

# Texas Register

Volume 15, Number 28, April 10, 1990

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## In This Issue...

### **Office of the Governor**

Appointments Made March 30, 1990

1993-Coastal Water Authority

1993-Home Health Services Advisory Council

1993-Pilot Commission for the Sabine Bar, Pass and Tributaries

1993-Justice of the Thirteenth Court of Appeals

1993-Board of Plumbing Examiners

1993-State Pension Review Board

1993-Commission on Jail Standards

1993-Department of Information Resources Council

1993-Fire Department Emergency Board

Appointments Made April 1, 1990

1993-Texas Workers' Compensation Commission

### **Emergency Sections**

State Board of Insurance

1995-General Administration

1995-Corporate and Financial Regulation

Texas Water Development Board

1995-Research and Planning Fund

### **Proposed Sections**

Office of the Governor

1997-Budget and Planning Office

Railroad Commission of Texas

1998-Transportation Division

Texas State Board of Public  
Accountancy

1999-Continuing Professional Education

State Board of Veterinary Medical  
Examiners

2004-Licensing

2004-Rules of Professional Conduct

2004-Practice and Procedure

Texas Department of Health

2005-HIV and STD Control

2011-Registry for Providers of Health-Related Services

2012-Food and Drug

2016-Occupational Health and Radiation Control

2017-Wastewater Surveillance and Technology

2021-Water Hygiene

State Board of Insurance

2022-Agent's Licensing

Employees Retirement System

2024-Benefits

Texas Department of Public Safety

2025-Controlled Substances Regulations

Texas Department of Criminal Justice

2030-Receipt and Disbursement of Work Program  
Residents' Earned Funds

Texas Rehabilitation Commission

2031-Special Rules and Policies

### **Withdrawn Sections**

Texas State Board of Public  
Accountancy

2032-Continuing Professional Education

CONTENTS CONTINUED INSIDE

## Texas Register

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

**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

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## ***Adopted Sections***

Railroad Commission of Texas

2033–Oil and Gas Division

Texas Department of Health

2033–Texas Board of Health

2033–Maternal and Child Health Services

2034–Home Health Care Agencies

2034–Long-Term Care

Texas Parks and Wildlife Department

2037–Executive

Comptroller of Public Accounts

2037–Tax Administration

Texas Department of Human Services

2037–Income Assistance Services

2038–Family Self-support Services

State Board of Insurance

2040–Notification Pursuant to the Texas Insurance Code,  
Chapter 5, Subchapter L

## ***Open Meetings***

2043–Texas Department of Aviation

2043–Advisory Commission on State Emergency Commu-  
nications

2043–Court Reporters Certification Board

2043–Commission on Fire Protection Personnel Standards  
and Education

2044–Texas Department of Health

2044–Texas Health and Human Services Coordinating  
Council

2044–Texas Higher Education Coordinating Board

2045–Texas Lay Midwifery Board

2046–Texas Board of Licensure for Nursing Home  
Administrators

2046–Texas Parks and Wildlife Department

2046–State Pension Review Board

2046–Public Utility Commission of Texas

2046–Texas Racing Commission

2046–State Committee of Examiners for Speech-  
Language Pathology and Audiology

2047–Texas Water Commission

2047–Regional Meetings

## ***In Addition***

State Banking Board

2049–Notice of Hearing

Texas Department of Banking

2049–Notice of Hearing

Office of Consumer Credit Commissioner

2049–Notice of Rate Ceiling

Texas Education Agency

2050–Request for Application-Staff Development Program  
for the Improvement of Geographic Education

Governor's Office of Budget and  
Planning

2051–Contract Award Notice

Texas Department of Health

2051–Licensing Actions for Radioactive Materials  
Community Justice Assistance Division

