entire state allocation under this fund is obligated for payment of assessments applications, then applications for planning activities under this fund will be considered under the planning/capacity building fund (§178.14 of this title (relating Planning/Capacity Building Fund)).

(d) Funding cycle. This fund will be allocated on an annual basis to eligible county applicants on a competitive basis. Applications for funding must be received by the department by 5 p.m. on the date specified in the most recent application guide for this fund.

(e) Selection procedures.

(1) On or before the application deadline, each eligible county may submit one application for payment of assessments activities and one application for planning activities for funding under the colonia fund. Copies of the application must be provided to the applicant's regional review committee and the department.

(2) Upon receipt of an application, the department staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a colonia fund proposal from a jurisdiction within its state planning region. These comments will become part of the application file, provided such comments are received by the department prior to scoring of the applications.

(4) The department then scores the applications to determine colonia fund rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant.

(5) Following a final technical review, the department staff makes funding recommendations to the State Review Committee.

(6) The funding recommendations of the State Review Committee are then provided to the executive director of the department.

(7) The executive director of the department reviews the final recommendations for project awards and announces the contract awards.

(8) Upon announcement of contract awards, the department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(f) Selection criteria (payment of assessments activities). The following is an outline of the selection criteria to be used by the department for scoring applications for payment of assessments activities under the colonia fund. Three hundred fifty points are available.

(1) Community distress (total-60 points). All community distress scores are based on the population of the applicant and the census geographic areas where project activities are located. An applicant that has 125% or more of the average of all applicants of the rate on any community distress factor, except per capita income, will receive the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants

on a factor will receive a proportionate share of the maximum number of points available for that factor. An applicant that has 75% or less of the average of all applicants on the per capita income factor will receive the maximum number of points available for that factor:

(A) percentage of persons living in poverty-20;

(B) per capita income-20;

(C) percentage of housing units without plumbing-20.

(2) Benefit to low-and moderate-income persons (total-50 points).

(A) Number of low-and moderate-income persons to be served (20 points). Points will be awarded using the median number of low-and moderate-income persons to benefit from all colonia fund applications received as the base figure using the following scale:

(i) 120% or above the median number of low-and moderate-income beneficiaries-20;

(ii) 100% to 119.99% of the median number of low-and moderate-income beneficiaries-15;

(iii) 80% to 99.99% of the median number of low-and moderate-income beneficiaries-10;

(iv) below 80% of the median number of low-and moderate-income beneficiaries-0.

(B) Low-and moderate-income percentage of the entire colonia area(s) receiving project benefit (30 points). Points will be awarded based on the percentage of low-and moderate-income persons residing within the entire boundaries of the colonia area(s) where project activities are located according to the following scale:

(i) 100% to 95% low-to moderate-income percentage for persons residing in the colonia area(s)-30;

(ii) 94.99% to 90% low-to moderate-income percentage for persons residing in the colonia area(s)-25;

(iii) 89.99% to 80% low-to moderate-income percentage for persons residing in the colonia area(s)-20;

(iv) 79.99% to 70% low-to moderate-income percentage for persons residing in the colonia area(s)-10;

(v) below 80% low-to moderate-income percentage for persons residing in the colonia area(s)-0.

(3) Percentage of minorities presently employed by the applicant divided

by the percentage of minority residents within the local community (total-25 points). In the event less than 5.0% of the applicant's population base is composed of minority residents or the applicant has less than five permanent full-time employees, the applicant will be assigned the average score on this factor for all applicants under this fund or the score calculated on its actual figures, whichever is higher. The terms used in this paragraph are defined in the most recent application for this fund.

(4) Project design (total-215 points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. Information submitted in the application is used by a committee composed of staff of the department to generate scores on the project design factor.

(g) Selection criteria (planning activities). The following is an outline of the selection criteria used by the department for scoring applications for eligible planning activities under this fund. In the event that the entire colonia fund allocation is obligated to colonia fund applications for payment of assessments activities, then colonia fund applications for planning activities will be considered under the planning/capacity building fund competition and will be scored using the selection criteria under §178.14(d). Four hundred twenty-five points are available.

(1) Community distress (total-50 points). All community distress factor scores are based on the total population of the applicant:

(A) percentage of persons living in poverty-15;

(B) per capita income-15;

(C) percentage of housing units without some or all plumbing-10;

(D) unemployment rate-10.

(2) Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community (total-25 points). In the event less than 5.0% of the applicant's population base is composed of minority residents or the applicant has less than five full-time permanent employees, the applicant will be assigned the average score on this factor for all applicants, or the score calculated on its actual figures, whichever is higher. The terms used in this paragraph are defined in the current application guide.

(3) Project design (total-100 points).

(A) Program priority (50 points). An applicant chooses its own priorities under this scoring factor. All activities are weighted at 10 points apiece. An applicant receives 50 points for its first five priorities. Proposals that include the activities shown on the matrix in the most recent application guide for this fund as priorities will receive primary consideration. An applicant is not limited to requesting only its first five priorities. It may also request funds for activities viewed as necessary, but no additional points would be available for these activities. Applicants with fewer than five priorities or wishing to accomplish fewer than five activities receive point consideration for efficient use of grant funds under "Planning Strategy and Products" described in the most recent application guide for this fund.

(B) Areawide proposals (50 points). An applicant must propose to conduct all activities described in its application on a colonia-wide basis to receive the maximum 50 points. An applicant proposing planning for portions of colonias will receive zero points.

(4) Planning strategy and products (total-250 points).

(A) Previous planning (50 points):

(i) an applicant which has not previously received a planning/capacity building contract to benefit the colonia(s) included in the application-50 points;

(ii) an applicant which has received previous planning/capacity building funding and can demonstrate that at least three previous planning recommendations have been implemented, i.e., funds from any source have been spent to implement recommendations included in the plans-40;

(iii) an applicant which has participated in the program established under this section and can demonstrate implementation of some of the planning recommendations, regardless of the source of funding, or an applicant which has received previous planning/capacity building funding but can demonstrate that conditions have changed to warrant new planning for the same activities-20.

(B) Proposed planning effort (200 points). The factors considered by a committee composed of staff of the department in determining this score are as follows:

(i) the extent to which findings of any previous planning efforts have been implemented;

(ii) how clearly the proposed planning effort will resolve the community needs addressed in the application;

(iii) whether the proposed activities will result in the development of a strategy capable of implementation and will be an efficient use of contract funds; and

(iv) demonstration of local commitment.

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 June 8, 1991.

TRD-9108105

Cathy Bonner
Interim Executive Director
Texas Department of
Commerce

Earliest possible date of adoption: August 16, 1991

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

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Appli- cability and Requirements

The Railroad Commission of Texas proposes to repeal and replace §9.4 concerning registration for testing laboratories. In addition, the commission proposes amendments to §§9.3, 9.15, and 9.24, concerning categories of LP-gas licenses, LP-gas report forms, and insurance requirements for LP-gas licensees. The commission proposes the changes in order to bring these sections into compliance with the requirements of House Bill 2505 and Chapter 113 of the Texas Natural Resources Code.

The commission proposes to repeal and replace §9.4 due to extensive changes in the rule. New §9.4 requires a test manual to be submitted by Category A, B, or O licensees. The section also sets out licensing deadlines for testing laboratories registered with the division prior to August 26, 1991. Section 9.4 extends the registration deadline for these testing laboratories until August 26, 1992, and provides that all LP-gas related activities must cease on that date unless an applicable license is obtained.

The amendment to §9.3 adds Category O, testing laboratories, to the categories of LP-gas licenses. Section 9.3 has also been revised to incorporate mobile fuel containers and systems and the testing of LP-gas containers and systems into the definitions of the appropriate categories of licenses. LPG Form 27, Application for Testing Laboratories Registration, has been deleted from §9.15, and §9.24 has been amended to state the insurance requirements for Category O licensees. The requirement that Categories B and O licensees carry completed operations and products liability insurance has also been added to §9.24, and all required insurance amounts for Category B licensees have been

increased. The references to the LPG Form 998C were changed to LPG Form 998B in §9.24.

Thomas D. Petru, director of the Liquefied Petroleum Gas Division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Petru also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed would be an increase in public safety due to greater regulatory control over testing laboratories. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

• 16 TAC §§9.3, 9.15, 9.24

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations which will protect or tend to protect the health, safety, and welfare of the general public.

§9.3 Categories of Licenses. A prospective licensee may apply to the LP-Gas Division for a license to engage in one or more of the following categories:

(1) Category A-Manufacturers and/or fabricators, which covers the manufacture, fabrication, assembly, repair, installation, subframing testing and sale of LP-gas containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems;

(2) Category B-Transport outfit-
ters, which covers the subframing, testing and sale of LP-gas transport containers, the testing of LP-gas storage containers, and the installation, testing, and sale of LP-gas motor or mobile fuel containers and systems, and the installation and repair of transport systems, and motor or mobile fuel systems;

(3)-(4) (No change.)

(5) Category E-Retail and wholesale dealers, which covers the storage, sale, transportation, and distribution of LP-gas at retail and wholesale, and all other activities included in this section, except the manufacture, fabrication, assembly, repair, [and] subframing, and testing of LP-gas containers;

(6)-(11) (No change.)

(12) Category L-Carburetion, which covers the sale and installation of

LP-gas motor or mobile fuel containers, and the sale and installation of LP-gas motor fuel systems;

(13) Category M-Recreational vehicle installers and repairmen, which covers the sale, service, and installation of recreational vehicle containers, and the installation, repair, and service of recreation vehicle appliances, piping, and LP-gas [LPG] systems, including recreational vehicle motor or mobile fuel systems and containers;

(14) (No change.)

(15) Category O-Testing laboratories which covers the testing of an LP-gas container for the purpose of determining the safety of the container of LP-gas service, including the necessary disconnection and reconnection of LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers.

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

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

(11) LPG Form 16B. Application for Examination Exemption by a Master or Journeyman Plumber or a [J] Class A or B Air Conditioning and Refrigeration Contractor;

(12)-(21) (No change.)

[(22) LPG Form 27. Application for Testing Laboratories Registration;]

(22)[(23)] LPG Form 500. Application for Tentative Approval;

(23)[(24)] LPG Form 500a. Notice of LP-Gas Installation;

(24)[(25)] LPG Form 501. Completion Report;

(25)[(26)] LPG Form 502. Application for Liquefied Petroleum Gas Equipment and Component Approval;

(26)[(27)] LPG Form 503. Application to Install a LP-Gas System on School Bus/Mass Transit Vehicles;

(27)[(28)] LPG Form 504. Notice of Subsequent Installation or Conversion by the Same Ultimate Consumer or Licensee;

(28)[(29)] LPG Form 996A. Certificate of Insurance, Worker's Compensation and Employer's Liability;

(29)[(30)] LPG Form 996B. Statement in Lieu of Worker's Compensation and Employer's Liability Insurance;

(30)[(31)] LPG Form 997A. Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability;

(31)[(32)] LPG Form 997B. Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance;

(32)[(33)] LPG Form 998A. Certificate of Insurance, General Liability;

(33)[(34)] LPG Form 998B. Statement in Lieu of General Liability Insurance and/or Completed Operations and Products Liability Insurance.

(34)[(35)] LPG Form 999. Notice of Insurance Cancellation.

§9.24. Insurance Requirements.

(a) Pursuant to the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the following minimum amounts of insurance for LP-gas licensees [dealers] licensed by the State of Texas. A valid certificate of insurance shall be filed with the LP-Gas Division before the commission grants or renews a license.

(1) (No change.)

(2) Category B-Transport outfitters.

(A) general liability, including premises and operations coverage and completed operations and products liability coverage: \$300,000 [\$25,000] bodily injury; \$100,000 [\$10,000] property damage; \$300,000 aggregate; or \$300,000 [\$25,000] combined single limits;

(B) (No change.)

(3) -(14) (No change.)

(15) Category O-Testing laboratory:

(A) general liability, including premises and operations coverage and completed operations and products liability coverage: \$300,000 bodily injury; \$100,000 property damage \$300,000 aggregate; or \$300,000 combined single limits;

(B) workers' compensation, including employers' liability.

(b) (No change.)

(c) A Category C, E, H, or J licensee or applicant for a license that does not operate or contemplate operating a motor vehicle equipped with an LP-gas cargo container [tank] or does not transport or contemplate transporting LP-gas by vehicle in any manner may file LPG Form 997B in lieu of a certificate of motor vehicle [automobile] bodily injury and property damage insurance, if this certificate is otherwise required. The licensee or applicant for a license must file the required insurance

certificate with the division before operating a motor vehicle equipped with an LP-gas cargo container [tank] or transporting LP-gas by vehicle in any manner.

(d) A Category A, B, C, [or] E, or O licensee or applicant for a license that does not engage in or contemplate engaging in any LP-gas operations that would be covered by completed operations and products liability insurance may file LPG Form 998B [998C] in lieu of a certificate of completed operations and produces liability insurance. The licensee or applicant for a license must file the required insurance certificate with the division before engaging in any operations that require completed operations and products liability insurance.

(e) A licensee or applicant for a license that does not engage in or contemplate engaging in any operations that would be covered by general liability insurance may file LPG Form 998B [998C] in lieu of a certificate of general liability insurance. The licensee or applicant for a license must file the required insurance certificate with the division before engaging in any operations that require general liability insurance.

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

Issued in Austin, Texas, on July 8, 1991.

TRD-9108172

Martha V. Swanger
Hearings Examiner, Legal
Division, General Law
Railroad Commission of
Texas

Earliest possible date of adoption: August 16, 1991

For further information, please call: (512) 463-6949

• 16 TAC §9.4

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

The repeal is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect the health, safety, and welfare of the general public.

§9.4. Registration for Testing Laboratories.

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

Issued in Austin, Texas, on July 8, 1991.

TRD-9108171

Martha V. Swanger
Hearings Examiner, Legal
Division, General Law
Railroad Commission of
Texas

Earliest possible date of adoption: August 16, 1991

For further information, please call: (512) 463-6949

The new section is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect the health, safety, and welfare of the general public.

§9.4. Requirements for Testing.

(a) In addition to the other licensing requirements set out in the Texas Natural Resources Code and the LP-Gas Safety Rules, any Category A, B, or O licensee that proposes to determine the safety of an LP-gas container for LP-gas service in the State of Texas shall submit for division approval a written detailed test manual covering all testing activities. Also, any testing laboratory currently registered with the division or any category A, B, or O licensee that seeks to obtain or renew an LP-gas license must submit its manual for division approval prior to the issuance or renewal of the applicable license. Any revisions to a test manual must be submitted and approved prior to implementation. Procedures for hydrostatic testing must include the use of a calibrated pressure chart recorder. Any reasonable material may be required by the commission or division director in connection with division approval.

(b) The registration for testing laboratories registered with the division on or prior to August 26, 1991, shall continue in effect until August 26, 1992, unless such registration is revoked following a formal hearing. Such registration will expire automatically on August 26, 1992, and an applicable license will be required for any continued testing activities. All testing laboratories operating under the extended registration prescribed by this section must comply with the insurance requirements pertaining to Category A licensees as set out in the Texas Natural Resources Code, §113.097 and §113.099, except that no products liability insurance is required. All certificates filed are subject to the insurance conditions of the Texas Natural Resources Code, §113.098.

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

Issued in Austin, Texas, on July 8, 1991.

TRD-9108173

Martha V. Swanger
Hearings Examiner, Legal
Division, General Law
Texas Railroad
Commission of Texas

Earliest possible date of adoption: August 16, 1991

For further information, please call: (512) 463-6949

Subchapter B. Basic Rules

• 16 TAC §9.33

The Railroad Commission of Texas proposes an amendment to §9.33, concerning certification of testing laboratories for testing containers when a manufacturer's data report is unavailable. The commission proposes the revision in order to bring the section into compliance with the requirements of House Bill 2505 and the Texas Natural Resources Code, Chapter 113. The section has been amended to cover testing laboratories licensed with the commission.

Thomas D. Petru, director of the Liquefied Petroleum Gas Division, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Petru also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increase in public safety due to greater regulatory control over testing laboratories. 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 Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect the health, safety, and welfare of the general public.

§9.33. Authorized Containers.

- (a) (No change.)
(b) Manufacturer's data report and plans and specifications.

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

(3) Exceptions.

(A) (No change.)

(B) Certification by testing laboratory.

(i)(et) Manufacturer's data report unavailable. Where the manufacturer's data report is unavailable or does not meet the requirements of paragraph (1) of this subsection, a [recognized] testing laboratory licensed by or registered with the Railroad Commission of Texas shall test the affected container or vessel and, prior to its use in the transport or storage of LP-gas in the State of Texas (other than that which may be incidental to such testing), the laboratory shall submit its certification to the Railroad Commission that the container or vessel is safe for LP-gas service.

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

Issued in Austin, Texas, on July 8, 1991.

TRD-9108175

Martha V. Swanger
Hearings Examiner
Railroad Commission of
Texas

Earliest possible date of adoption: August 16, 1991

For further information, please call: (512) 463-6949

Subchapter P. Division XIV

• 16 TAC §9.501

The amendment is proposed under the Texas Natural Resources Code, §113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the liquefied petroleum gas industry and its operations, which will protect the health, safety, and welfare of the general public.

§9.501. Testing Requirements.

(a) Each cargo container unit required to be registered with the [this] division must be tested at least once every five years and each test prescribed in this section must be conducted [in accordance with the applicable provision(s) of the ASME Code and] in accordance with the division approved manual of the Category A, B, or O licensee or the registered testing laboratory performing the test [quality procedures documentation approved by the division]. No [Any] cargo container unit that [which] has been out of LP-gas service for a period of one year or more shall [not] be returned to LP-gas service until it has been shown to meet [fulfilled] the testing requirements of [in] this section ([which shall] including [include] any test the division director [may] reasonably requires [require]). Documentation [Such documentation] of the required testing must be filed by the Category A, B, or O licensee [either an ASME Code fabricator licensed by the division] or by the [a] testing laboratory registered with the division. Upon completion of any test [or repairs] required under this section, the results of the [any such] test [or repair] must clearly indicate whether the cargo container [such] unit is safe for LP-gas service and must be submitted by the licensee [licensed fabricator] or registered testing laboratory that tested [or repaired] the affected cargo container unit on a LPG Form 8 (Manufacturer's Report of Pressure Vessel Repair, Modification, and Testing). This form [and] must be received by [at] the division within 30 days of the [date of repair or the] due date of the test(s) required under this section. If evidence of any unsafe condition is discovered as a result of any of the tests performed under this section, the cargo container unit must be immediately removed

from LP-gas service until an official communication is received from the division, which will include written notice that authorizes returning such unit to LP-gas service.

(b) (No change.)

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

Issued in Austin, Texas, on July 8, 1991.

TRD-9108174

Martha Swanger
Hearings Examiner, Legal
Division, General Law
Railroad Commission of
Texas

Earliest possible date of adoption: August 16, 1991

For further information, please call: (512) 463-6949

◆ ◆ ◆
TITLE 28. INSURANCE
Part II. Texas Workers'
Compensation
Commission

Chapter 42. Medical Benefits
Subchapter B. Medical Cost
Evaluation

◆ ◆ ◆
• **28 TAC §42.105**

The Texas Workers' Compensation Commission proposes an amendment to §42.105, concerning medical fee guideline. The purpose of the amendment is to change the commission's address, and to make clear that the guideline used to pay for medical services and durable medical equipment provided to persons who were injured prior to January 1, 1991, shall be the same as that adopted by the commissioners of the Texas Workers' Compensation Commission, under 28 TAC §134.200.

The amendment changes the address of the commission from the old Riverside Drive location to the current Southfield Building location. It makes clear that copies of the guideline must be purchased from the Reprographics Department of the commission. Further, to avoid confusion, it makes clear that the incorporated guideline in this section is to be the same as that adopted by the commissioners of the commission, so that the same guideline will be used for all services rendered to injured workers regardless of the date of injury. The guideline incorporated herein shall be used to calculate payment for services and durable medical equipment provided on and after August 1, 1991.

R. Glenn Looney, manager of planning and analysis, 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. There is no anticipated impact on employment, locally or statewide, as a result of implementing the proposed amendment to the section.