2054–Forms for Grant-in-aid Programs

North Central Texas Council of  
Governments

2054–Consultant Contract Award

Public Utility Commission of Texas

2054–Notices of Application to Amend Certificates of  
Convenience and Necessity

2055–Notice of Application to Revise a Telephone Service  
Base Rate Area

Texas Water Commission

2055–Notice of Application for Waste Disposal Permit

## ***Profiles***

2056–General Land Office



Name: Niki Maldonado

Grade: 8

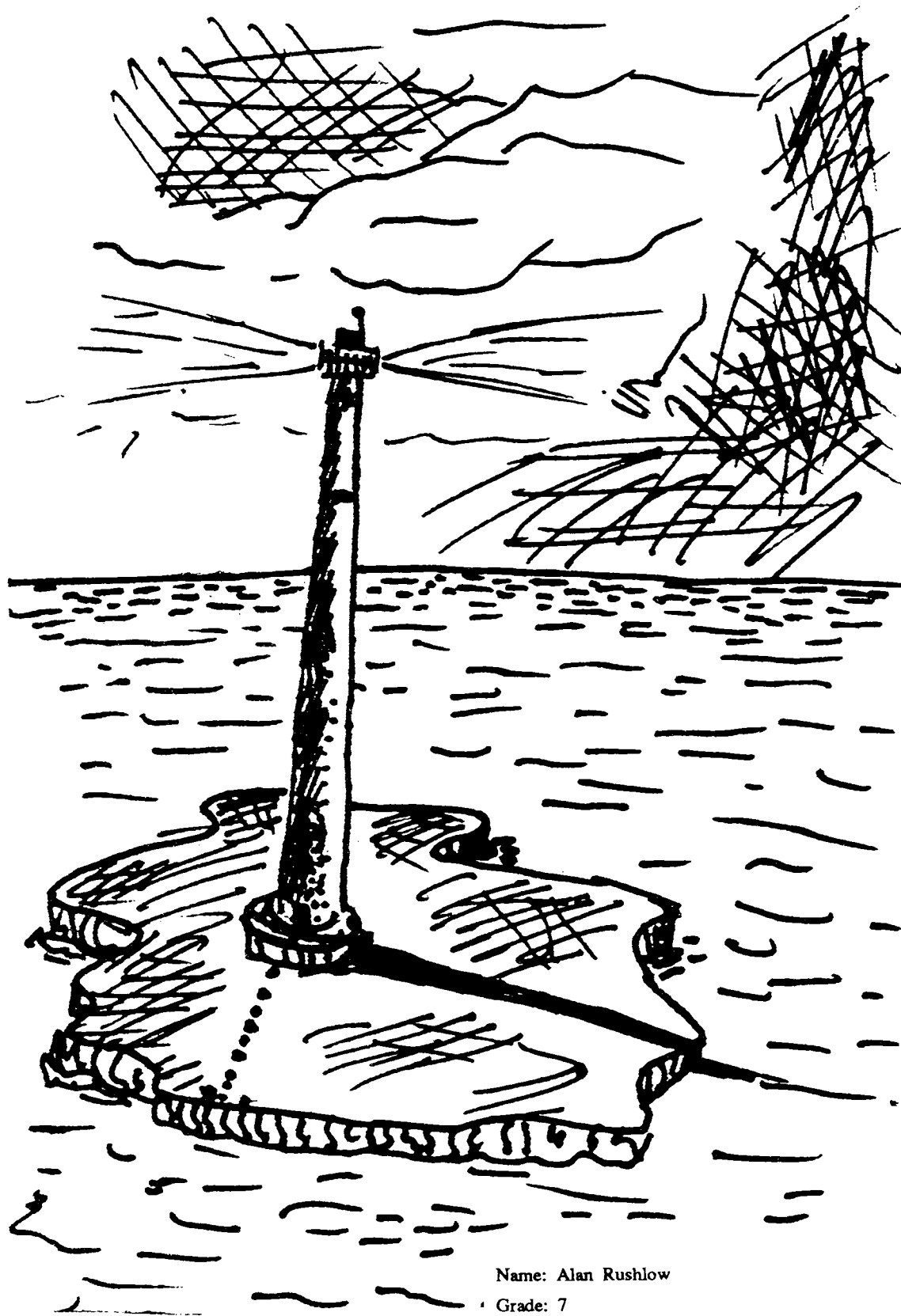
School: Baker Middle School, La Porte



Name: Melissa Epperly

Grade: 7

School: Baker Middle School, La Porte



Name: Alan Rushlow

Grade: 7

School: Baker Middle School, La Porte

# TAC Titles Affected

## TAC Titles Affected—April

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

### TITLE 1. ADMINISTRATION

#### *Part I. Office of the Governor*

1 TAC §5.301—1997

1 TAC §5.302—1997

1 TAC §5.303—1998

### TITLE 4. AGRICULTURE

#### *Part I. Texas Department of Agriculture*

4 TAC §11.2—1877

### TITLE 16. ECONOMIC REGULATION

#### *Part I. Railroad Commission of Texas*

16 TAC §3.74—2033

16 TAC §5.103—1998

16 TAC §§5.581-5.582, 5.584-5.590—1895

#### *Part II. Public Utility Commission of Texas*

16 TAC §21.141—1883

16 TAC §§21.201-21.208—1883

#### *Part IV. Texas Department of Licensing and Regulation*

16 TAC §§63.1, 63.10, 63.20, 63.21, 63.30, 63.40, 63.60, 63.70, 63.71, 63.80-63.82, 63.90-63.94—1957

16 TAC §§67.1-67.28—1959

16 TAC §§67.1, 67.10, 67.20-67.23, 67.30, 67.40, 67.60, 67.61, 67.70, 67.80-67.83, 67.90-67.92, 67.94, 67.100-67.105—1050

16 TAC §§70.78, 70.90-70.95, 70.120—1919, 1925

16 TAC §§78.1, 78.10, 78.20, 78.21, 78.30, 78.40, 78.60, 78.70-78.76, 78.80-78.82, 78.90-78.94—1960