Mr. Looney also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result

of enforcing the section will be the implementation of medical cost containment measures provided by the Workers' Compensation Act, using the same guideline as that implemented by the commissioners for "new law" medical services payment processing. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the amended section as proposed will include the cost of the new guideline, dependent upon the cost of printing the final published version. Also, there will be undeterminable costs to participating health care providers to update their billing systems to include new codes and amounts. There may be an increase or decrease in costs to carriers in the revision of systems to accommodate the fee guideline, as well as possible decreases in revenues to health care providers as a result of the revision of fees although most of these costs will have been incurred in adapting to the guideline adopted by the commission under 28 TAC §134.200. There may be a decrease to employers in the cost of providing medical benefits to injured workers as a result of the implementation of the fee schedule incorporated in §134.200 and this section.

Comments on the proposed amendment may be submitted to Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, The Southfield Building, 4000 South I-H 35, Austin, Texas 78704. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 8306, §7(b) (1990), which specifically authorize the board to adopt rules to implement medical cost containment; Article 8308-17.12(b), which authorize the commission to delegate appropriate powers and duties to the executive director to administer the workers' compensation law in effect prior to the effective date the new Texas Workers' Compensation Act (which delegation was made by the commission on April 1, 1990); Article 8308-17.18(d), which state that the commission shall process claims for injuries occurring prior to January 1, 1991, in accordance with the law in effect on the date of injury; and Article 8307, §4(a)(1990), which authorize the board to make rules to carry out and enforce the Workers' Compensation Act.

◆ ◆ ◆
§42.105. Medical Fee Guideline.

(a) (No change.)

(b) The commission will publish and adopt by reference herein a relative value scale used in conjunction with the 1990 CPT (Physicians' Current Procedural Terminology) as part of the *Medical Fee Guideline for Services Rendered Under the Texas Workers' Compensation Act*. This guideline is published as the *1991 Texas Workers' Compensation Commission Medical Fee Guideline* which is incorporated herein by reference. This shall be the same guideline adopted by the Texas Workers' Compensation Commission and incorporated into §134.200 of this title (relating to Medical Fee Guideline), as it exists on the effective date of this section, and as it may be amended thereafter by the commissioners. The guideline may be obtained

from the Reprographics Department [Division of Medical Review], Texas Workers' Compensation Commission, The Southfield Building, 4000 South I-H 35, [200 East Riverside Drive] Austin, Texas 78704 [-1287].

(c) (No change.)

(d) The guidelines established herein shall be used for services rendered, and durable medical equipment prescribed, on and after August 1, 1991 [February 1, 1991].

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

Issued in Austin, Texas, on July 8, 1991.

TRD-9108078

George E. Chapman
Executive Director
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: August 16, 1991

For further information, please call: (512) 448-7962.

◆ ◆ ◆
TITLE 34. PUBLIC FI-
NANCE

Part I. Comptroller of
Public Accounts

Chapter 3. Tax Administration
Subchapter O. State Sales and
Use Tax

◆ ◆ ◆
• **34 TAC §3.287**

The Comptroller of Public Accounts proposes an amendment to §3.287, concerning exemption certificates. The amendment provides information to retailers regarding the time period for obtaining exemption certificates prior to an audit. The amendment also provides information to persons purchasing tangible personal property for the Federal Deposit Insurance Corporation and the Resolution Trust Corporation.

Tom Plaut, chief revenue estimator, 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.

Dr. Plaut 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 in providing new information regarding tax responsibilities. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for 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 Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.287. Exemption Certificates.

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

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

(3) A person who issues an exemption certificate when purchasing a taxable item who knows at the time of purchase the item will be used in a manner other than that expressed in the certificate is guilty of a criminal offense [misdemeanor and upon conviction shall be fined not more than \$500 for each conviction].

(4) The seller should obtain the properly executed exemption certificate at the time the taxable transaction occurs. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The [Any certificates obtained after the transaction will be subject to verification by the comptroller. If the certificates are not obtained at the transac-

tion date, the] seller has 60 days from the date written notice is received by [given by the comptroller to] the seller from the comptroller in which to deliver the certificates [them] to the comptroller. Written notice shall be given by the comptroller upon the filing of a petition for redetermination or claim for refund. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. Any certificates delivered to the comptroller during the 60-day period will be subject to independent verification by the comptroller before any deductions will be allowed. Certificates delivered after the 60-day period [limit] will not be accepted [allowed] and the deduction will not be granted.

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

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

(g) Purchases of taxable items by agents of the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC). The FDIC/RTC may purchase items tax free

for use in operating a property or business to which they have title. An exemption certificate may be issued by either the FDIC/RTC or by persons acting as agents for the FDIC/RTC when purchasing items that are incorporated into or used on the property or business being managed. The certificate must state that the purchases are being made by or for the FDIC/RTC. The FDIC/RTC or persons managing property or a business for these corporations may issue an exemption certificate when:

(1) the FDIC/RTC provides documentation to the person managing the property or business showing that title to the property or business being managed was transferred to the FDIC/RTC; and

(2) the FDIC/RTC has entered into a written agreement with the person managing the property or business that designates that person as its agent and authorizes that person to make purchases on its behalf. The agreement must be in the person's files for review by the comptroller. It is not necessary to provide a copy of the agreement to suppliers.

(h)[(g)] Form of an exemption certificate. An exemption certificate must be in substantially the form set out as follows.

TEXAS CERTIFICATE OF EXEMPTION

Purchaser's name _____

Street Address _____

City, state, zip code _____

I claim an exemption from payment of sales and use taxes for the purchase of taxable items described below or on the attached order or invoice:

Description of items (or an attached order or invoice) to be purchased: _____

I claim this exemption for the following reason: _____

I understand that I will be liable for payment of sales tax which may become due for failure to comply with the provisions of the Tax Code: Limited Sales, Excise, and Use Tax Act, Municipal Sales and Use Tax Act, Sales and Use Taxes for Special Purpose Taxing Authorities, County Sales and Use Tax Act, County Health Services Sales and Use Tax and the Texas Health and Safety Code: Special Provisions Relating to Hospital Districts, Emergency Services Districts, and Emergency Services Districts in counties with a population of 125,000 or less. Liability for the tax will be determined by the price paid for the taxable items purchased or the fair market rental value for the period of time used.

I understand that it is a criminal offense [misdemeanor] to give an exemption certificate to the seller for taxable items which I know, at the time of purchase, will be used in a manner other than that expressed in this certificate [and, upon conviction, may be fined up to \$500 per offense].

Seller: _____

Street address: _____

City, state, zip code: _____

Purchaser's signature: _____ Date: _____ Phone: _____

Title: _____

This certificate does not require a number to be valid.

Sales and use tax exemption numbers or tax exempt numbers do not exist.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.
Issued in Austin, Texas, on July 8, 1991.

TRD-9108088 Martin Cherry
 Chief, General Law Section
 Comptroller of Public Accounts

Earliest possible date of adoption: August 16, 1991

For further information, please call: (512) 463-4028



Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 180. Compliance and Practices-Administrative Violations and Penalties

• **28 TAC §180.2**

The Texas Workers' Compensation Commission has withdrawn from consideration for permanent adoption a proposed new §180.2 which appeared in the April 23, 1991, issue of the *Texas Register* (16 TexReg 2276). The effective date of this withdrawal is July 8, 1991.

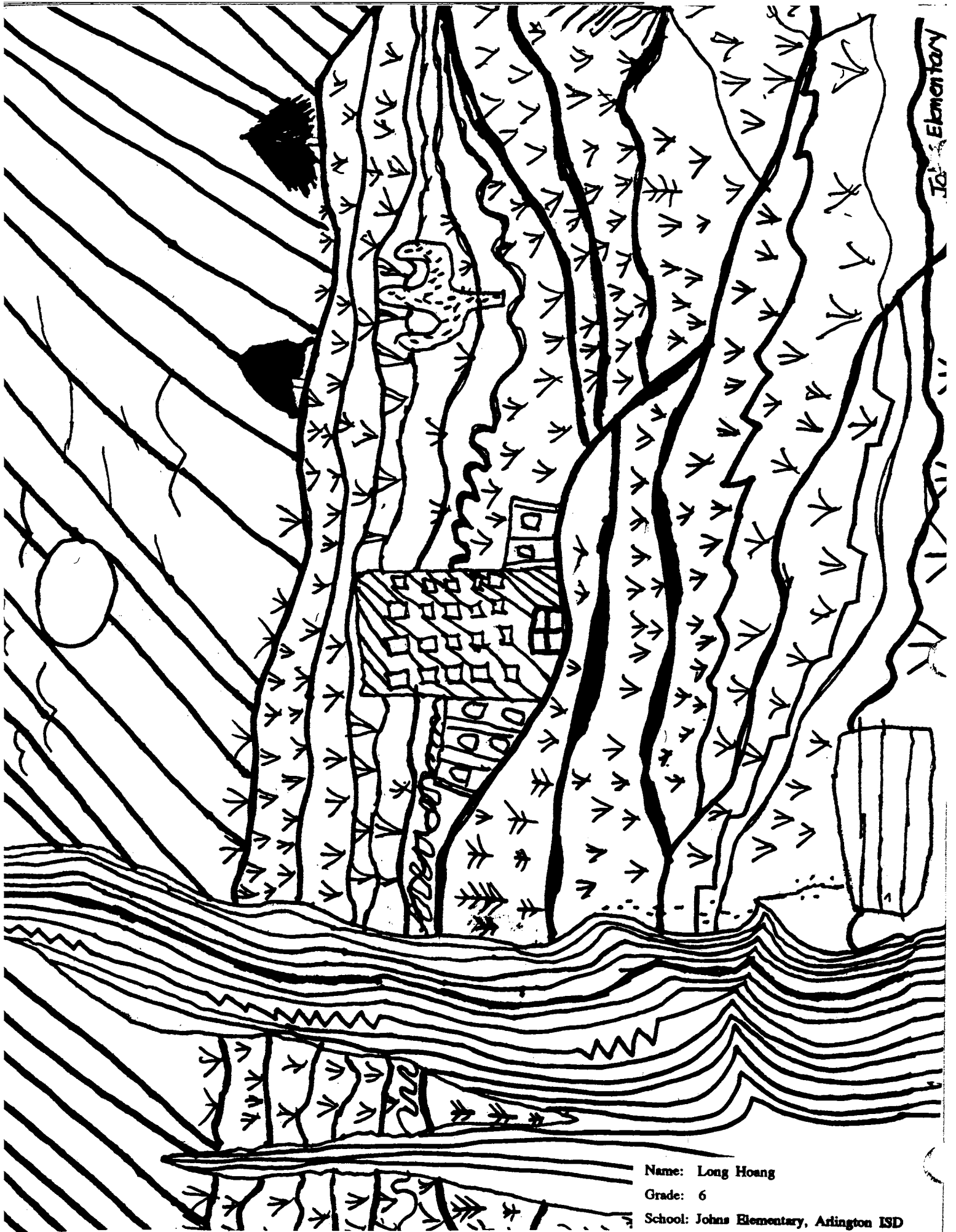
Issued in Austin, Texas, on July 8, 1991.

TRD-9108093 Patricia Schnautz
 Staff Services Assistant
 Texas Workers'
 Compensation
 Commission

Effective date: July 8, 1991

For further information, please call: (512)
440-3972





Name: Long Hoang
Grade: 6
School: Johns Elementary, Arlington ISD

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 28. INSURANCE

Part I. State Board of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter G. Worker's Compensation Insurance

Workers' Compensation Insurance Rate Deviation Filing Rules

• 28 TAC §§5.6171-5.6183

The State Board of Insurance adopts new §§5.6171-5.6183, without changes to the proposed text as published in the January 8, 1991, issue of the *Texas Register* (16 TexReg 86).

Sections 5.6171-5.6183 concern the filing of applications for downward rate deviations (rates less than those promulgated by the State Board of Insurance) applicable to workers' compensation insurance and/or employers' liability insurance by any insurer writing these coverages in the State of Texas. The new sections are necessary to prescribe requirements for submission of applications to the State Board of Insurance for deviations as established by the Insurance Code, Article 5.60(h), effective January 1, 1991.

New §5.6171 sets forth the scope of §§5.6172-5.6183. Section 5.6172 requires that companies applying to use a deviated rate must submit Texas Workers' Compensation Deviation Application Form WCD-100, which must be accompanied by balance sheets, income statements, and change in surplus for prescribed periods. New §5.6173 requires that deviation applications shall be filed under oath. Section 5.6174 sets forth requirements concerning classification, coverage, and percentage of deviations. New §5.6175 requires that deviations must be uniform by class and must apply statewide, unless otherwise approved by the board. Section 5.6176 prescribes that statistical and financial information included on a deviation application shall be taken from the applicant's most currently filed Texas Annual Statement and Insurance Expense Exhibit. New §5.6177 requires that an applicant submit specific underwriting information. New §5.6178 describes statistical reporting requirements in connection with approval of a deviation. Section 5.6179 requires that a deviation application be accompanied by a cover letter in which the proposed deviation is justified. Section 5.6180 and §5.6181 describe termination and renewal of deviations. New §5.6182 sets forth procedures for approval, revocation, or

suspension of deviations. New §5.6183 describes the manner in which approved deviations will apply to the promulgated manual rate.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to adopt rules in accordance with the laws of this state, and under the Insurance Code, Article 5.60(h), which provides the board with the authority to promulgate rules specifying the forms and requirements for an application for deviation.

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 July 5, 1991.

TRD-9108114 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: July 29, 1991

Proposal publication date: January 8, 1991

For further information, please call: (512) 463-6327

◆ ◆ ◆ Part II. Texas Workers' Compensation Commission

Chapter 102. General Provisions-Practices and Procedures

• 28 TAC §102.5

The Texas Workers' Compensation Commission adopts new §102.5, concerning the mailing and delivery of notices and written communications that go to, or come from, the Texas Workers' Compensation Commission and adopt uniform guidelines about the addresses and persons to whom communications should be directed, with changes to the proposed text as published in the April 16, 1991, issue of the *Texas Register* (16 TexReg 2183).

The new section requires mailing of documents to a claimant or claimant's representative to the last address supplied by that claimant or representative. The section further provides for filing of documents with a carrier to the attention of that carrier's Austin representative, unless another rule provides for something different. Notices to employers who have workers' compensation coverage must be mailed to the address reported by

that employer or to an address identified by the commission in the absence of such reporting; for employers who do not have coverage, the address used will be derived in the same way as for covered employers. Notices to health care providers and vocational rehabilitation services providers are mailed to the last address those persons provide to the commission. The section further provides that communications to the commission should be directed to the field office managing a claim, unless another rule provides for filing in a different location. Finally, the section contains a presumption for "deeming" a date of receipt by a party of communications mailed from the commission, for those documents calling for a response by a specific date; the date of receipt is deemed to be five days after the date of mailing.

No comments either in favor of or opposed to the proposed section were adopted. However, the commission has deleted references made in the proposed section to TWCC Forms 20 and 5, because the reporting of coverage information after September 1, 1991, will be to the State Board of Insurance, in accordance with the Texas Workers' Compensation Act, Article 8308-3.27. The commission has also added to "claimant" under subsection (a) of the adopted section.

The new section is adopted under Texas Civil Statutes, Article 8308, §2.09(a), which authorize the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation Act, Article 8303-1.01 et seq.

§102.5. General Rules for Written Communications to and From the Commission.

(a) All notices and written communications to the claimant or claimant's representative will be mailed to the last address supplied by that claimant or representative.

(b) Unless otherwise specified by rule, all notices and communications to insurance carriers will be sent to the carrier's Austin representative as provided by §156.1 of this title (relating to Carrier's Austin Representative).

(c) All notices and written communications to covered employers will be mailed to the address reported by the employer or to an address identified by the commission absent an employer reported address.

(d) All notices and written communications to non-covered employers will be mailed to the mailing address reported by the employer or to an address identified by the commission absent an employer-reported address.

(e) All notices and written communications to health care providers will be mailed to the last address supplied by the health care provider.

(f) All notices and written communications to vocational rehabilitation service providers shall be mailed to the last address supplied by the vocational service provider.

(g) Unless otherwise specified by rule, forms, notices, and other written communications required to be filed with the commission shall be directed to the local commission field office managing the claim.

(h) For purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt, the commission shall deem the received date to be five days after the date mailed.

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 July 8, 1991.

TRD-9108080 Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: July 29, 1991

Proposal publication date: April 16, 1991

For further information, please call: (512) 440-3973

Chapter 180. Compliance and Practices-Administrative Violations and Penalties

• 28 TAC §180.1, §180.3

The Texas Workers' Compensation Commission adopts new §180.1 and §180.3, concerning implementation by the commission of procedures to carry out compliance actions that are set forth in the Texas Workers' Compensation Act (the Act), Article 8308, §9.01 et seq and §10.02 et seq, with changes to the proposed text as published in the April 23, 1991, issue for the *Texas Register* (16 TexReg 2276).

The sections are needed to inform the public of procedures that will be used to monitor compliance with the Act. Proposed §180.2 is being withdrawn by the commission.

New §180.1 lists definitions of certain phrases that are used in the Act and rules; those definitions are charged person and patterns of conduct (which is synonymous, in the proposed section, with the terms "business practice" and "matter of practice.")

New §180.3 describes how the commission's division of compliance and practices will audit insurance carriers for compliance with the Act. The section makes clear that carrier's agents and those who are under contract to the carrier to perform services can be audited. The review is held at the office of the company who is audited. Compliance division

will work with the division of medical review for audit of medical issues. The section describes the reasonable notice that the compliance division must give a company before it audits performance. The section requires the carrier to designate a contact at each claims handling location, to work with the commission in order to provide three elements of information to its reviewer: access to records; response to inquires; and information about the carrier's claims handling and records procedures. The section further provides that written results of the review will be given to the carrier within 10 days after the review is finished. The carrier may file a response that includes how it proposes to correct any deficiencies. Copies of both the report and the response shall be provided by the compliance division to the State Board of Insurance. The section notes that the division will bill the carrier for the review, unless that carrier is a governmental entity. The carrier must mail or deliver payment for expenses by a check, within 40 days after the review has been completed.

Concerning proposed §180.1, one commenter noted that the proposed definition of participant did not include employers and left some confusion about whether claimants (as opposed to just persons actually receiving benefits) would be included. The commission agreed with the comment; however, it has been determined to omit this definition from the rules, as adopted by the commission, and does not appear in the Act, so there is no need at this time for defining this term.

The Alliance of American Insurers commented against the section as proposed. No comments specifically in favor of the proposed section were received.

Concerning proposed §180.3, one commenter recommended deletion of the word "payment" in subsection (c) of the proposed section, as it appeared to restrict coordination on medical issues only to payment disputes. The commission agrees that medical compliance issues can and will involve issues beyond payment, and has deleted the word "payment" from this subsection.

The Alliance of American Insurers commented against the section as proposed. No comments specifically in favor of the proposed section were received.

The sections are adopted under Texas Civil Statutes, Article 8308, §2.09(a), which authorizes the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation Act.

§180.1. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other terms such as "willful," "intentional," and "knowingly" shall have the meanings defined by the Texas Penal Code.

Charged person—The person who is charged with an administrative violation or wrongful act. As used in these rules, charged person includes people initially charged and those found guilty of administrative violations.

Patterns of conduct—The acts or omissions of a participant in the workers'

compensation system which are repeated. This term is synonymous with the terms "business practice" and "matter of practice."

§180.3. Performance Review of Insurance Carriers.

(a) The division of compliance and practices (the division) shall review and audit the records of insurance carriers, as that term is defined by the Texas Workers' Compensation Act (the Act), §1.03(28), the carrier's agents, and those with whom the carrier has contracted to provide, review, or monitor services under the Act, for compliance with the Act and rules of the commission.

(b) The division shall conduct such performance review at the offices of the insurance carrier, the carrier's agents, or those with whom the carrier has contracted to provide, review or monitor services under the Act.

(c) The division shall coordinate its reviews with the division of medical review for medical compliance issues.

(d) The division shall provide reasonable notice in advance of any performance review. That notice shall:

- (1) be in writing;
- (2) be sent at least 10 calendar days before the review is to be performed;
- (3) specify the information that must be made available;
- (4) list the names and phone numbers of commission staff involved in the review; and
- (5) specify the date, time, location, and conditions of the review.