16 TAC §§80.1-80.5, 80.8-80.10—1963

16 TAC §§80.1, 80.10, 80.20, 80.30, 80.40, 80.60, 80.70, 80.80-80.82, 80.90, 80.91, 80.94, 80.100-80.103—1963

### TITLE 22. EXAMINING BOARDS

#### *Part X. Texas Funeral Service Commission*

22 TAC §203.3—1925

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

22 TAC §511.122—1921, 1926

22 TAC §513.22—1926

22 TAC §513.47—1927

22 TAC §523.27—1927

22 TAC §523.63—1999, 2032

#### *Part XXIII. Texas Real Estate Commission*

22 TAC §535.67—1927

22 TAC §535.68—1928

22 TAC §535.94—1928

22 TAC §535.112—1929

22 TAC §535.153—1929

22 TAC §535.154—1929

#### *Part XXIV. State Board of Veterinary Medical Examiners*

22 TAC §571.4—2004

22 TAC §573.50—2004

22 TAC §575.1—2004

22 TAC §575.19—2005

### TITLE 25. HEALTH SERVICES

#### *Part I. Texas Department of Health*

25 TAC §1.91—2033

25 TAC §37.90—2033

25 TAC §§98.1-98.8—2005

25 TAC §§98.21-98.30—2007

25 TAC §§98.41-98.44—2010

25 TAC §§115.5, 115.8, 115.17—2034

25 TAC §115.18—2034

25 TAC §127.2—2011

25 TAC §127.3, §127.4—2011

25 TAC §145.91—2034

25 TAC §§229.341-229.349—2012

25 TAC §289.126—2016

25 TAC §301.18—2017

25 TAC §§325.5, §325.6—1930  
25 TAC §325.75—1931  
25 TAC §325.92—1931  
25 TAC §§325.143, 325.150, 325.151—1931  
25 TAC §325.185—1932  
25 TAC §325.484—1932  
25 TAC §§325.701, 325.702, 325.705, 325.706—1933

25 TAC §§337.205-337.207—2021  
TITLE 28. INSURANCE

**Part I. State Board of Insurance**

28 TAC §1.304—1995  
28 TAC §1.408—1995  
28 TAC §1.601—1885  
28 TAC §§1.901-1.911—1895  
28 TAC §3.3819—1895  
28 TAC §§5.1301-5.1309—1877  
28 TAC §§5.1501-5.1503—1880  
28 TAC §7.32—1995  
28 TAC §7.50—1881, 1933  
28 TAC §19.907—2022  
28 TAC §28.1, §28.2—1881