(e) The insurance carrier shall designate a contact person at each claim handling location to coordinate the review. That contact person shall:

- (1) provide reasonable access to requested personnel and information;
- (2) respond to reasonable needs of reviewers on-site or to telephone inquiries by reviewers; and
- (3) be familiar with the insurance carrier's claim handling procedures and record keeping systems.

(f) The insurance carrier, upon request, shall make available for review claim files as specified by the division.

(g) Written findings of the review will be provided to the insurance carrier at the time of the review or within 10 days after the review is completed.

(h) The insurance carrier may prepare and file with the division of compliance and practices a management response to the performance review findings. The response may include proposed corrective actions.

(i) The division shall provide the State Board of Insurance with a copy of all performance review findings and the insurance carrier's response, if any.

(j) Except to a governmental entity, the commission shall submit a bill to the insurance carrier for the actual expenses associated with the review within 10 days after the review is completed.

(k) The insurance carrier shall submit payment by check, made payable to the order of the commission, for the expenses within 40 days after the review is completed. Payment may be delivered in person or by mail to the commission in Austin.

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 July 8, 1991.

TRD-9108138

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: July 29, 1991

Proposal publication date: April 23, 1991

For further information, please call: (512) 440-3972

◆ ◆ ◆
• 28 TAC §§180.4-180.8

The Texas Workers' Compensation Commission adopts new §§180.4-180.8, concerning review of employer compliance with the Texas Workers' Compensation Act (the Act), Texas Civil Statutes, Article 8308-1.01 et seq; access to compensation-related records; evidence of patterns of conduct for purposes of assessing administrative penalties; the date administrative violations are considered to occur; and contents and procedures for notices of administrative violation and penalty, with changes to the proposed text as published in the April 30, 1991, issue of the *Texas Register* (18 TexReg 2418).

The sections clarify the procedures used by the compliance and practices division and describe how administrative violations are assessed.

New §180.4 sets out the procedures for a review of an employer's records by the compliance and practices division of the commission. The section provides that the commission may conduct a review of the employer's records and procedures if written allegations of noncompliance are received or if findings are developed through internal monitoring or insurance carrier audits, by the commission. The review may be conducted at the employer's offices, after prior written notice mailed 14 calendar days before the review; the notice shall specify the date and time of the review and identify commission staff involved. The section requires the employer to identify a knowledgeable contact to assist the commission reviewer in getting information. The section requires the commission to provide written findings to the employer within 10 days after the review; the employer may file a response which shall identify corrective actions to be taken.

New §180.5 requires a person subject to monitoring by the commission to provide records that are requested, and identified, by the commission. The records must be produced by the specific date stated in the request.

New §180.6 defines the occurrences of wrongful acts that will indicate a "pattern of conduct" of noncompliance for purposes of assessing administrative penalties under the Act. According to the section, a pattern of conduct can be established in any of three ways: by the first conviction in court for a criminal offense that constitutes a violation of the Act or commission's rules; by at least three administrative violations of the same provision of the Act; or by prohibited action following a written warning from the commission.

New §180.7 states that an administrative action is deemed to have occurred on the date when: a noncompliant action is taken; or no action is taken by the date required by the Act or commission rule.

New §180.8 sets out the contents of a notice of administrative violation that will be issued by the commission when it finds noncompliance with the Act. The notice of violation and penalty is required by the Act, §10.32. The section states that the notice will be issued by the division of compliance and practices, and sent to the charged person. The notice will briefly state the facts that constitute a violation, describe the sanction, and/or amount of penalty assessed, cite the law on which the violation and penalty are based, and briefly state the rights Texas Workers' Compensation Commission and duties of the charged person relating to responding to the charge or requesting a hearing. The notice will also include information required in hearings rules under Chapter 145, if any. The section gives the charged person no longer than 20 days to file a written answer to the charge; the answer must either agree with the sanction and pay the fine, or request a hearing, according to §145.3 of this title (relating to Requesting a Hearing). The section provides that failure to respond to the notice within 20 days, absent good cause, is deemed a consent to the penalty. Finally, the section allows the compliance and practices division to postpone civil penalty action until any possible prosecution of a criminal offense is completed.

Concerning §180.4, one commenter proposed language to add at the end of subsection (a) of the section, to establish a threshold which would trigger the on-site audit of employer records; the commenter suggested that the trigger be a finding of a pattern of conduct in violation of the rules. The commission agrees that a trigger should be established, but has broadened the suggestion offered by the commenter, to include written complaints of non-compliance and internal findings of the commission developed through internal monitoring or insurance carrier audits. This is added as the last sentence to subsection (a) of the section.

The same commenter also noted, as a comment to proposed §180.5, that seven days' notice of an on-site audit would be unduly disruptive to the employer, and suggested changing the notice date set forth in §180.4(c)(2) to 30 days. The commission agrees with adding more time, however, it disagrees with the 30 days suggested by the

commenter as too long. The commission has changed the advance notice requirement to 14 days.

The Texas Association of Business commented against the proposed section. No comments specifically in favor of the proposed section were received.

Concerning §180.5, one commenter, in response to the penalty provision set forth in subsection (c) of the proposed section, noted that seven days' advance notice was insufficient time for an employer to fully comply. The commission agrees with giving more time, and has made this change in adopted §180.4(c)(2), as noted previously. The commission has reevaluated the legal authority for creating a penalty in §180.5(c), and has determined that it will delete the proposed Class D designation in this subsection (c) of this section.

The Texas Association of Business commented against the proposed section. No comments specifically in favor of the proposed section were received.

Concerning §180.6, one commenter suggested that subsection (1) of the proposed section be expanded to include criminal acts that constituted a violation of provisions of the Act or rules; not all penal violations for which one can be prosecuted are established under this Act. The commission agrees and has changed subsection (1) to delete "established by this Act" and substitute the language appearing after the words "criminal act." Another commenter suggested that the evidence of a pattern of conduct be changed so that a violation rate in excess of a certain established percentage of all required acts of the same type be the threshold. The commenter stated that this would require an enumeration of the actions to which different standards would apply, depending upon degree of seriousness. Another commenter also called for consideration of the seriousness of the violation as an element in establishing the finding of a pattern of conduct. The commission disagrees with amending the rule to do this, noting that identification of a pattern of conduct is a different issue from establishing the appropriate penalty. The seriousness of the violation should be reflected in the penalty assessed, not in the determination of whether a pattern of conduct of non-compliance has occurred. The suggested method would require much more data collection than is warranted under the Act.

The Texas Association of Business and Alliance of American Insurers commented against the proposed section. No comments specifically in favor of the proposed section were received.

Concerning §180.7, the commission has deleted paragraphs (3) and (4) of the proposed section, in order to remove the "deeming" by the compliance and practices division of violations as part of the finding of non-compliant patterns of conduct.

No comments in favor of or opposed to proposed §180.7 were received.

Concerning §180.8, two commenters suggested that the failure to respond to the notice of violation within 20 days should be considered as consent to the penalty or sanction. The commission agrees, and has added this as subsection (d) of the adopted section, re-

lettering proposed subsection (d) to (e). Two commenters noted that the proposed provision for payment by cashier's check or money order only was unduly burdensome to insurance carriers and employers. The commission agrees, and has deleted this requirement from subsection (c) of the section, noting that the issue can be looked at again if problems with payment occur in the future. Another commenter stated that there should be an option for extension of the 20-day deadline for extenuating circumstances. The commission disagrees; the 20 days' time period for requesting a hearing is statutory; the request for hearing itself would extend payment. The issue of extenuating circumstances falls under the Act, §10.34. On its own motion, the commission deleted the requirement in proposed subsection (a)(2), that the notice be issued on a form approved by the commission.

The Alliance of American Insurers, Texas Association of Business, American Insurance Association, and Southwestern Bell Telephone commented against the proposed section. No comments specifically in favor of the proposed section were received.

The new sections are adopted under Texas Civil Statutes, Article 8308, §2.09(a), which authorize the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation Act.

§180.4. Review of Employer Compliance.

(a) A review of the employer's compliance with the Texas Workers' Compensation Act (Act) and rules of the commission may be performed by the division of compliance and practices. The commission may conduct a review of the employer's records and procedures to determine compliance with the Act and these rules, if written allegations of noncompliance are developed through internal monitoring or insurance carrier auditing.

(b) The division may conduct such review at the offices of the employer.

(c) The division shall provide notice in advance of any review at the offices of the employer. That notice shall:

- (1) be in writing;
- (2) be mailed at least fourteen calendar days before the review is to be performed;
- (3) specify the information that must be made available;
- (4) list the names and phone numbers of commission staff involved in the review; and
- (5) specify the date, time, location, and conditions of the review.

(d) The employer shall designate a contact person to coordinate the review. That contact person shall:

- (1) provide reasonable access to requested information;
- (2) respond to reasonable needs of reviewers on-site or to telephone inquiries by reviewers; and

(3) be familiar with the record keeping system and procedures regarding claims related information.

(e) Written findings of the review will be provided to the employer at the time of the review or within 10 days after the review is completed.

(f) The employer may prepare and file with the division of compliance and practices a management response to the review findings identifying any proposed corrective actions.

§180.5. Access to Workers' Compensation Related Records.

(a) Upon written request from the commission, any person subject to monitoring or review by the commission shall provide access to all records and information held by that person related to issues being reviewed or investigated.

(b) The request will identify the information or documents to be produced, and will provide a specific, reasonable date to produce the information.

§180.6. Evidence of Patterns of Conduct. For purposes of enforcement of the portions of the Texas Workers' Compensation Act (Act) pertaining to wrongful acts, administrative violations, and penalties, the following guidelines apply.

(1) A pattern of conduct is established upon the first conviction by a court for a criminal act that constitutes a violation of the Act or the rules of the commission.

(2) A pattern of conduct may be established by at least three administrative violations of the same provision of the Act or commission rule.

(3) A pattern of conduct is established by a person continuing to engage in acts after the commission has issued a written warning of the prohibited nature and consequences of the act.

§180.7. Date Administrative Violation; Deemed to Have Occurred. Administrative violations are deemed to have occurred:

(1) on the date a noncompliant action is taken; or

(2) on the date required by the Texas Workers' Compensation Act (Act) or rule, when no action is taken by the close of business on that date.

§180.8. Notice of Administrative Violation and Penalty.

(a) A notice of administrative violation, and penalty, if any, shall be:

(1) issued by the division of compliance and practices; and

(2) sent to the charged person as provided by §102.4 and §102.5 of this title (relating to Filing Documents with Claimant's Representative; General Rules for Written Communications to and from the Commission).

(b) The notice will provide the charged person with:

(1) a brief statement of facts constituting the violation;

(2) the statutory authority under which the violation has occurred and the statutory authority for assessing the sanction;

(3) a description of the sanction, including the amount of the penalty, if any;

(4) any other information required by rules under Chapter 145 of this title (relating to Dispute Resolutions-Hearings Under the Administrative Procedure and Texas Register Act); and

(5) information of the rights, obligations, and procedures for the charged person to file a written answer or request a hearing.

(c) The charged person must file a written answer not later than the 20th day after the date the notice is received. The answer must either consent to the proposed sanction, and remit the amount of the penalty, if any, or request a hearing as provided by §145.3 of this title (relating to Requesting a Hearing).

(d) Failure to respond in 20 days, absent good cause, is deemed consent to the penalty.

(e) In an investigation where both an administrative violation and a criminal prosecution are possible, the division may postpone action on the administrative violation until the criminal prosecution is completed.

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 July 8, 1991.

TRD-9108084

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: July 29, 1991

Proposal publication date: April 30, 1991

For further information, please call: (512) 440-3973

TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 29. Benefits

Service Retirement

• 34 TAC §29.11

The Teacher Retirement System of Texas (TRS) adopts an amendment to §29.11, without changes to the proposed text as published in the May 7, 1991, issue of the *Texas Register* (16 TexReg 2519).

The changes in the section are adopted to reflect new actuarial tables adopted by reference and used for early age retirements and retirement options.

The amendment will allow TRS to use actuarial tables that more accurately reflect the mortality, service, and compensation of the system's members and beneficiaries. There will be a slight improvement in the annuity amount available to most retiring members and their beneficiaries using the new tables.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §824.102, which provides the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, the administration of the funds of the retirement system, and the transaction of its business; §825.105, which authorizes the board to adopt actuarial tables for benefit calculations; and §824.202(d) and (e), which authorize the board to adopt tables for early age retirement reduction factors.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 8, 1991.

TRD-9108158

Ronald Douglas
Acting Executive Secretary
Teacher Retirement
System of Texas

Effective date: September 1, 1991.

Proposal publication date: May 7, 1991

For further information, please call: (512) 370-0524

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter G. Hospital Services

• 40 TAC §29.603, §29.606

The Texas Department of Human Services (DHS) adopts amendments to §§29.603, 29.606, and 29.1112, concerning authorized inpatient hospital services, reimbursement

methodology for inpatient hospital services, and exclusions and limitations, in its Purchased Health Services chapter. The amendments are adopted effective July 1, 1991, to comply with §4604 of the Omnibus Budget Reconciliation Act of 1990.

Section 4604 requires state Medicaid agencies to waive durational limits and dollar limits on inpatient hospital services provided to recipients less than age one (including those who are admitted to and remain in a hospital past their first birthday) in all Title XIX participating hospitals. Section 4604 also requires states to waive durational limits for recipients less than age six in disproportionate share hospitals. States using prospective payment systems must extend outlier payment adjustments for long and/or expensive hospital stays to stays involving recipients less than age one in all hospitals and recipients less than age six in disproportionate share hospitals.

The justification for the amendments is to comply with federal law.

The amendments will function by making DHS's policies consistent with federal law.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs. The amendments are adopted under federal requirements to be effective July 1, 1991.

§29.603. Authorized Inpatient Hospital Services. Inpatient hospital services include those items and services that are ordinarily furnished by the hospital for the care and treatment of inpatients and are provided under the direction of a physician in a Title XIX hospital or a Title XVIII or XIX out-of-state hospital approved for participation. Except as otherwise specified, and subject to the qualifications, limitations, and exclusions set forth, benefits are provided for hospital services set forth as follows when provided to eligible recipients:

(1) Duration of care. Except as otherwise specified in §29.1125 of this title (relating to Organ Transplants), when an eligible recipient is confined as an inpatient in a Title XIX hospital, or a Title XVIII or XIX out-of-state hospital approved for participation, the health insuring agent pays for medically necessary inpatient hospital services actually furnished to the recipient during the first 30 days of each Title XIX spell of illness. The Title XIX spell-of-illness limitations are waived for medically necessary inpatient services provided to recipients less than age one (including those recipients under age one who are admitted to and remain in a hospital past their first birthday) in all Title XIX participating hospitals and recipients less than age six in disproportionate share hospitals as defined by the department. For purposes of this waiver, disproportionate share hospitals are defined as those hospitals identified by the department during the previous state fiscal year as disproportionate share hospitals. The services are subject to the utilization

review requirements of the Texas Medical Assistance Program.

(2) (No change.)

§29.606. Reimbursement Methodology for Inpatient Hospital Services.

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

(f) Patient transfers. If a patient is transferred, the department or its designee establishes payment amounts as specified in paragraphs (1)-(4) of this subsection. If appropriate, the department or its designee manually reviews transfers for medical necessity and appropriate payment.

(1) (No change.)

(2) If the patient is transferred to another hospital, the department or its designee pays the receiving hospital the total payment amount of the patient's DRG. The department or its designee pays the transferring hospital a DRG per diem. The DRG per diem is based on the following formula:

$$\frac{\text{DRG relative weight} \times \text{standard dollar amount}}{\text{DRG mean length of stay (LOS)}} \times \text{LOS}$$

The LOS is the lesser of the DRG mean LOS, the claim LOS, or 30 days. The 30-day factor is not used in establishing a DRG per diem amount for a medically necessary stay of a recipient less than age one in a Title XIX participating hospital or a recipient less than age six in a disproportionate share hospital as defined by the department.

(3)-(4) (No change.)

(g)-(o) (No change.)

(p) Day and cost outliers. Effective for inpatient hospital services provided on or after July 1, 1991, the department or its designee pays day or cost outliers for medically necessary inpatient services provided to recipients less than age one in all Title XIX participating hospitals and recipients less than age six in disproportionate share hospitals, as defined by the department, that are reimbursed under the prospective payment system. For purposes of outlier payment adjustments, disproportionate share hospitals are defined as those hospitals identified by the department during the previous state fiscal year as disproportionate share hospitals. If an admission qualifies for both a day and a cost outlier, only the outlier resulting in the highest payment to the hospital is paid.

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

(3) If a recipient less than age one is admitted to and remains in a hospital past his or her first birthday, medically necessary inpatient days and hospital charges after the child reaches age one are included in calculating the amount of any day or cost outlier payment.

(q) (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 July 8, 1991.

TRD-9108101 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: July 1, 1991

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

Subchapter L. General Administration

• 40 TAC §29.1112

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs. The amendments are adopted under federal requirements to be effective July 1, 1991.

§29.1112. Exclusions and Limitations.

(a) Benefits do not extend to:

(1)-(19) (No change.)

(20) any medical and remedial care, services, and supplies provided to a hospital inpatient by practitioners, providers, or suppliers after total hospitalization-related expenditures under the Texas Medical Assistance Program reach \$200,000 per recipient, per 12-month benefit period, except as specified in §29.1125 of this title (relating to Organ Transplants), or except as otherwise specified by the department as directed by the department's board. This limit does not apply to medically necessary services provided to an inpatient less than age one (including inpatients under age one who are admitted to an remain in a hospital past their first birthday). This limit also does not apply to physician (M.D. or D.O.) services as defined in Title XIX laws and regulations and state law. For the purposes of this limit, "12-month benefit period" means 12 consecutive months beginning November 1 of each year and ending October 31 of the next year. The limit applies to hospitalization-related services while the recipient is a hospital inpatient regardless of where the services are provided; regardless of how soon, within the 12-month period, the limit is reached; and regardless of how many hospital stays are involved. For the purposes of this limit, the department's agent processes and pays claims, if payable, in order of receipt.

(21) (No change.)

(b)-(d) (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 July 8, 1991.

TRD-9108102 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: July 1, 1991

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

Chapter 49. Child Protective Services

Subchapter R. Cost-finding Methodology for 24-Hour Child-care Facilities

• 40 TAC §§49.1801-49.1806

The Texas Department of Human Services (DHS) adopts new §§49.1801-49.1806, concerning child protective services, with changes to the proposed text as published in the January 11, 1991, issue of the *Texas Register* (16 TexReg 166).

The new sections are justified because they help providers better understand the cost-finding methodology in relation to the DHS's review of provider cost reports. Consequently, providers will be better able to respond to DHS's calculations and recommendations of payment rates.

The new sections will function by establishing a uniform cost-finding methodology for Child Protective Services' 24-hour residential child-care program.

The department received nine written comments on the proposed amendments during the 30-day public comment period and an additional 10 oral comments at a public hearing on January 31, 1991. The commenters included individuals and representatives of the following organizations: the Texas Association of Private Residential Resources (TAPRR); the Texas Association of Children's Treatment (TACT); the Texas Association of Licensed Children's Services (TALCS); the Texas Association of Executives for Children; the Cost of Care Committee of the Texas Health and Human Services Coordinating Council (THSCC); and various private child care providers. A summary of the comments and the department's responses follows.

Several commenters wanted all educational costs (including private educational costs) that are not covered by the Texas Education Agency or local school district to be included as allowable costs.

The department will allow only those educational costs that are not reimbursed or provided by a state agency, county agency, the local school district, or any third-party payor. Educational costs not reimbursed by a third-party payor will be allowable for facilities who serve children in emergency shelters and children who must attend an on-facility school for health, safety, and quality-of-services reasons as determined by the Admission, Review, and Dismissal (ARD) Committee. The department excludes from its rate of payment all educational costs incurred by facilities that educate children for whom no ARD determination (based on health, safety, and quality of services reasons) has been made.

Several commenters stated that fundraising and promotional activities are necessary for their operations. They further stated that they must raise funds to make up the difference between the calculated rate and the actual rate paid. These commenters want to include fundraising and promotional activities as allowable costs.

The department disagrees with these comments. Revenues generated from fundraising and promotional activities should cover any cost incurred during these activities. The department does not allow fundraising and promotional costs because they do not directly relate to the provision of child care services for which the department has contracted. The department maintains that fund-raising, promotional, and public relations expenses are unallowable costs and will continue to capture these costs on the cost report for statistical purposes.