**Part II. Industrial Accident Board**

28 TAC §64.10—1887

**Part II. Texas Workers' Compensation Commission**

28 TAC §41.1—1922, 1934  
28 TAC §41.70—1922, 1934

TITLE 31. NATURAL RESOURCES  
AND CONSERVATION

**Part II. Texas Parks and Wildlife Department**

31 TAC §51.141—2037

**Part III. Texas Air Control Board**

31 TAC §§121.1, 121.3, 121.15, 121.21—1934

**Part IX. Texas Water Commission**

31 TAC §334.1—1935  
31 TAC §§334.2, 334.3, 334.5-334.7—1939  
31 TAC §334.13—1941

31 TAC §§334.21-334.23—1941  
31 TAC §§334.42, 334.44, 334.47, 334.50, 334.51—1942  
31 TAC §§334.121-334.132—1946

**Part X. Texas Water Development Board**

31 TAC §355.74—1995

TITLE 34. PUBLIC FINANCE

**Part I. Comptroller of Public Accounts**

34 TAC §3.182—1951  
31 TAC §3.230—2037  
34 TAC §5.123—1887

**Part IV. Employees Retirement System**

34 TAC §77.9, §77.11—2024

**Part VII. State Property Tax Board**

34 TAC §155.4—1887, 1893  
34 TAC §155.38—1893  
34 TAC §155.45—1888, 1893  
34 TAC §161.201—1888

TITLE 37. PUBLIC SAFETY AND  
CORRECTIONS

**Part I. Texas Department of Public Safety**

37 TAC §§13.71-13.88—2025

**Part VI. Texas Department of Criminal Justice**

37 TAC §§160.1-160.8—2030

TITLE 40. SOCIAL SERVICES AND  
ASSISTANCE

**Part I. Texas Department of Human Services**

40 TAC §§3.2201, 3.2203, 3.2208—2037  
40 TAC §§10.3102, 10.3106, 10.3107, 10.3114, 10.3116,  
10.3122, 10.3123, 10.3155, 10.3159, 10.3160, 10.3165,  
10.3167, 10.3170, 10.3172, 10.3173—2038  
40 TAC §§10.33010, 10.3307, 10.3320-10.3324—2039  
40 TAC §§10.3501-10.3506—1951  
40 TAC §§10.7001, 10.7005, 10.7007—2040  
40 TAC §15.200, §15.210—1889  
40 TAC §16.1502, §16.1503—1955  
40 TAC §16.1601—1955  
40 TAC §§16.1902, 16.1905, 16.1908, 16.1909—1055