Another commenter stated that entertainment expenses should be allowable costs because every organization has business entertainment expenses.

The department disagrees with this comment and feels that business entertainment expenses, especially those for promotional activities, do not specifically relate to providing services to children in 24-hour child care facilities. Entertainment expenses reported as an employee benefit, however, are considered allowable costs.

Other commenters stated that advertising, other than educational pamphlets, is necessary to educate the public and state agency staff about 24-hour child care facilities and the services that they provide.

Again, the department disagrees with these comments. Advertising to increase occupancy is not directly related to the provision of child care services and is not required by the department for placement of children who are in its conservatorship. The department does, however, allow advertising costs to recruit employees, and pamphlets or brochures published to meet statutory or regulatory requirements or to inform the public about the provider's 24-hour child care program.

Several commenters wanted all medical and dental costs that are not covered by Medicaid to be included as allowable costs.

The department is allowing medical and dental costs that remain after providers have first accessed all third-party payors. Third-party payors include but are not limited to, Medicaid, early periodic screening, diagnosis, and treatment (EPSDT) Medicaid, parents, insurance, and county reimbursements. An expenditure that is not considered medically necessary, but has been determined by a physician as necessary for the emotional well being of the child, must be preapproved by department staff before the expenditure is allowed.

Commenters stated that the value of in-kind donations should be included in the department's rate of payment. Commenters felt that without in-kind donations they would have to incur the cost of purchasing or replacing the donated items.

The department changed the appropriate sections to include only the value of in-kind donated buildings and donated transportation equipment, including the depreciation and

amortization of the value of the donations, as allowable costs. Adequate documentation must be provided if the value of these in-kind donations is to be allowed.

Two commenters wanted the cost of therapeutic interventions for children at Level II included as an allowable cost.

The department maintains that the cost of therapeutic interventions for children at Level II is an unallowable cost. The department will, however, reexamine this issue at a future date.

Several commenters contended that contributions to self-insurance funds that do not represent payments on current liabilities should be included as allowable costs.

Contributions to a self-insurance fund do not represent actual expenditures for costs incurred. The department disagrees with allowing costs based on expected or potential liabilities for which an actual amount is unknown. The cost-finding methodology does allow for the costs of insurance premiums and actual paid claims.

One commenter requested that the department modify the method by which a provider's occupancy level is calculated. The commenter stated that this request was justified because facilities have different levels of care.

A median occupancy level is chosen for each level of care from the facilities that deliver care at that level of care. However, before the department adjusts a provider's administration, transportation, and building expenses by level of care, facilities are placed in groups by their lowest and highest levels of care. Facilities that fall into each group will have their administration, transportation, and building expenses adjusted if those facilities have an occupancy level below the median occupancy rate.

One commenter stated that allowances for bad debts should be an allowable cost.

The department disagrees with this comment because bad debts are a reduction in revenues that could not be recovered. Bad debts do not represent an additional cost to care for a child. Even though the revenue may not be recovered from parents or governmental agencies, the cost to care for a child is an allowable cost.

One commenter stated that corporate headquarters expenses that are not directly related to providing services or supplies to support the normal operations and child-care services of a 24-hour child care facility should be allowed. He contended that these expenses should be allowed because there are many corporate functions that are indirectly related to program support.

The department disagrees with this comment. The department has contracted for child care services and must therefore restrict its cost determination to those activities that are associated with and directly related to providing child care services. For an expense to be necessary, it must meet several conditions as specified in §49.1803(B) and (C). Two of those conditions are: the cost must not be used for personal or other activities that are not specifically related to the provision of child-care services in a 24-hour child care facility; and the cost must not be eliminated if

its elimination adversely affects the health, safety, or welfare of children in the facility.

Another commenter stated that discounts granted by the provider should be allowed because discounted fees to parents and governmental agencies aid the state in maximizing its resources.

The department disagrees with this comment; however, the department has changed the wording of the original proposed paragraph. In §49.1805(9), the word "by" now reads "to." The amended paragraph now reads "Discounts for administrative reasons; courtesy, cash, trade and quantity discounts; rebates; and any other discounts granted to the provider." The cost of an item, less any discount taken, represents the actual amount expended by the facility on an item and is considered an allowable cost. Please note that §49.1805(9) was §49.1805(8) in the proposed sections. Paragraphs are renumbered to include additional information that resulted from public comment.

Two commenters proposed that dues and fees for membership in organizations whose primary purposes are not specifically related to services for which the department has contracted should be allowed if these organizational affiliations are reasonable and function-related.

The department disagrees with this comment and believes that if dues for membership are to be allowed, the purposes of the organization must be related to providing services to children in 24-hour child care facilities.

A commenter stated that expenses that are not the legal obligation of the provider should be allowed because providers frequently assume financial responsibilities for the care of the child for whom there is no legally responsible party.

The legal obligation referenced in §49.1805(12) does not refer to the legal obligation for the care of the child but rather the legal obligation to pay for allowable costs incurred by the provider. No change in the rule is needed.

One commenter stated that fines and other penalties for violations of statutes or ordinances; penalties for late payment of taxes, utilities, mortgages, or loans; and other similar penalties should be allowable costs because reimbursements from state and/or county agencies may be delayed. These delays result in fines and late fees.

The department disagrees with this comment because the department considers interest expense for working capital loans an allowable cost. A facility that has access to a working capital loan should not incur any expenses for fines and penalties.

Another commenter contended that premiums for life insurance in which the beneficiary is the provider organization should be considered as allowable costs, unless life insurance is required in a loan agreement related to child care. The commenter believed that these premiums should be allowed because these policies are frequently used in developing endowments for the organization.

The department disagrees with this comment. The development of endowments through life insurance premiums in which the facility is the beneficiary represents a type of

fundraising. The investment of excess funds with the expectation of future return is not directly related to the costs of providing child care services. As stated earlier, fundraising and promotional activities that are not directly related to the provision of child care services for which the department has contracted are considered as unallowable costs. Payment of life insurance premiums is considered an allowable cost if payment is an employee benefit and if it is made by a facility in which the employee's relative or designee is the beneficiary.

A commenter stated that several cost categories that are not related to the delivery of services for which the department has contracted should be considered as allowable costs. The commenter included the following costs: premiums for insuring items of unallowable cost; interest expense on loans for assets not related to the delivery of services; rental or lease expenses on items not related to the delivery of services; and vehicles used for purposes other than the delivery of child care services.

The department has contracted for child care services and must therefore restrict its cost determination to those activities that are associated with and are directly related to providing child care services. As stated earlier, the cost must not be for personal or other activities that are not specifically related to the provision of child-care services in a 24-hour child care facility. Also if eliminated, the cost must adversely affect the health, safety, or welfare of children in the facility.

One commenter stated that fees related to the preparation of income taxes should be an allowable cost.

The department concurs with this comment and has removed the fees related to the preparation of income taxes as an unallowable cost.

One commenter stated that compensation for only those staff who provide direct services to residents omits support staff who provide other services necessary to complement an array of services as well as a quality care delivery system.

The department concurs with this comment and has amended §49.1804 to include support staff.

One commenter stated that fees and travel expenses of a corporation, association, or board of directors should be allowable costs.

Although the work of the board of directors at any facility is important, the services they provide do not directly relate to the delivery of services to the children. The department maintains that these costs are unallowable.

A commenter stated that taxes paid on donated land should be allowable costs.

Taxes levied on assets related to the delivery of services for child care are considered allowable costs. If the donated land is not used to deliver services to children, the taxes on that land would be unallowable costs.

In addition to changes made as a result of public comment, the department initiated editorial changes to clarify and simplify the language.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22,

which authorizes the department to administer public assistance programs, and Chapter 41, which authorizes the department to enforce laws for the protection of children.

§49.1801. Cost Reporting. Agencies that contract with the Texas Department of Human Services (DHS) to provide 24-hour, residential child-care services must submit financial and statistical information according to the requirements specified in this subchapter. Providers must report this information on cost-reporting forms approved by DHS. The cost report must cover all of the provider's activities during the previous fiscal year unless DHS, at its own discretion, requires a provider to submit a cost report covering selected activities or covering another time period.

(1) Who must file a cost report. Every 24-hour residential child-care provider that directly or indirectly receives payment from DHS for services to children whom DHS has placed with the provider must submit a cost report. The provider must submit a separate cost report for each separately licensed facility that the provider operates. If two or more facilities share a license, but function as separate and distinct facilities, each of them must submit a cost report that covers its own revenues, expenses, and statistics.

(2) Cost report due date. Unless DHS specifies otherwise, providers must submit cost reports within 90 days after receiving cost-reporting forms from DHS.

(3) Extension of due date. When circumstances that a provider cannot reasonably be expected to control prevent the provider from submitting a cost report within 90 days as specified in paragraph (2) of this section, DHS may extend the due date for 30 days. The provider must request the extension in writing before the due date, and DHS must respond to the request within 10 workdays after receiving it.

(4) Cost-report supplements. To obtain additional financial and statistical information that does not appear in a provider's regular cost report, DHS has the authority to require the provider to submit a cost-report supplement. The provider must submit the supplement by the due date specified by DHS.

(5) Vendor hold. If a provider fails to file a cost report or cost-report supplement by the due date or according to the other requirements specified in this subchapter, DHS has the authority to institute a vendor hold and withhold payments from the provider until the provider submits an acceptable cost report. A provider's failure to submit a cost report after DHS has placed the provider on vendor hold may result in nonrenewal or cancellation of the provider's contract with DHS. When a provider is on vendor hold, DHS does not extend the due date for receipt of the provider's cost report.

(6) Accounting requirements. Except for governmental institutions operated on the cash method of accounting, providers must ensure that the financial and statistical information submitted in their cost reports is based on the accrual method of accounting. Each provider's treatment of financial and statistical data must reflect the application of generally accepted accounting principles (GAAP) approved by the American Institute of Certified Public Accountants (AICPA). For purposes of cost reporting, however, the requirements of this subchapter take precedence over the AICPA's GAAP and any other authority's accounting requirements, including Internal Revenue Service requirements.

(7) Methods of allocation. Providers must use reasonable methods of cost allocation when they allocate costs. If DHS considers a provider's method of allocation unreasonable, DHS adjusts the allocated costs. Providers must keep work papers supporting their cost allocations.

(8) Certification. Providers must complete the certification page of their cost reports to certify that the reports are accurate.

(9) Review of cost reports. DHS conducts a desk review of each cost report to ensure that the financial and statistical information presented in the report conforms to all applicable requirements, including the requirements of this subchapter. The desk review verifies that the cost report:

(A) displays financial and statistical information in the format required by DHS;

(B) reports expenses in conformity with the lists of allowable and unallowable costs in §§49.1804-49.1806 of this title (relating to Allowable Costs; Unallowable Costs; and Costs Not Included in Recommended Payment Rates); and

(C) follows GAAP except as specified in paragraph (6) of this section or in the lists of allowable and unallowable costs in §§49.1804-49.1806 of this title (relating to Allowable Costs; Unallowable Costs; and Costs Not Included in Recommended Payment Rates).

(10) Requests for additional information. If a cost report fails to conform to applicable requirements as specified in paragraph (9) of this section, DHS returns the report to the provider for correction. DHS also has the authority to require providers to supply additional information to substantiate the information provided in the cost report.

(11) On-site audits. DHS performs a sufficient number of on-site audits each year to ensure the fiscal integrity of the 24-hour child-care services program. DHS determines the frequency and nature

of on-site audits, and the number of audits performed each year may vary. To maximize the number of audited cost reports available for use in projecting costs, DHS arranges as many on-site audits as possible.

(12) Notification of exclusions and adjustments. DHS gives providers written notification of exclusions and adjustments of reported expenses made during desk reviews and on-site audits of cost reports.

(13) Reviews of exclusions and adjustments. When a provider disputes a DHS exclusion or adjustment of a reported expense, the provider may request an informal review of DHS's disallowance. On receipt of the provider's request, DHS reimbursement and audit staff meet with the provider and review the action taken.

(14) Access to records. Each provider and each provider's designated agents must give DHS access to any and all records necessary to verify information submitted to DHS on cost reports, including records that pertain to related-party transactions or other business activities engaged in by the provider. If a provider does not allow DHS to inspect pertinent records within 30 days after DHS sends the provider written notice, DHS places the provider on vendor hold and withholds payments until the provider gives DHS access to the records. DHS has the authority to cancel the provider's contract if the provider continues to deny DHS access.

(15) Maintaining records. Providers must ensure that all records pertinent to services rendered under their contracts with DHS are accurate and sufficiently detailed to support the financial and statistical information contained in their cost reports. As specified in §69.202 of this title (relating to Contractors' Records), providers must retain these records for at least three years and 90 days after the end of the contract period.

(16) Failure to maintain adequate records. If DHS discovers that a provider has failed to maintain adequate records as specified in paragraph (15) of this section, DHS notifies the provider of the deficiencies in the provider's record keeping and gives the provider 90 days to correct them. DHS has the authority to cancel the provider's contract if the provider fails to correct the deficiencies within 90 days after the date of DHS's notification.

§49.1802. Cost-finding Analysis.

(a) The Texas Board of Human Services establishes the Texas Department of Human Services' (DHS's) payment rates for 24-hour, residential child-care facilities after considering rate recommendations developed by DHS according to the provisions of this subchapter. To develop rate recommendations for board consideration, DHS analyzes the information submitted in

provider cost reports and related documentation in the following ways.

(1) DHS excludes the expenses specified in §49.1805 and §49.1806 of this title (relating to Unallowable Costs and Costs Not Included in Recommended Payment Rates).

(2) DHS reduces reported costs by the amount of federal revenue reported, including revenue from the United States Department of Agriculture (USDA).

(3) DHS groups allowable costs into the following cost areas:

- (A) administration;
- (B) routine daily service;
- (C) dietary services;
- (D) therapeutic services;
- (E) building and transportation;
- (F) medical and dental services; and
- (G) educational services.

(4) When a provider's occupancy rate for a given level of care falls below the median occupancy rate for that level of care, DHS adjusts the provider's administration, transportation, donated transportation, building, donated building, educational building, and donated educational building expenses to reflect the per diem costs of operating at the median occupancy rate for that level of care.

(5) DHS includes therapy costs in its recommended payment rates for Levels of Care III through VI and for emergency shelters.

(6) DHS projects allowable expenses in each cost area for the period between each provider's reporting period and the next rate period. Unless a more appropriate economic adjuster is applicable, DHS uses the Implicit Price Deflator-Personal Consumption Expenditures index to calculate these projected expenses.

(7) DHS uses the following methodology to recommend payment rates for consideration by the Texas Board of Human Services. For each level of care, DHS:

(A) adds each provider's projected allowable costs in all of the cost areas specified in paragraph (3)(A)-(G) of this subsection in order to obtain a projected cost total for each provider;

(B) ranks the projected cost totals of all providers from low to high; and

(C) determines the median projected cost total. For each level of care, the median projected cost total is the recommended payment rate.

(b) The Texas Board of Human Services establishes DHS payment rates for 24-hour child-care facilities in an open meeting after considering pertinent financial and statistical information, DHS rate recommendations, the provisions of this subchapter, and public testimony. The board seeks to ensure that the payment rates it establishes are within DHS's budget. DHS's payment rates are not allowed to exceed the Texas Health and Human Services Coordinating Council's standard recommended rates for 24-hour child-care facilities.

§49.1803. Definition of Allowable and Unallowable Costs.

(a) General information. The Texas Department of Human Services (DHS) defines allowable and unallowable costs in order to identify the reasonable expenses that an efficient and economical provider must incur to provide the 24-hour child-care services specified in the provider's contract with DHS. The primary objective of DHS's cost-reporting system is to determine fair and reasonable reimbursement rates for these providers. To achieve this objective, DHS compiles a rate base that includes, to the extent possible, only information about allowable costs. When DHS classifies a particular type of expense as unallowable, the classification means only that DHS will not include the expense in the rate base because the department does not consider the expense reasonable and necessary to provide contracted services. The classification does not mean that individual providers must not make these expenditures.

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

(1) Allowable costs are expenses that are reasonable and necessary in the normal conduct of operations relating to child-care services in a 24-hour, residential child-care facility. To the extent possible, DHS includes only allowable costs in the rate base. The key terms in this definition and in the definition of unallowable costs are further explained as follows.

(A) Reasonable refers to the amount expended. An amount is reasonable if it does not exceed the cost that a prudent business operator seeking to contain costs would incur.

(B) Necessary refers to the relationship of the cost to the provision of

child-care services. A cost is necessary if it is usual and customary in the operation of a 24-hour child-care facility, and if it satisfies all of the following conditions:

(i) the cost is not listed as an unallowable cost in §49.1805 and §49.1806 of this title (relating to Unallowable Costs and Costs Not Included in Recommended Payment Rates);

(ii) the cost is not unallowable under other federal, state, or local laws or regulations;

(iii) the cost is not for personal or other activities that are not specifically related to the provision of child-care services in a 24-hour child-care facility;

(iv) the cost bears a significant relationship to the provision of 24-hour child-care services. DHS considers the relationship significant if eliminating the expenditure would adversely affect the health, safety, or welfare of children in the facility; and

(v) the cost is incurred in the purchase of materials, supplies, or services provided directly to the children or staff of individual 24-hour child-care facilities in the conduct of normal operations relating to child-care services.

(C) Expenses incurred in the normal conduct of operations relating to 24-hour child-care services include, but are not limited to, the following types of special expenses:

(i) expenses for facilities, materials, supplies, and services. The allowable portion of expenses for facilities, materials, supplies, and services that are used both for providing 24-hour child-care services and for other purposes. Whenever otherwise allowable costs can be attributed partially to personal or other business interests and partially to child-care services, the portion attributed to child-care services may be allowed on a pro rata basis if the attribution is well-documented;

(ii) expenses in related-party transactions. In related-party transactions, the allowable cost to the 24-hour child-care facility is the cost to the related party. Allowable costs in related-party transactions are limited to the lesser of the actual purchase price paid by the related party or the usual and customary charge for comparable goods or services. Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other. The affiliation or association may be based on common ownership, past or present mutual interests in child-care or other types of enterprises, or family ties. Allowable costs that result from arm's-length transactions involving unrelated parties are not affected by the provisions of this clause.

(2) Third-party payors are reimbursement sources other than the provider, including county agencies, parents, insurance, and state or federal agencies.

(3) Unallowable costs are expenses that are not reasonable and necessary in the normal conduct of operations relating to child-care services in a 24-hour, residential child-care facility. To the extent possible, DHS does not include unallowable costs in the rate base.

§49.1804. Allowable Costs. The following list of allowable costs is designed to function as a general guide and to clarify certain key expense areas. The list is not comprehensive, and the absence of a particular cost does not necessarily mean that the cost is not allowable:

(1) compensation of 24-hour child-care facility employees. This cost includes compensation only of those employees who provide services directly to the residents or staff of a 24-hour child-care facility in the normal conduct of operations relating to resident care. Compensation includes the following elements:

(A) wages and salaries. This includes deferred compensation, overtime pay, incentive pay and bonuses, and any other monies subject to withholding taxes and Federal Insurance Contributions Act (FICA) deductions;

(B) payroll taxes and insurance. This includes FICA and other social security contributions, unemployment compensation insurance, and workers' compensation insurance;

(C) employee benefits. This includes employer-paid health, life, accident, and disability insurance for employees; employer contributions to employee retirement accounts; uniform and clothing allowances; and housing and meals provided to employees as a part of the employment contract;

(2) compensation of outside consultants who provide direct services to residents or staff of a 24-hour child-care facility;

(3) routine child-care expenses. This includes expenses for recreational fees and supplies, clothing expenses that are not covered by a third-party payor, allowances (except for amounts paid from a child's trust fund), personal-care supplies, laundry, linen, housekeeping, personal educational supplies, and gifts for children;

(4) dietary services expenses. This includes expenses for food, food-related supplies, kitchen equipment, and depreciation of kitchen equipment;

(5) therapy expenses. This includes the cost and depreciation of supplies for therapy;

(6) central-office overhead expenses. A facility may use an indirect rate that has been approved by the federal government to allocate these expenses. If a facility does not have an approved indirect rate, it must develop a reasonable method of allocation;

(7) building, equipment, and capital expenses. This includes expenses for the rental, lease, and depreciation of buildings and equipment, land and leasehold improvements, taxes, insurance, utilities, maintenance, and interest:

(A) depreciation and amortization expense. Property owned by the provider, and improvements to owned, leased, or rented property valued at more than \$500 at the time of purchase, must be depreciated or amortized using the straight-line method. The minimum useful lives to be assigned to depreciable property are as follows:

(i) buildings: 30 years, with a minimum salvage value of 10% or a use-fee formula specified by Texas Department of Human Services (DHS) based on an approved appraisal;

(ii) building equipment, buildings and grounds improvements and repairs, furniture and appliances, and power equipment and tools used for buildings and grounds maintenance: minimum schedules consistent with Estimated Useful Lives of Depreciable Hospital Assets, published by the American Hospital Association; and

(iii) transportation equipment used for the transport of residents or of materials and supplies utilized by the 24-hour child-care facility: a minimum of three years for passenger automobiles; five years for light trucks and vans; and seven years for buses, with a minimum salvage value of 10%;

(B) rental and lease expense. Rental and lease expense paid to a related party is limited to the lower of the cost to the related party or organization; or the cost to the provider; or the price of comparable services, facilities, or supplies purchased in an arm's-length transaction. This includes rental and lease expenses for buildings, transportation equipment, building equipment, furniture, and so forth;

(C) interest expense. Interest expense is allowable on loans for the acquisition of allowable items, subject to all of the requirements governing allowable costs and to the following additional requirements:

(i) the loan must be evidenced in writing; and

(ii) the loan must be made in the name of the provider as maker or co-maker of the note;

(D) interest expense on related-party loans. Interest expense on related-party loans is limited to the lesser of:

(i) the interest expense to the provider, which is the expense to the related party; or

(ii) the prevailing national average prime interest rate during the year in which the loan contract is concluded, as the rate is reported by the United States Department of Commerce's Bureau of Economic Analysis in the Survey of Current Business and the Business Conditions Digest;

(E) tax expense. This includes ad valorem taxes, real and personal property taxes, motor vehicle registration fees, sales taxes, Texas corporate franchise taxes, and organization filing fees;

(F) insurance expense. This includes expenses for building, grounds, and contents insurance; facility fire and casualty insurance; professional liability and malpractice insurance; and transportation-equipment insurance;

(G) utilities expense. This includes expenses for natural gas, electricity, water, waste water, garbage collection, and telephone service;

(8) client transportation expenses. These expenses are limited to costs directly related to providing transportation for 24-hour child-care residents. They include rental, lease, and contract costs for transportation equipment; depreciation; purchased transportation; and operating and maintenance costs. Mileage is allowed when:

(A) adequately documented;

(B) related to the delivery of services for which DHS has contracted; and

(C) the cost per mile does not exceed the current reimbursement rate set by the legislature for state employee travel;

(9) business and professional association dues. This expense is limited to dues for associations primarily devoted to child care;

(10) outside training expenses. These expenses are limited to the direct costs of training personnel who provide direct child-care services to the facility's residents. Direct costs of training include expenses for transportation, meals, lodging, and tuition and registration fees. The training must:

(A) take place in the continental United States; and

(B) relate directly and primarily to child care;

(11) expenses for nonprescription drugs and medical supplies that do not have to be administered by medically trained personnel;

(12) expenses for prescription medications. Expenses for prescription medications not covered by Medicaid, early and periodic screening, diagnosis, and treatment (EPSDT) Medicaid, or paid by county reimbursements, parents, insurance, or any other third-party payor;

(13) expenses for providing 24-hour on-call services. Expenses for providing 24-hour on-call medical, psychiatric, and nursing services for clients in Levels of Care V and VI. These are the expenses associated with a plan, agreement, or contract to provide 24-hour on-call medical, psychiatric, and nursing services for clients in Levels of Care V and VI. These expenses exclude the actual costs of treatment and all costs paid by third-party payors;

(14) medical and dental expenses. Allowable medical and dental expenses are those that are considered medically necessary (not cosmetic) and that are not covered by Medicaid, EPSDT Medicaid, or paid by county reimbursements, parents, insurance, or any other third-party payor. Medically necessary refers to the need for medical services in an amount and frequency sufficient, according to accepted standards of medical practice, to preserve health and life and to prevent future impairment. Prior approval by the department is necessary for those medical and dental expenses that are not considered medically necessary but have been determined by a physician (M.D., D. O., or psychiatrist) as necessary for the emotional well being of the child;

(15) the value of in-kind donations. The value of in-kind donations includes only the depreciation of the value of donated buildings and donated vehicles used exclusively for the provision of 24-hour child care services. The historical cost used to depreciate buildings must be consistent with an appraisal by an independent third-party appraiser or the documented historical cost to the donor. The historical cost used to depreciate vehicles must be consistent with the National Automobile Dealer's Association (NADA) listings or the documented historical cost to the donor. For additional information, see paragraph (7)(A) of this section;

(16) educational expenses. Allowable educational expenses are those that are not reimbursed or provided by a state agency, county agency, the local school district, or any other third-party payor. Allowable expenses include:

(A) educational expenses for facilities that provide educational services to children who reside in emergency shelters and children who must attend an on-

facility educational program due to health, safety, and quality of services reasons as determined by the local school district's Admission, Review, and Dismissal (ARD) Committee. A copy of the local school district's document describing the ARD decision must be included in the child's record and maintained at the on-facility school. These education expenses include:

(i) textbooks and salary costs for teachers and teachers' aides that are in excess of the district's Texas Education Agency (TEA) allocation for which the local school district bills the facility. The excess costs must be determined necessary by the ARD Committee and documented in the student's individual educational plan (IEP).

(ii) expenses for the rental, lease, and depreciation of buildings and equipment used to provide educational services, as well as related utility, insurance, tax, and maintenance expenses, including compensation of staff for facility maintenance. These expenses include the costs of buildings and equipment in buildings or spaces within a building that are used for both educational and noneducational purposes. When a building or a space within a building is used for both educational and noneducational purposes, the portion of building and equipment expenses directly related to providing educational services in that building or space is allowed on a pro rata basis. The provider must clearly document the proportion of use for educational purposes.

(iii) teaching aid supplies;

(B) course enrollment and testing fees for obtaining a general equivalency diploma;

(C) educational enrichment expenses not paid for by a state agency, county agency, the local school district, foster parent associations, child welfare boards, parents, or other similar third-party payors. Allowable educational enrichment expenses are those expenses that would normally be paid for by the parents of a child and are directly related to school-sponsored events. Allowable educational enrichment expenses include tutors, class rings, cheerleader uniforms, and other similar items used for extra-curricular activities related to school-sponsored events;

(D) expenses for vocational or farm programs that are not part of the structured educational program, less any revenue earned by the facility from those programs.

§49.1805. Unallowable Costs. The following list is designed to function as a general guide to the types of unallowable costs frequently included in cost reports. The list is

not comprehensive, and the absence of a particular cost does not necessarily mean that the cost is allowable:

(1) advertising expenses. Advertising expenses are unallowable. However, the Texas Department of Human Services (DHS) treats the following expenses as allowable exceptions: advertisements to recruit employees, yellow-page listings that require no more than one column-inch of page space, and pamphlets or brochures published to meet statutory or regulatory requirements or to inform the public about the provider's 24-hour child-care program;

(2) allowances for bad debts, and other similar accounts;

(3) business expenses and expenses for activities unrelated to providing the 24-hour services for which DHS has contracted;

(4) political and charitable contributions;

(5) corporate headquarters expenses that are not directly related to providing services or supplies to support the normal operations and child-care services of a 24-hour child-care facility;

(6) depreciation expenses that are not based on the straight-line method of depreciation as specified in §49.1804(7)(A) of this title (relating to Allowable Costs);

(7) building depreciation expenses based on less than a 30-year life as specified in §49.1804(7)(A)(i) of this title (relating to Allowable Costs);

(8) vehicle depreciation expenses based on less than the life of the vehicle as specified in §49.1804(7)(A)(iii) of this title (relating to Allowable Costs);

(9) discounts for administrative reasons; courtesy, cash, trade, and quantity discounts; rebates; and any other discounts granted to the provider;

(10) dues and fees for membership in organizations whose primary purposes are not related to the services for which DHS has contracted;

(11) entertainment expenses, except for entertainment reported as an employee benefit;

(12) expenses that are not the legal obligation of the provider;

(13) fees and travel expenses for the corporation or association board of directors;

(14) partnership or corporation filing fees;

(15) fines and other penalties for violations of statutes or ordinances; penalties for late payment of taxes, utilities, mortgages, or loans; and other similar penalties;

(16) franchise fees;

(17) premiums for life insurance in which the beneficiary is the provider organization, unless life insurance is required in a loan agreement related to child care;

(18) contributions to self-insurance funds that do not represent payments on current liabilities;

(19) premiums for insuring items of unallowable cost;

(20) interest expenses on loans for assets not related to the delivery of services for which DHS has contracted. In general, interest expenses must be reduced or offset by interest income. However, interest income from funded depreciation accounts or qualified pension funds must not be used to offset interest expenses;

(21) personal compensation and personal expenses not related to the delivery of 24-hour child-care services;

(22) expenses for the purchase of facilities, supplies, or services from parties or organizations related to the provider, to the extent that these expenses exceed the lower of:

(A) the cost to the related party or organization; or

(B) the price of comparable services, facilities, or supplies purchased in an arm's-length transaction.

(23) rental or lease expenses on items not related to the delivery of services for which DHS has contracted;

(24) federal, state, and local income taxes; and all taxes levied on assets not related to the delivery of services;

(25) transportation expenses for vehicles that are not generally suited for

functions related to 24-hour child-care services;

(26) expenses that are not adequately documented;

(27) forms of compensation that are not clearly enumerated in dollar amounts or that represent distributions of profit;

(28) expenses related to college enrollment and attendance;

(29) medical and dental expenses, including medications that were paid for by a third-party payor or covered by Medicaid and EPSDT Medicaid;

(30) hospitalization expenses.

§49.1806. Costs Not Included in Recommended Payment Rates. Although the Texas Department of Human Services (DHS) has the authority to require providers to report the following costs, DHS does not include them in its recommended payment rates. The department captures these costs for statistical purposes only:

(1) the value of in-kind donated items, including depreciation and amortization of the value of the donations, except those described as allowable costs in §49.1804(15) of this title (relating to Allowable Costs);

(2) the values assigned to the services of unpaid workers or volunteers;

(3) fund-raising, promotional, and public-relations expenses;

(4) educational expenses for those facilities that educate in an on-facility school those children for whom no Admission, Review, and Dismissal (ARD) Committee determination about attendance (based on health, safety, and quality of ser-

vice reasons) has been made. These expenses include:

(A) compensation for administrators, teachers, and teachers' aides for providing educational services;

(B) expenses for textbooks and teaching aid supplies;

(C) the rental, lease, and depreciation of buildings and equipment used to provide educational services, as well as related utility, insurance, tax, and maintenance expenses. This expense also includes compensation of staff for facility maintenance;

(D) the costs of buildings or spaces within a building that are used for both educational and noneducational purposes. When a building or a space within a building is used for both educational and noneducational purposes, the portion of building and equipment expenses directly related to providing educational services in that building or space is unallowable on a pro rata basis.

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 July 10, 1991.

TRD-9108207

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: July 31, 1991

Proposal publication date: January 11, 1991

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



State Board 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 Article 5.97, the 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, and the final actions printed in this section have not been previously published as proposals.

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, 1110 San Jacinto Street, Austin.)

The State Board of Insurance in a public meeting on June 7, 1991, adopted amend-

ments to Parts One and Two and the associated retrospective endorsements in the Texas Retrospective Rating Plan Manual as amended on an emergency basis under Board Order 58237 effective May 1, 1991.

The amendments to Part One pertain to the large risk alternative rating option and amend the emergency rules as originally adopted by indicating that the only allowable method for collecting the applicable Texas WC residual market premium (RMP) shall be through the Texas WC residual market factor (RMF) determined in accordance with Part Two Section I.B.8. The amended rule also indicates the residual market costs cannot be included in any other rating plan factors negotiated between the carrier and the insured. However, the RMF used in all retrospective premium adjustments shall not exceed the actual RMF determined by the State Board of Insurance (SBI). Any amount of RMP in excess of the

actual RMP as produced by applying the RMF determined by SBI shall be refunded to the insured. The eligibility requirements for the large risk alternative rating option were amended to make this option available for risks with either an estimated annual workers' compensation standards premium in excess of \$35,000 in all states subject to interstate retrospective rating or an estimated annual workers' compensation premium in excess of \$100,000 on an intrastate basis.

The amendments to Part Two indicate that for insureds written under any retrospective rating plans the residual market premium may be added to the retrospective premium calculated in accordance with the formula set forth in the rules. The actual RMF as determined by SBI shall be calculated either by dividing the actual assessed Texas WC residual market deficit by the Texas WC voluntary written premium for the year to which the deficit

lated in accordance with the formula set forth in the rules. The actual RMP as determined by SBI shall be calculated either by dividing the actual assessed Texas WC residual market deficit by the Texas WC voluntary written premium for the year to which the deficit assessment relates or by any other formula adopted by SBI.

Endorsement WC 42 05 25 was amended to reflect the proposed methodology to calculate the RMP. In addition, endorsement WC 42 05 18 was adopted for risks written under the large risk alternative rating option.

The amended rules and forms are effective 12:01 a.m. June 7, 1991.

The board adopted the amended rules and forms under the authority and jurisdiction of the Insurance Code, Articles 5.65, 5.62, 5.77, 5.78, 5.79, and 5.96 and on an emergency basis as provided in Article 5.96(f).

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.

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 July 3, 1991.

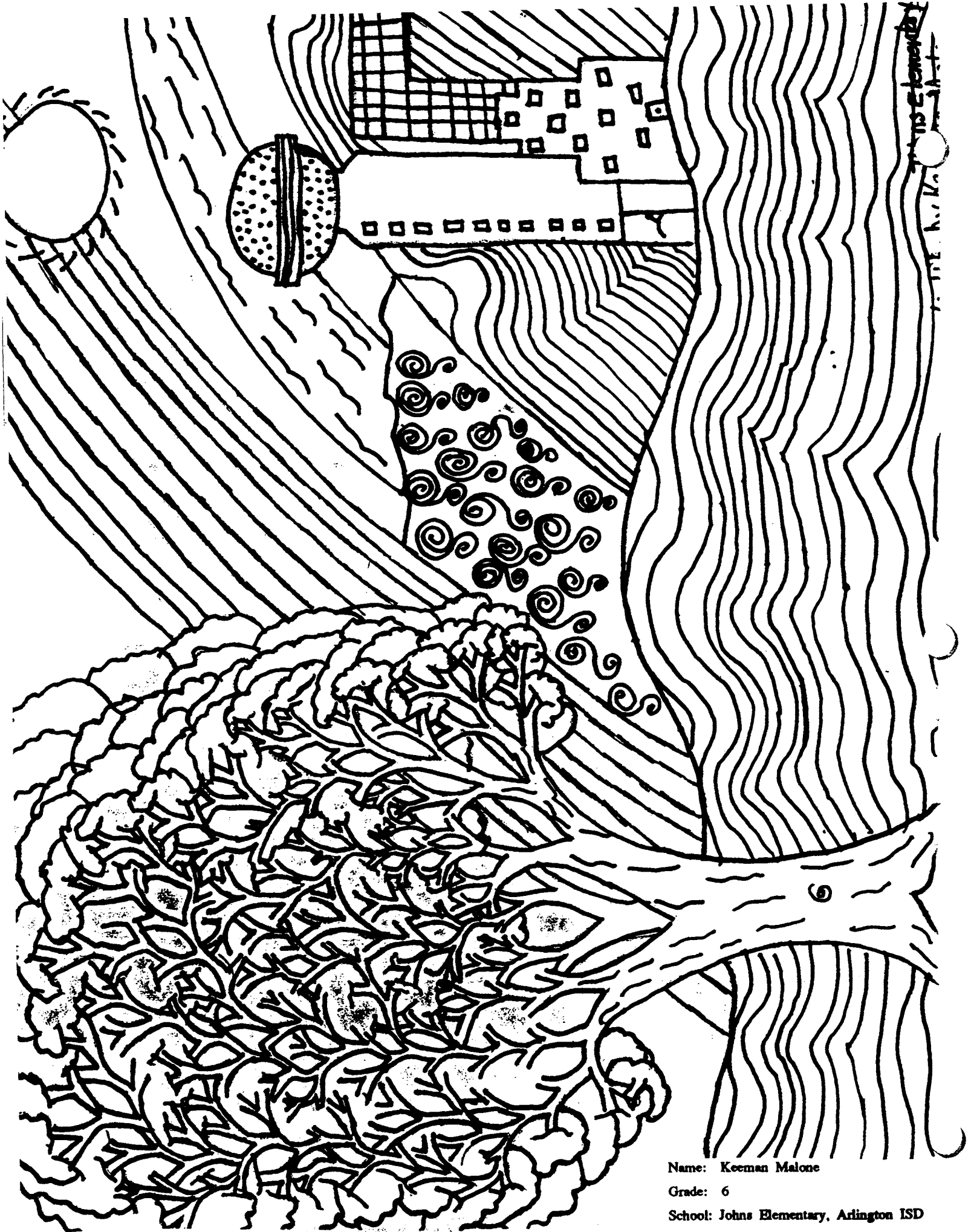
TRD-9108116

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: June 7, 1991

For further information, please call: (512) 463-6327

◆ ◆ ◆



Johns Elementary
Arlington, Texas

Name: Keeman Malone

Grade: 6

School: Johns Elementary, Arlington ISD

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 outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas State Board of Public Accountancy

Wednesday-Thursday, July 17-18, 1991, 11 a.m. and 9 a.m. respectively. The Texas State Board of Public Accountancy will hold an emergency meeting at 1033 La Posada, Suite 340, Austin. According to the agenda summary, the board will approve June, 1991 meeting minutes; hear committee reports (executive, technical standards review, behavioral enforcement, examination, long-range planning), licensing, quality review, ad hoc rules); final action on substantive rules 501.40 (licensing/registration requirements), 505.3 (chairman of the board), 505.5 (secretary of the board), 513.26 (partnership names), 513.84 (sole proprietorship names), and 519.8 (classification of parties); ratification of board orders, consent orders, and proposals for decision; and review of future meeting/hearing schedules. The emergency status is necessary as the enactment of the boards' new statute requires extensive modification to its substantive rules and the board procedures in order to effect their adoption by the statute's effective date of September 1, 1991.

Contact: William Treacy, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: July 10, 1991, 1:27 p.m.

TRD-9108217

Texas Department of Agriculture

Wednesday-Thursday, July 17-18, 1991, 1 p.m. and 9 a.m. respectively. The Texas Agricultural Diversification Board of the Texas Department of Agriculture will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Ninth Floor, Austin. According to the agenda summary, on Wednesday the board will introduce program; new board members; discuss and act on election of vice chairman; presentation by Sweetwater Incubator; Texas Business Incubator Association; and report on matching grants program. On Thursday, the board

will make introductions; give report on linked deposit program; microenterprise loan program; open discussion on matching grants program; and discussion and action on other business and on setting next meeting date.

Contact: Richard Salmon, P.O. Box 12847, Austin, Texas 78711, (512) 475-1614.

Filed: July 9, 1991, 4:24 p.m.

TRD-9108192

State Aircraft Pooling Board

Wednesday, July 17, 1991, 4:30 p.m. The State Aircraft Pooling Board will meet at 4900 Old Manor Road, Austin. According to the agenda summary, the board will call to order; have introductions; discuss approval minutes; Highway Department review of photography aircraft; interagency contract and pilot exemptions; hear executive director's report; discuss personnel matter; adjourn for executive session; reconvene regular session; set time and place for next meeting; and adjourn.

Contact: Gladys Alexander, (512) 477-8900

Filed: July 9, 1991, 10:19 a.m.

TRD-9108154

Texas Alcoholic Beverage Commission

Monday, July 22, 1991, 4 p.m. The Texas Alcoholic Beverage Commission will meet at 5806 Mesa, Room 180, Austin. According to the complete agenda, the commission will discuss approval of the minutes of June 17, 1991 meeting; hear administrator's and staffs' report of agency activity; and approve affidavit of destruction of tested alcoholic beverages.