40 TAC §48.2101, §48.2109—1889

40 TAC §§48.2701-48.2708, 48.2710, 48.2711—1963

40 TAC §48.9808—1967

40 TAC §56.701—1953

**Part II. Texas Rehabilitation Commission**

40 TAC §117.2—2031

**Part IX. Texas Department on Aging**

40 TAC §255.39—1967

**Part II. Texas Rehabilitation Commission**

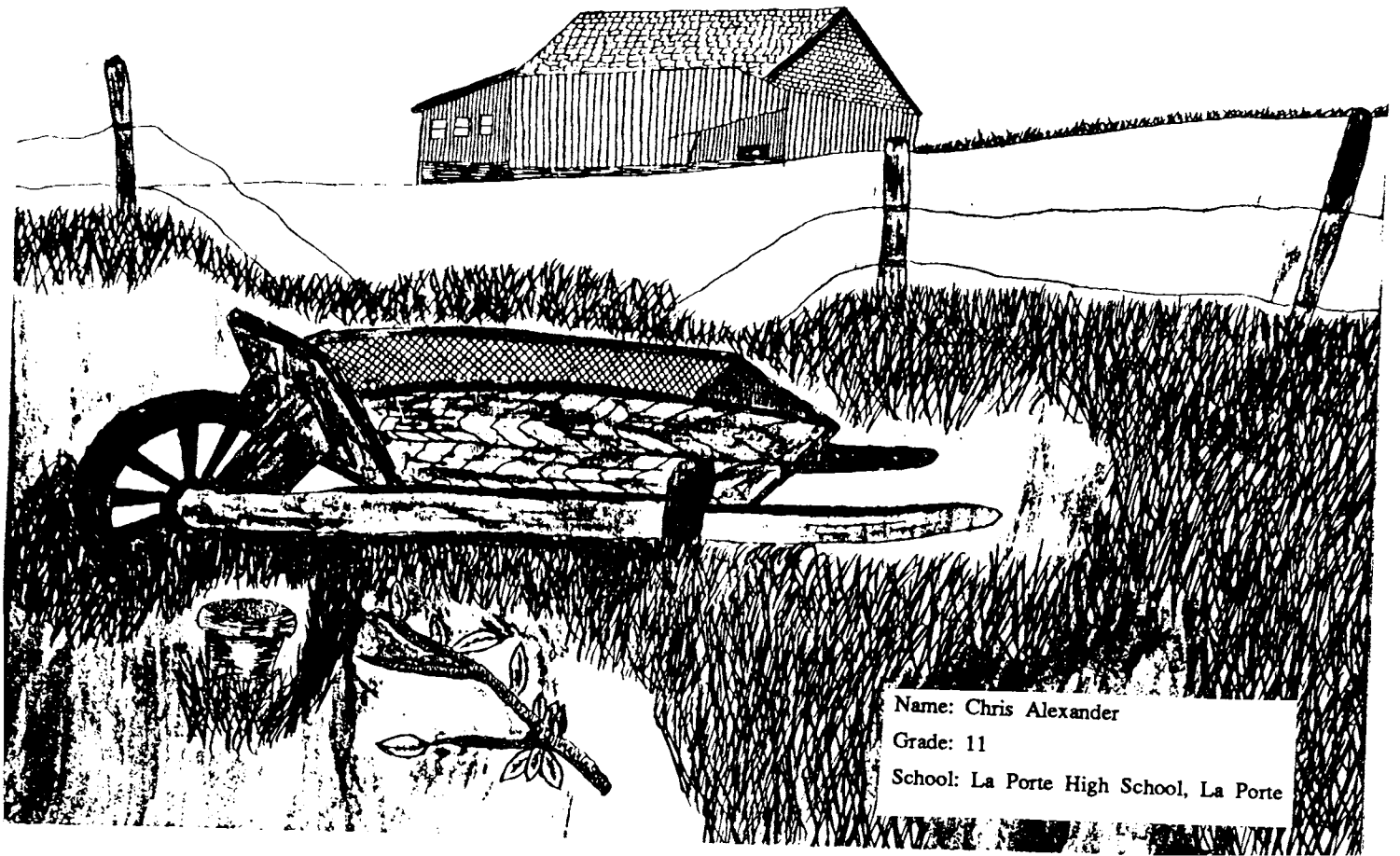
40 TAC §101.11—1891

**TITLE 43. TRANSPORTATION**

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

43 TAC §25.91—1922





Name: Chris Alexander  
Grade: 11  
School: La Porte High School, La Porte

# The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in Chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

## Appointments Made March 30, 1990

To be a member of the **Coastal Water Authority** for a term to expire April 1, 1992: Barbra Gigout, Route 2, Box 60, Dayton, Texas 77535. Ms. Gigout will be filling the term of Buster French of Bellview, whose term expired.

To be a member of the **Home Health Services Advisory Council** for a term to expire January 31, 1992: Joyce Nicholson Snead, 1604 Larry Wadkins, El Paso, Texas 79936. Mrs. Snead is being reappointed.

To be a member of the **Pilot Commission for the Sabine Bar, Pass, and Tributaries** for a term to expire August 22, 1991: Charles Paul Turco, 113 Briggs, Beaumont, Texas 77707. Dr. Turco is being reappointed.

To be a member of the **Pilot Commission for the Sabine Bar, Pass, and Tributaries** for a term to expire March 22, 1991: Patty Cantella Neild, 3560 Delaware, Suite 107, Beaumont, Texas 77706. Mrs. Neild is being reappointed.

To be a member of the **Justice of the Thirteenth Court of Appeals** until the next general election and until his successor shall be duly elected and qualified: William H. Keys, 432 Bermuda, Corpus Christi, Texas 78411. Mr. Keys will be replacing Justice Norman L. Utter of Corpus Christi, who is deceased.