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

Filed: July 9, 1991, 12:58 p.m.

TRD-9108162

Bond Review Board

Thursday, July 18, 1991, 10 a.m. The Bond Review Board will meet at the State Capitol, Sergeant's Committee Room, Austin. According to the agenda summary, the board will call the meeting to order; approval of minutes; consideration of proposed issues; discuss other business; and adjourn.

Contact: Tom K. Pollard, 506 Sam Houston Building, 210 East 14th Street, Austin, Texas 78701, (512) 463-1741.

Filed: July 10, 1991, 4:52 p.m.

TRD-9108242

Texas Catastrophe Property Insurance Association

Friday, July 26, 1991, 8:30 a.m. The Board of Directors of the Texas Catastrophe Property Insurance Association will meet at the TCPIA Conference Room, 2801 South Interregional, Austin. According to the complete agenda, the board will call the meeting to order; consider changes to plan of operation to comply with House Bill 2; discuss 1992 TCPIA budget; any other business that may come before the board; and adjourn.

Contact: Frank R. Rogers, 2801 South Interregional, Austin, Texas 78741, (512) 444-9611.

Filed: July 11, 1991, 9:15 a.m.

TRD-9108259

Court Reporters Certification Board

Saturday, July 20, 1991, 9 a.m. The Court Reporters Certification Board will meet at Texas Law Center, 1414 Colorado, Suite 206, Austin. According to the agenda, the board will call to order and recognize guests; conduct formal hearing in Cause Number 91089603; consider the qualifications for instructors as proposed by the Texas Education Agency; conduct prelimi-

nary reviews in Cause Numbers 91114904 and 91048305; discuss SB884 as passed in 72nd Legislative Session; discuss Texas Performance Review Report; consider approval of minutes from April 20, 1991 meeting; review expenditures for fiscal year 1991; consider examination and meeting schedules for 1991 and 1992; consider any other business that may come before the board; and adjourn.

Contact: Peg Liedtke, 3000 South IH-35, Suite 120, Austin, Texas 78704, (512) 463-1630.

Filed: July 9, 1991, 10:24 a.m.

TRD-9108155

Texas Employment Commission

Tuesday, July 16, 1991, 8:30 a.m. The Texas Employment Commission will meet at Texas Employment Commission Building, Room 644, 101 East 15th Street, Austin. According to the emergency revised agenda, the commission will hold an executive session to discuss San Antonio Board of Realtors, Inc. v. Texas Employment Commission settlement offer in pending litigation; and action, if any, resulting from executive session. The emergency status is necessary because the commission needs to consider settlement offer in pending litigation.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: July 10, 1991, 3:10 p.m.

TRD-9108226

Texas Public Finance Authority

Wednesday, July 17, 1991, 1 p.m. The Board of the Texas Public Finance Authority will meet at Price Daniel, Sr. Building, 209 West 14th Street, Room 903-B, Austin. According to the agenda, the emergency board meeting will include: call to order; approval of minutes; consideration of selection of firm to implement restructuring of Escrow Account; selection of firm to implement Master Equipment Finance Program (representatives from Grigsby Branford Powell, Lehman Brothers, J. P. Morgan/Estrada Securities/Walton Johnson, Rauscher Pierce and Merrill Lynch will make presentations.); consideration of request for financing from TDCJ for issuance of GO Bonds; consideration of selection of bond counsel; and adjournment. The emergency status is necessary because the Texas Public Finance Authority board approval is needed for GO Bond issuance for TDCJ in order to forward request to BRB.

Contact: Pamela Scivicque, 1201 Brazos Street, Suite 313, Austin, Texas 78711 (512) 463-5544.

Filed: July 10, 1991, 3:52 p.m.

TRD-9108235

Texas Historical Commission

Thursday, July 25, 1991, 10 a.m. The Historic Resources Advisory Group of the Texas Historical Commission will meet at Gethsemane Lutheran Church, 1510 Congress Avenue, Austin. According to the agenda summary, the group will discuss: update on statewide historic preservation planning; issues in identifying, evaluating, and registering historic resources; Outreach, Quality Control, Sections 106 and 110; community and regional development contexts; agriculture/cotton context; developing goals and objectives for historic contexts; and new directions for historic context development.

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6094.

Filed: July 10, 1991, 3:05 p.m.

TRD-9108223

Thursday, July 25, 1991, 3:30 p.m. The Texas Preservation Trust Fund Committee of the Texas Historical Commission will meet at the Carrington-Covert House Library (THC Headquarters), 1511 Colorado Street, Austin. According to the complete agenda, the committee will give an update on Viva S. Huffman Estate Property Transaction; advisory board and guardians will discuss status of appointments, meeting plans; update on state legislation; and discuss other business.

Contact: Curtis Tunnell, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: July 10, 1991, 1:07 p.m.

TRD-9108216

Friday, July 26, 1991, 7:30 a.m. The National Register Programs Committee of the Texas Historical Commission will meet at El Rose Apartment Building, Second Floor Library, 108 West 16th Street, Austin. According to the agenda summary, the committee will meet to discuss: State Board of Review; approval of changes to the rules of the Texas Historical Commission; Fourth Annual Certified Local Government Conference; resolution for Willard B. Robinson; and quarterly report of activities.

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6094.

Filed: July 10, 1991, 3:06 p.m.

TRD-9108224

Friday, July 26, 1991, 8:30 a.m. The Architecture Committee of the Texas Historical Commission will meet at the Elrose Building (Architecture Library, Second

Floor), 108 West 16th Street, Austin. According to the complete agenda, the committee will give quarterly report of activities; update on significant projects; update on Texas Historic Preservation Grants (FY1991); update on Texas Preservation Trust Fund; and update on federal and state legislation.

Contact: Curtis Tunnell, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: July 10, 1991, 1:07 p.m.

TRD-9108215

Saturday, July 27, 1991, 9 a.m. The State Board of Review of the Texas Historical Commission will meet at Ashbel Smith Hall, Second Floor Conference Room, 201 West Seventh Street, Austin. According to the agenda summary, the board will hear announcements; discuss approval of minutes of March 2, 1991 meeting; and review nominations to the National Register.

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6094.

Filed: July 10, 1991, 3:06 p.m.

TRD-9108225

Texas Department of Human Services

Friday, July 19, 1991, 10 a.m. The Texas Board of Human Services of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, East Tower, Public Hearing Room, Austin. According to the agenda summary, the board will consider action on approval of June 14, 1991 minutes; hear comments by chairman; NHIC reserve fund; purchased health services contract; FY 91 budget adjustments; family care waiting lists; PASARR unallowable costs; OBRA task force; ICF-MR special children's facilities; rate adjustments for small ICF/MRs and facilities for persons with related conditions; rates for case management for MR, RC, and MI individuals; rates for diagnostic and medicaid rehabilitative services; strategic plan for OSPD; work group on medicaid waiver programs; application for medicaid community supported living arrangement; medical transportation services coordination with TDH kidney health care; disproportionate share hospitals; CCDBG eligibility; self-arranged child care eligibility; removal of transportation allowance limit for JOBS program; amendments to policies and procedures; commissioner's report; the board will recess into a closed session on personnel matters and will reconvene in open session to take action resulting from executive session.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3048.

Filed: July 10, 1991, 3:40 p.m.

TRD-9108232

Friday, July 26, 1991, 9 a.m. The EPSDT Dental Professional Advisory and Review Subcommittee of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, West Tower, Room 103-W, Austin. According to the complete agenda, the subcommittee will call the meeting to order; take roll call; approval of April 12, 1991 minutes; fiscal report; department FY 91 budget status; LAR update FY 1992-1993; FY 1991 utilization/expenditure report; baby bottle tooth decay client education; emergency dental claims; EPSDT medical screening Ad Hoc Committee report; CDC dental fees/Texas Performance Review; sealants; OBRA 89 program expansions; NHIC report on provider relations activities, behavior management code, and quality control procedures; meet in executive session; and adjourn.

Contact: Richard Wilson, P.O. Box 139030, Austin, Texas 78714-9030, (512) 338-6944.

Filed: July 10, 1991, 5:03 p.m.

TRD-9108233

Friday, July 26, 1991, 9 a.m. The EPSDT Dental Professional Advisory and Review Subcommittee of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, West Tower, Room 103-W, Austin. According to the complete agenda, the subcommittee will call the meeting to order; take roll call; approval of April 12, 1991, minutes; fiscal report; department FY 1991 budget status; LAR update FY 1992-1993; FY 1991 utilization/expenditure report; baby bottle tooth decay client education; emergency dental claims; EPSDT medical screening Ad Hoc Committee report; CDC dental fees/Texas Performance Review; sealants; OBRA 89 program expansions; NHIC report on provider relations activities, behavior management code, and quality control procedures; meet in executive session; and adjourn.

Friday, July 26, 1991, 9 a.m. The Social Work Certification Advisory Council of the Texas Department of Human Services will meet at 701 West 51st Street, Fourth Floor, West Tower, Conference Room 4W, Austin. According to the complete agenda, the council will hear a report from Cris Ros-Dukler; Nanci Gibbons; discussion of the 10th anniversary social work certification; discussion of rules revision of section 6000; hear staff report; and discussion of newsletter policy.

Contact: Michael Doughty, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3248.

Filed: July 9, 1991, 3:23 p.m.

TRD-9108182

Tuesday, July 30, 1991, 9:30 a.m. The Religious Community Advisory Committee

of the Texas Department of Human Services will meet at 701 West 51st Street, Third Floor, West Tower, Conference Room 3W, Austin. According to the complete agenda, the committee will welcome guests and members; make introductions; discuss committee business; election of officers; evaluation of committee for FY 1991; new IRS travel reimbursement rules; the new Texas plan FY 1992-1993 budget; confidentiality and emergency food providers; public education subcommittee planning local initiatives; child protective services update; concerns of members; wrap up; and adjourn.

Contact: Lucy Todd, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3129.

Filed: July 10, 1991, 3:43 p.m.

TRD-9108234

Department of Information Resources

Thursday, July 18, 1991, 1:30 p.m. The Board of the Department of Information Resources will meet at 300 West 15th Street, Suite 1300, Austin. According to the complete agenda, the board will give an update on payroll RFP and migration costs; progress report on consulting contract dollar threshold; report on geographical information system program; presentation on the ASIST Program; discussion on the impact of Texas Performance Review to the Department of Information Resources; update and tour of the disaster recovery operations center; and discuss other business.

Contact: John Hawkins, 300 West 15th Street, Suite 1300, Austin, Texas 78711, (512) 371-1120.

Filed: July 9, 1991, 5:24 p.m.

TRD-9108199

State Board of Insurance

Wednesday, July 10, 1991, 8:30 a.m. The State Board of Insurance met at William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the emergency revised agenda, the board met to consider adoption of an amendment to the Workers' Compensation and Employers Liability Insurance Texas Unit Statistical Plan on an emergency basis, and to provide new worker's compensation codes for use by insurers in reporting on losses. The emergency status was necessary since the new Worker's Compensation Codes will be used by insurers in the reporting of losses on September 1, 1991. This reporting of information is required as set forth in Senate Bill 1, approved by the 71st Legislature of Texas; therefore, the new codes must be in place by September 1, 1991.

Contact: Angelia Johnson, 333 Guadalupe Street, Austin, Texas 78701, (512) 463-6328.

Filed: July 9, 1991, 3:24 p.m.

TRD-9108183

Wednesday, July 10, 1991, 8:30 a.m. The State Board of Insurance met at William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the emergency revised agenda, the board met to consider adoption of the Texas Workers' Compensation Detailed Claim Information Statistical Plan on an emergency basis. The emergency status was necessary to develop and maintain a database for research and cost containment efforts of the Texas Workers' Compensation Research Center and the Texas Workers' Compensation Commission, in accordance with the Senate Bill 1 of the 71st Texas Legislature.

Contact: Angelia Johnson, 333 Guadalupe Street, Austin, Texas 78701, Mail Code 001-1, (512) 463-6328.

Filed: July 9, 1991, 3:24 p.m.

TRD-9108184

Thursday, July 11, 1991, 10 a.m. The State Board of Insurance met at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete emergency revised agenda, the board considered personnel action concerning the position of Deputy Commissioner I for the Insurance Services Section of the Liquidation Division. The emergency status was necessary to protect the public welfare by enabling the board to have adequate personnel to handle important matters relating to failed insurance companies.

Contact: Angelia Johnson, 333 Guadalupe Street, Austin, Texas 78701, (512) 463-6328.

Filed: July 10, 1991, 1:48 p.m.

TRD-9108218

Friday, July 19, 1991, 9 a.m. The State Board of Insurance will meet at Tower 1, William P. Hobby Building, 12th Floor, 333 Guadalupe Street, Austin. According to the agenda, the board will hold a public hearing to consider request by Charles D. Sims concerning calculation of experience rating modifier applicable to workers' compensation insurance.

Contact: Angelia Johnson, 333 Guadalupe Street, Austin, Texas 78701, (512) 463-6328.

Filed: July 9, 1991, 10:59 a.m.

TRD-9108160

Texas Commission on Jail Standards

Wednesday, July 24, 1991, 9 a.m. The Texas Commission on Jail Standards will meet at the Employees Retirement Building,

Room 100, Austin. According to the agenda summary, the commission will call the meeting to order; take roll call of members; discuss old business: Bowie County, Chambers County, Kaufman County, McLennan County, Polk County, Zapata County; Suicide Prevention Guide; change to standards; status of privately developed facilities; juvenile justice survey; completed jail projects; jail population report; active remedial orders; status of budget/appropriations; discuss new business: Angelina County, Bexar County, Galveston County, Kerr County, Starr County, Tarrant County, Travis County, Uvalde County, Victoria County, Wilbarger County; highlights of sunset act and adoption of policies; change to standards-complaints and fees, change to standards-privately operated facilities; discussion of conditional certification, and elimination of architectural barriers; applications for variances: Harris County, Tarrant County, and Wichita County; hear director's report; discuss other business; meet in executive session; and adjourn.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: July 9, 1991, 1:46 p.m.

TRD-9108165

Judicial Districts Board

Friday, July 19, 1991, 10 a.m. The Judicial Districts Board will meet at Texas Law Center, Room 204, 1414 Colorado Street, Austin. According to the agenda, the board will review duties of the board; receive a briefing on and discuss recent United States Supreme Court decisions regarding the methods of selection of judges; and review suggestions on their possible effect on Texas.

Contact: C. Raymond Judice, 1414 Colorado Street, Suite 602, Austin, Texas 78711 (512) 463-1625.

Filed: July 9, 1991, 1:45 p.m.

TRD-9108164

Polygraph Examiners Board

Friday, July 19, 1991, 9 a.m. The Polygraph Examiners Board will meet at the Holiday Inn, 6911 North IH-35, Austin. According to the complete agenda, the board will close meeting to administer Phase III of licensing exam; discuss approval of April 1991 meeting minutes; consideration of amendment to Regulation 391.3(13) second reading; consideration of amendment to Regulation 397.40; discussion of 1992 licensing survey; agency update; recess for lunch; and hold board hearing Number 91-03.

Contact: Bryan M. Perot, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

Filed: July 9, 1991, 12:06 p.m.

TRD-9108161

Public Utility Commission of Texas

Wednesday, July 17, 1991, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the revised agenda, the commission will consider the appeal of Examiner's Order Number 18 or of June 20, 1991, oral ruling regarding extension of effective date in Docket Numbers 10200 and 10034-application of Texas-New Mexico Power Company for authority to change rates, and application of Texas-New Mexico Power Company for deferred accounting treatment for TNP One-unit two.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 9, 1991, 4:28 p.m.

TRD-9108193

Wednesday, July 17, 1991, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, the commission will consider the following Docket Numbers: 9986, 10002, 9930, 9469, 9925, and 10108.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 9, 1991, 3:09 p.m.

TRD-9108180

Wednesday, July 17, 1991, 9:05 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, the commission will hold an administrative meeting to discuss: reports, discussion and action on budget and fiscal matters; monthly financial statements; legislative update; review applicants for court reporting services contract; award contract; and authorize the executive director to negotiate/execute the contract; discussion and action on the issuance of a request for proposals for the design and/or implementation of the Utility Information System; discussion and action on the issuance of a request for proposals for a management audit update of the Public Utility Commission; adjourn for executive session to consider: litigation matters; discussion and decision regarding pending or threatened litigation; personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and adjourn.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 9, 1991, 3:08 p.m.

TRD-9108179

Wednesday, August 14, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, the commission will hold a hearing on the merits scheduled in Docket Number 10325-application of Central Texas Electric Cooperative, Inc. for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 9, 1991, 4:28 p.m.

TRD-9108194

Wednesday, September 4, 1991, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10400-application of Texas Utilities Electric Company for approval of its notice of intent.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 10, 1991, 3:20 p.m.

TRD-9108228

Tuesday, November 5, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, the division will hold a hearing on the merits scheduled in Docket Number 10140-application of Rayburn Country Electric Cooperative, Inc. to amend Certificate of Convenience and Necessity for proposed transmission line within Van Zandt County.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 9, 1991, 3:07 p.m.

TRD-9108176

Wednesday, November 20, 1991, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10279-petition of Rayburn Country Electric Cooperative, Inc. and its member cooperatives for waiver of Public Utility Commission Substantive Rule 23.66(d)(1) and (d)(2).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 10, 1991, 3:21 p.m.

TRD-9108230

◆ ◆ ◆
Tuesday, November 5, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, the division will hold a hearing on the merits scheduled in Docket Number 10141-application of Rayburn Country Electric Cooperative, Inc. to amend Certificate of Convenience and Necessity for proposed transmission line within Anderson, Cherokee, Henderson, Kaufman, Rusk, Smith and Van Zandt Counties.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 9, 1991, 3:07 p.m.

TRD-9108177

◆ ◆ ◆
Tuesday, November 5, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, the division will hold a hearing on the merits scheduled in Docket Number 10161-application of Southwestern Electric Power Company to amend Certificate of Convenience and Necessity for proposed transmission line within Wood, Smith, and Van Zandt Counties.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 9, 1991, 3:08 p.m.

TRD-9108178

Texas Rehabilitation Commission

◆ ◆ ◆
Monday, July 22, 1991, 10 a.m. The Governor's Committee for Disabled Persons of the Texas Rehabilitation Commission will meet at 603 Mississippi Avenue, El Paso. According to the agenda summary, the committee will give Judge Governor's Employment Awards; review current awards program to assure compatibility with ADA; and discuss old business and new business.

Contact: Virginia Roberts, 4900 North Lamar Boulevard, Austin, Texas, (512) 483-4380.

Filed: July 9, 1991, 10:25 a.m.

TRD-9108156

Texas National Research Laboratory Commission

Wednesday, July 17, 1991, 10 a.m. The Government Affairs Committee, Standing Commission Committee of the Texas National Research Laboratory Commission will meet at the InforMart Exhibition Hall, Room 7015, Oak Lawn at Stemmons Freeway, Dallas. According to the agenda summary, the committees will take roll call of members; hear chairman's report-Martha Smiley; status reports (mitigation issues, regional funding, congressional/legislative development); staff reports; hear public comments; and adjourn.

Contact: Karen Chrestay, 1801 North Hampton Road, #400, DeSoto, Texas 75115, (214) 709-3800.

Filed: July 9, 1991, 5:21 p.m.

TRD-9108196

Wednesday, July 17, 1991, 11 a.m. The Site Acquisition and Development Committee and Standing Commission Committee of the Texas National Research Laboratory Commission will meet at the InforMart Exhibition Hall, Room 6052, Oak Lawn at Stemmons Freeway, Dallas. According to the agenda summary, the committees will take roll call of members; hear chairman's report-Charles R. Perry; hear staff reports; contractor reports; public comment; and adjourn.

Contact: Karen Chrestay, 1801 North Hampton Road, #400, DeSoto, Texas 75115, (214) 709-3800.

Filed: July 9, 1991, 5:22 p.m.

TRD-9108198

Wednesday, July 17, 1991, 1 p.m. The Texas National Research Laboratory Commission will meet at the InforMart Exhibition Hall, Room 7014, Oak Lawn at Stemmons Freeway, Dallas. According to the agenda summary, the commission will call the meeting to order-Martha Smiley, Vice Chairman; take roll call of members; hear public comments; SSC status report-Joseph Cipriano; meet in executive session to discuss land acquisition; hear vice chairman's report-Martha Smiley; executive director's report-Edward C. Bingle; general counsel's report-Michael J. Shearn; Finance-Peter O'Donnell; government affairs-M. Smiley; personnel, procurement, and minority affairs-Jerome Johnson; site acquisition and development-Charles R. Perry; and adjourn.