To be a member of the **Board of Plumbing Examiners** for a term to expire September 5, 1991: Phillip A. Lord, P.O. Box 8746, 502 Link Road, Houston, Texas 77249. Mr.

Lord will be filling the unexpired term of William Pickens of Houston, who resigned.

To be a member of the **State Pension Review Board** for a term to expire January 31, 1991: Craig M. Stanfill, P.O. Drawer 1977, El Paso, Texas 79950. Mr. Stanfill will be filling the unexpired term of James M. Brelsford of Houston, who resigned.

To be a member of the **Commission on Jail Standards** for a term to expire January 31, 1995: Kenneth W. Anderson, Jr., 1601 Elm Street, Suite 2600, Dallas, Texas 75201. Mr. Anderson will be replacing Robert J. Uhr of New Braunfels, whose term expired.

To be a member of the **Department of Information Resources Council** for a term to expire February 1, 1995: Harry H. Richardson, 11858 Gallery View, San Antonio, Texas 78249. Mr. Richardson is being appointed to a new position pursuant to House Bill 2736, 71st Legislature, Regular Session.

To be a member of the **Fire Department Emergency Board** for a term to expire February 1, 1991: Howard Baughman, 401 East Losoya, Del Rio, Texas 78841. Chief Baughman is being appointed to a new position pursuant to House Bill 798, 71st Legislature, Regular Session.

## Appointments Made April 1, 1990.

To be a member of the **Texas Workers' Compensation Commission** for a term to expire February 1, 1991: Ramon Class, Owens Corning Fiberglass, 1701 Hollywood Road, Canyon, Texas 79015. Mr. Class is being appointed to a new position pursuant

to Senate Bill 1, 71st Legislature, second called session.

To be a member of the **Texas Workers' Compensation Commission** for a term to expire February 1, 1995: Edward K. Hayse, Jr., 7608 Teresa, North Richland Hills, Texas 76180. Mr. Hayse is being appointed to a new position pursuant to Senate Bill 1, 71st Legislature, second-called session.

To be a member of the **Texas Workers' Compensation Commission** for a term to expire February 1, 1995: Jack Garey, 15006 Bratton Lane, Austin, Texas 78728. Mr. Garey is being appointed to a new position pursuant to Senate Bill 1, 71st Legislature, second-called session.

To be a member of the **Texas Workers' Compensation Commission** for a term to expire February 1, 1993: Joe L. Hanson, 323 High Brook Drive, Richardson, Texas 75080. Mr. Hanson is being appointed to a new position pursuant to Senate Bill 1, 71st Legislature, second-called session.

To be a member of the **Texas Workers' Compensation Commission** for a term to expire February 1, 1993: O. D. Kenemore, 109 Carnation, Lake Jackson, Texas 77566. Mr. Kenemore is being appointed to a new position pursuant to Senate Bill 1, 71st Legislature, second-called session.

To be a member of the **Texas Workers' Compensation Commission** for a term to expire February 1, 1991: Dewey Mark, P.O. Box 696000, San Antonio, Texas 78269. Mr. Mark is being appointed to a new position pursuant to Senate Bill 1, 71st Legislature, second-called session.

TRD-9003375





Name: Jessica Henderson  
Grade: 10  
School: La Porte High School, La Porte

# Emergency Sections

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

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

## TITLE 28. INSURANCE

### Part I. State Board of Insurance

#### Chapter 1. General Administration

##### Subchapter B. Fees, Charges, and Costs

###### • 28 TAC §1.304

The State Board of Insurance is renewing the effectiveness of the emergency adoption of amended §1.304, for a 60-day period effective April 14, 1990. The text of amended §1.304 was originally published in the December 22, 1989, issue of the *Texas Register* (14 TexReg 6708).

Issued in Austin, Texas, on April 4, 1990.

TRD-9003489      Nicholas Murphy  
                         Chief Clerk  
                         State Board of Insurance

Effective date: April 14, 1990

Expiration date: June 13, 1990

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

##### Subchapter C. Maintenance Taxes

###### • 28 TAC §1.408

The State Board of Insurance is renewing the effectiveness of the emergency adoption of new §1.408, for a 60-day period effective April 14, 1990. The text of new §1.408 was originally published in the December 22, 1989, issue of the *Texas Register* (14 TexReg 6709).