Contact: Karen Chrestay, 1801 North Hampton Road, #400, DeSoto, Texas 75115, (214) 709-3800.

Filed: July 9, 1991, 5:22 p.m.

TRD-9108197

Teacher Retirement System of Texas

Wednesday, July 10, 1991, 7:30 a.m. The Board of Trustees Executive Search Committee of the Teacher Retirement System of Texas held an emergency meeting at Four Seasons Hotel, 98 San Jacinto Boulevard, Austin. According to the agenda, the committee held an executive session to discuss the employment of Chief Investment Officer. The emergency status was necessary because this was the only time the committee members could meet.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400.

Filed: July 9, 1991, 10:35 a.m.

TRD-9108157

◆ ◆ ◆
Wednesday, July 17, 1991, 2 p.m. The Retirees Advisory Committee of the Teacher Retirement System of Texas will meet at 1000 Red River, Fifth Floor Board Room, Austin. According to the agenda, the committee will consider Texas Performance Review recommendations affecting the Texas Public School Retired Employees Group Insurance Program (TRS-Care).

Contact: Stan Blake, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6394.

Filed: July 9, 1991, 3:21 p.m.

TRD-9108181

Texas State Treasury Department

◆ ◆ ◆
Tuesday, July 23, 1991, 1:30 p.m. The Texpool Advisory Board of the Texas State Treasury Department will meet at the Texas State Treasury, 111 East 17th Street, LBJ Office Building, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval minutes of February 12, 1991 meeting; introduction of the State Treasurer and staff; remarks by the State Treasurer; introduction of new and current advisory board members; investment report; operations and financial report; fiscal 1991 budget update; consideration of new TexPool Board organization; and new business and instructions from the board.

Contact: Anne L. Schwartz, 111 East 17th Street, Austin, Texas 78701, (512) 463-5971.

Filed: July 10, 1991, 1:04 p.m.

TRD-9108214

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

◆ ◆ ◆
Tuesday, July 16, 1991, 9 a.m. The Institutional Animal Care and Use Committee of the University of Texas System, M. D. An-

derson Cancer Center 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 modification thereof.

Contact: Anthony Mastromarino, Ph.D., U.T. M.D. Anderson Cancer Center, 1515 Holcombe Boulevard, Houston, Texas 77030, (713) 792-3991.

Filed: July 10, 1991, 2:05 p.m.

TRD-9108222

Texas Water Commission

Wednesday, July 10, 1991, 9 a.m. The Texas Water Commission held an emergency meeting at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission considered various matters within the regulatory jurisdiction of the commission. In addition, the commission considered 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 have taken various actions, including, but not limited to scheduling an item in the entirety or for particular action at a future date or time. The emergency status was necessary due to reasonably unforeseeable circumstances, setting of this matter is necessary.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: July 9, 1991, 4:03 p.m.

TRD-9108189

Friday, July 19, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 123, Austin. According to the agenda summary, the commission will consider the executive director's report on agency administration, policy, budget procedures, and personnel matters.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: July 9, 1991, 4:04 p.m.

TRD-9108190

Monday, August 12, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1030, Austin. According to the agenda summary, the commission will hold a hearing on Lamar Water Supply Corporation's rate increase.

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

Filed: July 10, 1991, 4:55 p.m.

TRD-9108245

Monday, August 12, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North

Congress Avenue, Room 1149A, Austin. According to the agenda summary, the commission will hold a hearing on the Town of Hackberry Water Company's water rate increase to out-of-city customers. Docket Number 9097-W.

Contact: Kerry D. Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 10, 1991, 4:55 p.m.

TRD-9108244

Thursday, August 15, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 543, Austin. According to the agenda summary, the commission will hold a hearing on an appeal filed with the commission protesting Beck-Jiba Water Supply Corporation's charges for new connections in Kaufman County. Docket Number 9135-X.

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

Filed: July 10, 1991, 4:56 p.m.

TRD-9108247

Monday, August 19, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 543, Austin. According to the agenda summary, the commission will hold a hearing on Five Land, Inc.'s application for a water certificate of convenience and necessity (CCN) to provide water utility service in Grimes County. The proposed service area is approximately six miles southwest of downtown Iola, and generally bounded on the north by Johnson Ranch, on the south by Grimes County Road #170, on the east by FM 244, and on the west by Johnson Ranch.

Contact: Leslie A. Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 10, 1991, 4:57 p.m.

TRD-9108248

Monday, August 19, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1030, Austin. According to the agenda summary, the commission will hold a hearing on a rate increase of Roger A. VanVoorhees and Norman O. Deike doing business as Magic Enterprises for water utility service in Burnet County. Docket Number 9068-G.

Contact: William Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 10, 1991, 4:56 p.m.

TRD-9108246

Friday, August 23, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1030, Austin. According to the agenda summary, the com-

mission will hold a hearing on Wayne White doing business as Heritage Estates Water System, Inc.'s application to cease operations and discontinue providing water utility service in Lubbock County. The water utility service area is located approximately two miles southwest of Lubbock and generally bounded by 34th Street and 50th Street, and Danforth Avenue and Zeeland Avenue.

Contact: Joseph W. O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7858.

Filed: July 10, 1991, 4:57 p.m.

TRD-9108249

Texas Water Development Board

Wednesday, July 17, 1991, 2:30 p.m. The Audit Committee of the Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 513-F, Austin. According to the complete agenda, the committee will be briefed on the FYE August 31, 1991 audit; consider approval of the minutes of the March 13, 1991 committee meeting; be briefed on a draft report that pertains to the purchasing function; hold preliminary discussions pertaining to the Internal Auditor annual plan for the year ending August 31, 1992; and committee input into areas of concern/concentration will be integrated into the annual plan.

Contact: Craig Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 9, 1991, 3:56 p.m.

TRD-9108185

Wednesday, July 17, 1991, 3:30 p.m. The Finance Committee of the Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 513, Austin. According to the complete agenda, the committee will consider approval of the minutes of the June 20, 1991 meeting; may discuss items on the agenda of the July 18, 1991 board meeting; be briefed on the Upper Trinity Regional Water District's application for water supply account and state participation funds; briefed on financial assistance for restructuring distressed water district bonds; and discuss proposed sale of Texas Water Development Bonds.

Contact: Craig Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 9, 1991, 3:56 p.m.

TRD-9108186

Thursday, July 18, 1991, 9 a.m. The Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the board will consider the minutes of June 20,

1991 meeting; development fund manager's report; extension of commitment for City of Denver City; authorizing the executive administrator to amend Cameron County WCID contract to increase budget and scope; authorizing the executive administrator to execute agreement with the Advisory Council on Historic Preservation, the Texas State Historic Preservation officer and El Paso County Lower Valley Water District Authority for the Socorro wastewater project; setting SRF lending rate scale; financial assistance for Isaacson Municipal Utility District, Fayette County WCID, and Cities of Westover Hills, San Saba and Lovelady; and adoption of new 31 TAC Chapter 355 and repeal of present Chapter 355 rules.

Contact: Craig Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 10, 1991, 3:53 p.m.

TRD-9108236

Texas Water Resources Finance Authority

Wednesday, July 17, 1991, 3:30 p.m. The Finance Committee of the Texas Water Resources Finance Authority will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 513, Austin. According to the complete agenda, the committee will consider approval of the minutes of June 20, 1991 meeting; and may discuss any items on the agenda of the July 18, 1991 meeting.

Contact: Craig Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 9, 1991, 3:56 p.m.

TRD-9108187

Thursday, July 18, 1991, 9 a.m. The Texas Water Resources Finance Authority will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the complete agenda, the authority will consider approval of the minutes of the meeting of June 20, 1991; consider adoption of the budget for the authority for payment of expenses incurred from August 16, 1991 through February 15, 1992; and be briefed on the status of the sale of the authority's loan portfolio.

Contact: Craig Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 10, 1991, 3:54 p.m.

TRD-9108237

Texas Workers' Compensation Insurance Facility

Thursday, July 18, 1991, 9 a.m. The Governing Committee of the Texas Workers' Compensation Insurance Facility will meet at the Red Lion Austin Airport, 6121 IH-35

North, Austin. According to the complete agenda, the committee will approve minutes; consideration of report of: Ad Hoc Committee on Rating Plans; Ad Hoc Committee on Credit, Underwriting and Anti-fraud; Ad Hoc Committee on Loss Control and Safety; consideration of request for reimbursement of servicing carrier; report on tax status; report of Actuarial Committee; Accounting Committee; review of retro factors for ARRP; and staff recommendations regarding collections.

Contact: Miles L. Mathews, 8303 MoPac Expressway, Suite 310, Austin, Texas 78759-8396, (512) 345-1222.

Filed: July 9, 1991, 5:21 p.m.

TRD-9108195

Regional Meetings

Meetings Filed July 9, 1991

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse Street, Denton, July 18, 1991, at 4 p.m. Information may be obtained from John D. Brown, 3911 Morse Street, Denton, Texas 76205, (817) 566-0904. TRD-9108163.

The Ellis County Appraisal District Board of Directors will meet at 406 Sycamore Street, Waxahachie, July 23, 1991, at 7 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9108159.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. met at 2401 Houston Highway, Victoria, July 15, 1991, at 6 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9108166.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. met at 2401 Houston Highway, Victoria, July 15, 1991, at 7 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9108167.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. met at 2401 Houston Highway, Victoria, July 17, 1991, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9108168.

Meetings Filed July 10, 1991

The Austin-Travis County Mental Health and Mental Retardation Center Finance and Control Committee held an emergency meeting at 1430 Collier Street, Austin, July 11, 1991, at 8 a.m. The emergency status was necessary as committee needed immediate approval for September 1, 1991 implementation of new client data software. In-

formation may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9108213.

The Austin-Travis County Mental Health and Mental Retardation Center Executive Committee/Finance and Control Committee met at 1430 Collier Street, Austin, July 11, 1991, at 8 a.m. The emergency revised agenda was necessary to get immediate approval for September 1, 1991 implementation of new client data software. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9108231.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors met at 1124 A Regal Row, Austin, July 15, 1991, at 5 p.m. Information may be obtained from Bill E. Couch, 1124 A Regal Row, Austin, Texas 78748, (512) 282-8441. TRD-9108219.

The Brazos Valley Development Council Executive Committee will meet at the Council Offices, 3006 East 29th Street, Door Number Two, Bryan, July 18, 1991, at 1:30 p.m. (revised agenda). Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9108202.

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadaway Street, Abilene, July 15-19, 1991, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79602, (915) 677-1711. TRD-9108243.

The Deep East Texas Council of Governments Grants Application Review Committee will meet at Twitty's Restaurant, Highway 87 North, Hemphill, July 18, 1991, at 11 a.m. Information may be obtained from Tas McGraw, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9108206.

The Guadalupe-Blanco River Authority Board of Directors will meet at the Authority's Offices, 933 East Court Street, Seguin, July 18, 1991, at 10 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (512) 379-5822. TRD-9108205.

The Harris County Appraisal District Board of Directors will meet at 2800 North Loop West, Eighth Floor, Houston, July 17, 1991, at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9108227.

The Hickory Underground Water Conservation District Number One Board and Advisors will meet at 2023 South Bridge Street, Brady, July 17, 1991, at 7 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9108203.

The Hood County Appraisal District Appraisal Review Board met at 1902 West

Pearl Street, Granbury, July 15, 1991, at 8:30 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048-0819. TRD-9108210.

The Hood County Appraisal District Appraisal Review Board met at 1902 West Pearl Street, Granbury, July 15, 1991, at 8:30 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048-0819. TRD-9108201.

The Houston-Galveston Area Council Projects Review Committee will meet at 3555 Timmons Lane, Fourth Floor, Board of Directors Conference Room, Houston. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Houston, Texas 77027, (713) 627-3200. TRD-9108211.

The Houston-Galveston Area Council Board of Directors will meet at 3555 Timmons Lane, Fourth Floor Conference Room, Houston. Information may be obtained from Marjorie Baker, P.O. Box 22777, Houston, Texas 77227-2777, (713) 627-3200. TRD-9108212.

The Lamar County Appraisal District Board will meet at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, July 16, 1991, at 5 p.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (214) 785-7822. TRD-9108220.

The Lamar County Appraisal District Appraisal Review Board will meet at the

Lamar County Appraisal District Office, 521 Bonham Street, Paris, July 18, 1991, at 9 a.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (214) 785-7822. TRD-9108221.

The Mason County Appraisal District will meet at 206 Fort McKavitt Street, Mason, July 17, 1991, at 7:30 p.m. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989. TRD-9108204.

The Region IV Education Service Center Board of Directors will hold an emergency meeting at the Region IV Education Service Center, Board Room, 7145 West Tidwell Road, Houston, July 17, 1991, at 1 p.m. The emergency status is necessary as action needs to be taken on bid items before the next regular board meeting. Information may be obtained from W. L. McKinney, 7145 West Tidwell, Houston, Texas 77001, (713) 462-7708. TRD-9108240.

◆ ◆ ◆
Meetings Filed July 11, 1991

The Deep East Texas Council of Governments Board of Directors will meet at Twitty's Restaurant, Highway 87 North, Hemphill, July 18, 1991, at 1 p.m. Information may be obtained from Joan Draper, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9108257.

The Limestone County Appraisal District Board of Directors will meet on the Second Floor, Groesbeck, July 17, 1991, at 5:10 p.m. Information may be obtained from

Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9108254.

The Lower Neches Valley Authority Board of Directors will meet at the LNVA Office Building, 7850 Eastex Freeway, Beaumont, July 16, 1991, at 10:30 a.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9108258.

The Riceland Regional Mental Health Authority Board of Trustees will meet at 3007 North Richmond Road, Wharton, July 18, 1991, at 2 p.m. Information may be obtained from Marjorie Dornak, 3007 North Richmond Road, Wharton, Texas 77488, (409) 532-3098. TRD-9108256.

The San Patricio County Appraisal District Board of Directors met at 1146 East Market Street, Sinton, July 11, 1991, at 9:30 a.m. The emergency status was necessary as the submission form was mailed incorrectly due to wrong zip code, and the budget needed to be addressed today. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9108253.

The Scurry County Appraisal District Appraisal Review Board will meet at 2612 College Avenue, Snyder, July 15-16, 1991, at 9 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9108255.

◆ ◆ ◆

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 Notice of Contested Case Hearing

An examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing to consider whether to not a construction permit should be issued to Oryx Energy Company (the applicant) to construct an emergency flare stack at the Caldwell-Brackenridge Unit Tank Battery #2, located 0.32 miles southeast of the intersection of State Highway 180 and FM Road 287, Breckenridge, Stephens County.

Deadline for Requesting to be a Party. At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the applicant and the TACB staff. Any person who may be affected by emissions from the proposed facility who wants to be made a party must send a specific written request for party status to Hearings Examiner Cindy Hurd and make sure that this request is actually received at the TACB Central Office, 12124 Park 35 Circle, Austin, Texas 78753 by 5 p.m. on July 24, 1991. The examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to the TACB before publication of this notice will not be considered as a request for party status. The examiner will decide on party status at the prehearing conference.

Prehearing Conference. The examiner has scheduled a prehearing conference at 1:30 p.m. on Thursday, August 8, 1991, at the TACB Central Office, Room 143-E, 12124 Park 35 Circle, Austin, Texas 78753. At this conference, the examiner will consider any motions of the parties, but may grant contested motions for continuance only upon proof of good cause. The examiner will also establish a specific date prior to the hearing on the merits for the exchange of written and documentary evidence.

Time and Place of Hearing. The examiner has set the hearing to begin at 1:30 p.m. on Tuesday, August 20, 1991, at the TACB Central Office, Room 143-E, 12124 Park 35 Circle, Austin, Texas 78753.

What the Applicant Must Prove. This hearing is a contested case hearing under the Administrative Procedure and Texas Register Act, §13, Texas Civil Statutes, Article 6252-13a. It is generally conducted like a trial in district court. The applicant must demonstrate, by a preponderance of the evidence, that the proposed facility will meet the requirements of the Texas Clean Air Act, §382.051, Chapter 382, Texas Health and Safety Code (the Act), and TACB §116.3. These requirements include compliance with all applicable TACB and federal regulations, including the requirement that the proposed facility will use the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions.

Public Attendance and Testimony. Members of the general public may attend the prehearing conference and the hearing. Those who plan to attend are encouraged to

telephone the TACB Central Office in Austin, at (512) 908-1770, a day or two prior to the prehearing conference and the hearing dates in order to confirm the settings, since continuances are sometimes granted. Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the TACB Hearings Section of the Legal Division at (512) 908-1770, to find out the names and addresses of all persons who may be contacted about the possibility of presenting testimony.

Information About the Application and TACB Rules. Information about the application and copies of the TACB's rules and regulations are available at the TACB Regional Office located at 120 South Willis, Suite 205, Abilene, Texas 79605, the TACB Central Office located at 12124 Park 35 Circle, Austin, Texas 78753, and at the Breckenridge City Hall office located at 120 West Elm, Breckenridge, Texas 76024.

Legal Authority. This hearing is called and will be conducted under the authority of the Act, §§382.029, 382.030, 382.031, 382.051, and 382.056 and TACB Procedural Rules 103.11(3), 103.31, and 103.41.

Issued in Austin, Texas, on July 3, 1991.

TRD-9108099 Steve Spaw, P.E.
Executive Director
Texas Air Control Board

Filed: July 8, 1991

For further information, please call: (512) 908-1772

Texas Department of Human Services Correction of Public Notice

The Texas Department of Human Services (TDHS) is publishing a correction to a public notice regarding implementation of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) §4711 as published in the June 25, 1991, issue of the *Texas Register* (16 TexReg 3552). The statement "The increase in annual aggregate expenditures for fiscal year 1992 is estimated to be (\$681,401)" should have read "The net decrease in annual aggregate expenditures for fiscal year 1992 is estimated to be (\$618,401)."

Issued in Austin, Texas, on June 27, 1991.

TRD-9108099 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: July 8, 1991

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

Correction to Notice of Public Hearing

The Texas Department of Human Services (TDHS) will not receive comments on the department's proposed reimbursement rates for the Case Management for High-risk Pregnant Women and High-risk Infants Program at the

public hearing to be held on July 5, 1991. If there are questions concerning this change, contact Kathy E. Hall, MC E-601, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3702.

Issued in Austin, Texas, on June 27, 1991.

TRD-9108100 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: July 8, 1991

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

Public Notice of Closed Solicitation

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is closing the solicitation for new Medicaid beds in Duval County, County Number 066, Jim Hogg County, County Number 124, which appeared in the November 21, 1989, issue of the *Texas Register* (14 TexReg 6144) and Zapata County, County Number 253, which appeared in the May 17, 1991, issue of the *Texas Register* (16 TexReg 2777).

These solicitations are being closed effective the date of this public notice.

Issued in Austin, Texas, on July 10, 1991.

TRD-9108209 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: July 10, 1991

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

Request for Proposals

The Texas Department of Human Services (DHS) is inviting proposals for nutrition education workshop instructors.

Description of Services. Dietitians are needed to conduct nutrition education workshops, evaluate materials, attend two training workshops per year, and assist in the development of materials for the Nutrition Education and Training (NET) program. Services will be required on a variable basis depending on the number and type of workshops planned for each dietitian's area.

Closing Date. Proposals must be received by 5 p.m., August 25, 1991.

Term of Contract. The contract period is October 1, 1991-September 30, 1992.

Contact person. For more information, please call or write Brenda Miller (512) 450-3391 or Deborah Simpson (512) 450-4816, NET Program MC W-313, P. O. Box 149030, Austin, Texas 78714-9030.

RFP packets are now available.

Procedures of Selection. A screening form will be used to select applicants. Applicants that are considered for selection will be scheduled for an interview.

Issued in Austin, Texas, on July 10, 1991.

TRD-9108208 Nancy Murphy
Agency Liaison Policy and Document
Support
Texas Department of Human Services

Filed: July 10, 1991

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

State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for Admission to do business in Texas for Bankers Life of Louisiana, a foreign life insurance company. The home office is in Ruston, Louisiana.
2. Application for Admission to do business in Texas for Titan Insurance Company, a foreign fire insurance company. The home office is in Phoenix, Arizona.
3. Application for name change by Hansa Marine Insurance Company Limited (United States Branch), a foreign fire insurance company. The home office is in Stockholm, Sweden. The proposed new name is Trygg-Hansa Insurance Company Limited (United States Branch).

Issued in Austin, Texas, on July 5, 1991.

TRD-9108115 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: July 8, 1991

For further information, please call: (512) 463-6327

Texas Parks and Wildlife Department Notice of Public Hearing

Notice is hereby given that Barrow-Shaver Resources Company, 712 First City Place, 100 East Ferguson Street, Tyler, Texas 75702, has made application for a surface easement to drill an oil/gas well under its oil and gas leases from the Texas Parks and Wildlife Department in the Felix Flores League, A-9, Tyler State Park, Smith County.

The executive director of the department has appointed a hearing examiner to conduct a hearing as authorized by the Texas Parks and Wildlife Code, Chapter 26, as follows: August 2, 1991, 10 a.m., Room C-200, Texas Parks and Wildlife Department, Headquarters Building, 4200 Smith School Road, Austin, Texas 78744.

The applicant may appear in person or by attorney to present evidence supporting its application. This hearing will be held under the authority of an in accordance with the Texas Parks and Wildlife Code, Chapter 26, and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon Supplement 1991).

The record of this proceeding will include evidence and testimony taken at the public hearing. Evidence or testimony may be presented orally or in writing, subject to the requirements of the Administrative Procedure and Texas Register Act. The hearing may be continued from time to time and place to place, if necessary, to develop all relevant evidence bearing on the subject of the hearing. The examiner retains the right to schedule or reschedule hearings as necessary. Further information concerning the basis of this proceeding, if available, may be obtained by contacting John Foshee, Land Management Counsel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4806.

Information concerning any procedures of the hearing or scheduling may be obtained by contacting the undersigned at the Texas Parks and Wildlife Department, 4200, Smith School Road, Austin, Texas 78744, (512) 389-4867.

Issued in Austin, Texas, on July 9, 1991.

TRD-9108189 Jennifer Melett
Hearing Examiner
Texas Parks and Wildlife Department

Filed: July 9, 1991

For further information, please call: (512) 389-4867



Texas Water Commission Correction of Error

The Texas Water Commission submitted adopted new 31 TAC §§307.2-307.10, concerning Texas surface water quality standards for publication in the June 25, 1991, issue of the *Texas Register*.

In §307.2(d)(4), the phrase "United States Environmental Protection Agency and the" should be deleted. On line 18 following the sentence which ends "... permit" a new sentence added to read "A temporary variance for an

NPDES permit will also require approval by the United States Environmental Protection Agency." In §307.4(h)(1) on line 44 the word "occur" should be deleted.

The *Texas Register* omitted printing the introduction to Appendix B on page 3465, Low Flow Criteria. It should read as follows.

"The flow value listed for each Texas Water Commission Stream Monitoring Network (SMN) Station represents the statistically calculated seven-day two-year low flow (7Q2). The 7Q2 is the lowest average flow for seven consecutive days with a recurrence interval of two years. The calculated values are based on USGS period of record streamflow data for establishing gauging stations. Where USGS stream gauging stations are not present, low flow values have been estimated by using data from nearby stations with similar hydrologic characteristics or from the best information available. The 7Q2 values presented in appendix B are intended as guidelines, and the 7Q2 flows used to set effluent limits for discharges may be recalculated as additional data becomes available."

The Texas Water Commission omitted information in the chart in §307.10 on page 3444 entitled San Jacinto River Basin. Segment 1015 should be inserted between Segments 1014 and 1016.

| SAN JACINTO RIVER BASIN | | USES | | | | CRITERIA | | | | | | |
|-------------------------|--|------------|--------------|-----------------------|-------|---|--|---|--|----------|--|-----------------------------------|
| SEGMENT NUMBER | SEGMENT NAME | RECREATION | AQUATIC LIFE | DOMESTIC WATER SUPPLY | OTHER | CHLORIDE (mg/L) Annual average not to exceed | SULFATE (mg/L) Annual average not to exceed | TOTAL DISSOLVED SOLIDS (mg/L) Annual average not to exceed | DISSOLVED OXYGEN (mg/L) Not less than | pH RANGE | FECAL COLIFORM (#/100 mL) Thirty-day geometric mean not to exceed | TEMPERATURE (°F) Not to exceed |
| 1001 | San Jacinto River Tidal | CR | H | | | | | | 4.0 | 6.5-9.0 | 200 | 95 |
| 1002 | Lake Houston | CR | H | PS | | 100 | 50 | 200 | 5.0 | 6.5-9.0 | 200 | 90 |
| 1003 | East Fork San Jacinto River | CR | H | PS | | 80 | 40 | 400 | 5.0 | 6.0-8.5 | 200 | 91 |
| 1004 | West Fork San Jacinto River | CR | H | PS | | 80 | 40 | 300 | 5.0 | 6.5-9.0 | 200 | 95 |
| 1005 | Houston Ship Channel/San Jacinto River | MCR | H | | | | | | 4.0 | 6.5-9.0 | 200 | 95 |
| 1006* | Houston Ship Channel | | | | N/IS | | | | 2.0 | 6.5-9.0 | 2,000 | 95 |
| 1007* | Houston Ship Channel/Bufalo Bayou | | | | N/IS | | | | 1.0 | 6.5-9.0 | 2,000 | 95 |
| 1008 | Spring Creek | CR | H | PS | | 80 | 40 | 300 | 5.0 | 6.5-9.0 | 200 | 90 |
| 1009 | Cypress Creek | CR | H | PS | | 80 | 40 | 300 | 5.0 | 6.5-9.0 | 200 | 90 |
| 1010 | Caney Creek | CR | H | PS | | 50 | 40 | 300 | 5.0 | 6.0-8.5 | 200 | 90 |
| 1011 | Peach Creek | CR | H | PS | | 50 | 40 | 200 | 5.0 | 6.0-8.5 | 200 | 90 |
| 1012 | Lake Conroe | CR | H | PS | | 50 | 40 | 200 | 5.0 | 6.5-9.0 | 200 | 90 |
| 1013 | Bufalo Bayou Tidal | CR | I | | | | | | 3.0 | 6.5-9.0 | 200 | 92 |
| 1014 | Bufalo Bayou Above Tidal | CR | L | | | 110 | 65 | 600 | 3.0 | 6.5-9.0 | 200 | 92 |
| 1015 | Lake Creek | CR | H | PS | | 80 | 20 | 300 | 5.0 | 6.0-8.5 | 200 | 90 |
| 1016 | Greens Bayou Above Tidal | CR | L | | | 110 | 65 | 600 | 3.0 | 6.5-9.0 | 200 | 92 |
| 1017 | Whiteoak Bayou Above Tidal | CR | L | | | 110 | 65 | 600 | 3.0 | 6.5-9.0 | 200 | 92 |

* Chronic numerical toxic criteria and chronic total toxicity requirements apply to Segments 1006 and 1007.

Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Disposal Systems Inc., (SWR Number 32299) on June 26, 1991, assessing \$52,000 in administrative penalties with \$36,900 deferred and foregone pending compliance.

Information concerning any aspect of this order may be obtained by contacting Samita Mehta, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on July 8, 1991.

TRD-9108191* Laurie J. Lancaster
Notices Coordinator
Texas Water Commission

Filed: July 9, 1991

For further information, please call: (512) 463-7898

Texas Workers' Compensation Commission

Announcement of Public Hearing and Extension of Public Comment Period

The Texas Workers' Compensation Commission has scheduled a public hearing to solicit public comment on the Hospital and Ambulatory Surgical Center Fee Guidelines under "old law," 28 TAC §42.110, and under "new law," §134.400. The public hearing will be held on Wednesday, July 24 and will continue until oral testimony is completed. The public hearing on Hospital and Ambulatory Surgical Center Fee Guidelines will begin at 6 p.m. and will take place in the Tippy Foster Meeting Room 910, in the Southfield Building at 4000 South IH 35, Austin, Texas 78704.

The 30-day public comment periods for §134.400 and §42.110 has been extended from July 4, until July 24, 1991. The text of the proposed rules was published in the June 4, 1991, issue of the *Texas Register*.

Depending upon attendance, a time limitation may be placed on oral testimony. Written summaries of testimony will be accepted and are encouraged.

Issued in Austin, Texas, on July 8, 1991.

TRD-9108081 Susan M. Kelley
General Counsel
Texas Workers' Compensation Commission

Filed: July 8, 1991

For further information, please call: (512) 440-3972

The Texas Workers' Compensation has scheduled a public hearing to solicit public comment on the state risk management "new law" rules, Chapter 170. The public hearing will be held on Wednesday, July 24, and will continue until oral testimony is completed. The public hearing will begin at 3 p.m. and will take place in the Tippy Foster Meeting Room 910, in the Southfield Building at 4000 South IH 35, Austin, Texas 78704.

The 30-day public comment periods for §§170.1, 170.2, and 170.3 has been extended from July 4 until July 24, 1991. The text of the proposed rules was published in the June 4, 1991, issue of the *Texas Register*.

Depending upon attendance, a time limitation may be placed on oral testimony. Written summaries of testimony will be accepted and are encouraged.

Issued in Austin, Texas, on July 8, 1991.

TRD-9108082 Susan M. Kelley
General Counsel
Texas Workers' Compensation Commission

Filed: July 8, 1991

For further information, please call: (512) 440-3972

Correction of Error

The Texas Workers' Compensation Commission submitted 28 TAC §11.106 for publication in the February 26, 1991, issue of the *Texas Register*.

In the third paragraph of the notice in subsection (a), the first sentence should read as follows.

"[Name of employer] esta cubierto por aseguranza de compensacion al trabajador atraves de [name of insurance carrier] para su proteccion."

Also the commission's assigned toll free number should be inserted in the first paragraph on page 1294. "1 (800) 252-7031."

1991 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1991 issues of the *Texas Register*. Because of printing schedules, material received 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 of publication. A bullet 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. |
|-------------------------|---|---|
| 1 *Tuesday, January 1 | Friday, December 21 | Thursday, December 27 |
| Friday, January 4 | NO ISSUE PUBLISHED | |
| 2 Tuesday, January 8 | Wednesday, January 2 | Thursday, January 3 |
| 3 Friday, January 11 | Monday, January 7 | Tuesday, January |
| 4 Tuesday, January 15 | Wednesday, January 9 | Thursday, January 10 |
| 5 Friday, January 18 | Monday, January 14 | Tuesday, January 15 |
| 6 Tuesday, January 22 | Wednesday, January 16 | Thursday, January 17 |
| Friday, January 25 | 1990 ANNUAL INDEX | |
| 7 Tuesday, January 29 | Wednesday, January 23 | Thursday, January 24 |
| 8 Friday, February 1 | Monday, January 28 | Tuesday, January 29 |
| 9 Tuesday, February 5 | Wednesday, January 30 | Thursday, January 31 |
| 10 Friday, February 8 | Monday, February 4 | Tuesday, February 5 |
| 11 Tuesday, February 12 | Wednesday, February 6 | Thursday, February 7 |
| 12 Friday, February 15 | Monday, February 11 | Tuesday, February 12 |
| 13 Tuesday, February 19 | Wednesday, February 13 | Thursday, February 14 |
| 14 *Friday, February 22 | Friday, February 15 | Tuesday, February 19 |
| 15 Tuesday, February 26 | Wednesday, February 20 | Thursday, February 21 |
| 16 Friday, March 1 | Monday, February 25 | Tuesday, February 26 |
| 17 Tuesday, March 5 | Wednesday, February 27 | Thursday, February 28 |
| 18 Friday, March 8 | Monday, March 4 | Tuesday, March 5 |
| 19 Tuesday, March 12 | Wednesday, March 6 | Thursday, March 7 |
| 20 Friday, March 15 | Monday, March 11 | Tuesday, March 12 |
| 21 Tuesday, March 19 | Wednesday, March 13 | Thursday, March 14 |
| 22 Friday, March 22 | Monday, March 18 | Tuesday, March 19 |
| 23 Tuesday, March 26 | Wednesday, March 20 | Thursday, March 21 |
| 24 Friday, March 29 | Monday, March 25 | Tuesday, March 26 |
| 25 Tuesday, April 2 | Wednesday, March 27 | Thursday, March 28 |
| 26 Friday, April 5 | Monday, April 1 | Tuesday, April 2 |
| 27 Tuesday, April 9 | Wednesday, April 3 | Thursday, April 4 |
| 28 Friday, April 12 | Monday, April 8 | Tuesday, April 9 |
| 29 Tuesday, April 16 | Wednesday, April 10 | Thursday, April 11 |
| *Friday, April 19 | FIRST QUARTERLY INDEX | |

| | | |
|-------------------------|-----------------------------|---------------------|
| 30 Tuesday, April 23 | Wednesday, April 17 | Thursday, April 18 |
| 31 Friday, April 26 | Monday, April 22 | Tuesday, April 23 |
| 32 Tuesday, April 30 | Wednesday, April 24 | Thursday, April 25 |
| 33 Friday, May 3 | Monday, April 29 | Tuesday, April 30 |
| 34 Tuesday, May 7 | Wednesday, May 1 | Thursday, May 2 |
| 35 Friday, May 10 | Monday, May 6 | Tuesday, May 7 |
| 36 Tuesday, May 14 | Wednesday, May 8 | Thursday, May 9 |
| 37 Friday, May 17 | Monday, May 13 | Tuesday, May 14 |
| 38 Tuesday, May 21 | Wednesday, May 15 | Thursday, May 16 |
| 39 Friday, May 24 | Monday, May 20 | Tuesday, May 21 |
| 40 Tuesday, May 28 | Wednesday, May 22 | Thursday, May 23 |
| 41 *Friday, May 31 | Friday, May 24 | Tuesday, May 28 |
| 42 Tuesday, June 4 | Wednesday, May 29 | Thursday, May 30 |
| 43 Friday, June 7 | Monday, June 3 | Tuesday, June 4 |
| 44 Tuesday, June 11 | Wednesday, June 5 | Thursday, June 6 |
| 45 Friday, June 14 | Monday, June 10 | Tuesday, June 11 |
| 46 Tuesday, June 18 | Wednesday, June 12 | Thursday, June 13 |
| 47 Friday, June 21 | Monday, June 17 | Tuesday, June 18 |
| 48 Tuesday, June 25 | Wednesday, June 19 | Thursday, June 20 |
| 49 Friday, June 28 | Monday, June 24 | Tuesday, June 25 |
| 50 Tuesday, July 2 | Wednesday, June 26 | Thursday, June 27 |
| 51 Friday, July 5 | Monday, July 1 | Tuesday, July 2 |
| Tuesday, July 9 | NO ISSUE PUBLISHED | |
| 52 Friday, July 12 | Monday, July 8 | Tuesday, July 9 |
| 53 Tuesday, July 16 | Wednesday, July 10 | Thursday, July 11 |
| 54 Friday, July 19 | Monday, July 15 | Tuesday, July 16 |
| Tuesday, July 23 | SECOND QUARTERLY IN- DEX | |
| 55 Friday, July 26 | Monday, July 22 | Tuesday, July 23 |
| 56 Tuesday, July 30 | Wednesday, July 24 | Thursday, July 25 |
| 57 Friday, August 2 | Monday, July 29 | Tuesday, July 30 |
| 58 Tuesday, August 6 | Wednesday, July 31 | Thursday, August 1 |
| 59 Friday, August 9 | Monday, August 5 | Tuesday, August 6 |
| 60 Tuesday, August 13 | Wednesday, August 7 | Thursday, August 8 |
| 61 Friday, August 16 | Monday, August 12 | Tuesday, August 13 |
| 62 Tuesday, August 20 | Wednesday, August 14 | Thursday, August 15 |
| 63 Friday, August 23 | Monday, August 19 | Tuesday, August 20 |
| 64 Tuesday, August 27 | Wednesday, August 21 | Thursday, August 22 |
| 65 Friday, August 30 | Monday, August 26 | Tuesday, August 27 |
| 66 Tuesday, September 3 | Wednesday, August 28 | Thursday, August 29 |
| Friday, September 6 | NO ISSUE PUBLISHED | |

| | | |
|--------------------------|-------------------------|------------------------|
| 67 Tuesday, September 10 | Wednesday, September 4 | Thursday, September 5 |
| 68 Friday, September 13 | Monday, September 9 | Tuesday, September 10 |
| 69 Tuesday, September 17 | Wednesday, September 11 | Thursday, September 12 |
| 70 Friday, September 20 | Monday, September 16 | Tuesday, September 17 |
| 71 Tuesday, September 24 | Wednesday, September 18 | Thursday, September 19 |
| 72 Friday, September 27 | Monday, September 23 | Tuesday, September 24 |
| 73 Tuesday, October 1 | Wednesday, September 25 | Thursday, September 26 |
| 74 Friday, October 4 | Monday, September 30 | Tuesday, October 1 |
| 75 Tuesday, October 8 | Wednesday, October 2 | Thursday, October 3 |
| 76 Friday, October 11 | Monday, October 7 | Tuesday, October 8 |
| Tuesday, October 15 | THIRD QUARTERLY INDEX | |
| 77 Friday, October 18 | Monday, October 14 | Tuesday, October 15 |
| 78 Tuesday, October 22 | Wednesday, October 16 | Thursday, October 17 |
| 79 Friday, October 25 | Monday, October 21 | Tuesday, October 22 |
| 80 Tuesday, October 29 | Wednesday, October 23 | Thursday, October 24 |
| 81 Friday, November 1 | Monday, October 28 | Tuesday, October 29 |
| 82 Tuesday, November 5 | Wednesday, October 30 | Thursday, October 31 |
| 83 Friday, November 8 | Monday, November 4 | Tuesday, November 5 |
| 84 Tuesday, November 12 | Wednesday, November 6 | Thursday, November 7 |
| 85 *Friday, November 15 | Friday, November 8 | Tuesday, November 12 |
| 86 Tuesday, November 19 | Wednesday, November 13 | Thursday, November 14 |
| 87 Friday, November 22 | Monday, November 18 | Tuesday, November 19 |
| 88 Tuesday, November 26 | Wednesday, November 20 | Thursday, November 21 |
| 89 Friday, November 29 | Monday, November 25 | Tuesday, November 26 |
| Tuesday, December 3 | NO ISSUE PUBLISHED | |
| 90 Friday, December 6 | Monday, December 2 | Tuesday, December 3 |
| 91 Tuesday, December 10 | Wednesday, December 4 | Thursday, December 5 |
| 92 Friday, December 13 | Monday, December 9 | Tuesday, December 10 |
| 93 Tuesday, December 17 | Wednesday, December 11 | Thursday, December 12 |
| 94 Friday, December 20 | Monday, December 16 | Tuesday, December 17 |
| 95 Tuesday, December 24 | Wednesday, December 18 | Thursday, December 19 |
| 96 *Friday, December 27 | Friday, December 20 | Monday, December 23 |
| Tuesday, December 31 | NO ISSUE PUBLISHED | |
| 1 *Friday, January 3 | Friday, December 27 | Tuesday, December 31 |
| 2 *Tuesday, January 7 | Tuesday, December 31 | Thursday, January 2 |
| 3 Friday, January 10 | Monday, January 6 | Tuesday, January 7 |
| 4 Tuesday, January 14 | Wednesday, January 8 | Thursday, January 9 |
| 5 Friday, January 17 | Monday, January 13 | Tuesday, January 14 |

Please use this form to order a subscription to the *Texas Register*, a back issue, or to indicate a change of address. For more information about the *Texas Register* please call 512/463-5561. Please specify the exact dates and quantities of the issues requested. Each copy of a back issue is \$4. You also may write to the Texas Register, P.O. Box 13824, Austin, TX 78711-3824.

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'm enclosing payment for 1 year/\$90. 6 months/\$70. 7 week trial/\$14.
Bill me for 1 year/\$90. 6 months/\$70.

Make checks payable to the Secretary of State. Subscription fees will not be refunded. Do not use this card to renew subscriptions. Return to Texas Register, P.O. Box 13824 Austin, TX 78711-3824. For more information call 512/463-5561. ckc

Second Class Postage
PAID
Austin, Texas
and additional entry offices