Issued in Austin, Texas, on April 4, 1990.

TRD-9003479      Nicholas Murphy  
                         Chief Clerk  
                         State Board of Insurance

Effective date: April 14, 1990

Expiration date: June 13, 1990

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

## Chapter 7. Corporate and Financial Regulation

### Subchapter A. Examination and Corporate Custodian and Tax

#### • 28 TAC §7.32

The State Board of Insurance is renewing the effectiveness of the emergency adoption of new §7.32, for a 60-day period effective April 12, 1990. The text of new §7.32 was originally published in the December 19, 1989, issue of the *Texas Register* (14 TexReg 6618).

Issued in Austin, Texas, on April 4, 1990.

TRD-9003490      Nicholas Murphy  
                         Chief Clerk  
                         State Board of Insurance

Effective date: April 12, 1990

Expiration date: June 11, 1990

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part X. Texas Water Development Board

#### Chapter 355. Research and Planning Fund

##### Facility Engineering in Economically Distressed Areas

###### • 31 TAC §355.74

The Texas Water Development Board (board) adopts on an emergency basis an amendment to §355.74, concerning the criteria for eligibility in the Economically Distressed Areas Program. Section 355.74 was adopted by the board on an emergency basis on December 7, 1990, as part of new sections concerning facility engineering for economically distressed areas. The proposed amendment to §355.74 adopts the model political subdivision rules (model rules) by reference. The adoption of the model rules by reference will allow the board to further implement the Economically Distressed Areas Program. It is the purpose of the board to make funds available to political subdivisions through the Economically Distressed Areas Program for facility engineering.

The board finds that there is a need to adopt the amendments to §355.74 on an

emergency basis in order to further implement the Economically Distressed Areas Program as established by the 71st Legislature, 1989. The Economically Distressed Areas Program provides financial assistance in those eligible counties which contain residential areas without any or with seriously inadequate water supply and sewer services creating serious and unacceptable health hazards and threatens the public health, safety, and welfare.

The model rules establish a minimum standard for subdivision regulation in eligible political subdivisions which wish to receive financial assistance through the Economically Distressed Areas Program. The political subdivisions which wish to participate in the Economically Distressed Areas Program must adopt the model rules to participate in the program.

The new sections are adopted on an emergency basis under the Texas Water Code, §6.101 and §15.403, which states that the board shall adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code and other laws of the state.

§355.74. *Criteria for Eligibility [of Political Subdivisions]*. Political subdivisions must meet the appropriate requirements of this section before the board may provide financial assistance for facility engineering.

(1) (No change.)

(2) A county within which the political subdivision applying for assistance is wholly or partially located must have adopted and be enforcing the model subdivision rules required by the Texas Water Code, §16.343. The board adopts these model political subdivision rules by reference. Copies of the model subdivision rules are available from the board upon request from the Texas Water Development Board, Project Director, Economically Distressed Areas, P.O. Box 13231, Austin, Texas 78711 [If a county does not have the authority to adopt the model subdivision rules, the application for facility engineering must contain a resolution committing the county commissioners court to adopt and implement the model subdivision rules at such time as the county obtains the authority to do so].

(3)-(8) (No change.)

Issued in Austin, Texas, on March 23, 1990.

TRD-9003315      Suzanne Schwartz  
                         General Counsel  
                         Texas Water Development Board

Effective date: March 30, 1990

Expiration date: April 6, 1990



# 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 1.

### ADMINISTRATION

#### Part I. Office of the Governor

#### Chapter 5. Budget and Planning Office

#### Subchapter C. Energy Conservation Design Standards

#### Energy Conservation Design Standard for New State Buildings

##### • 1 TAC §5.301

The Energy Management Center in the Governor's Office of Budget and Planning proposes an amendment to §5.301, concerning the Energy Conservation Design Standard for New State Buildings. The amendment regards only the material which is adopted by reference in this section. The section was originally adopted in the May 19, 1989, issue of the *Texas Register* (14 TexReg 2463). In the amendment, no changes are being proposed to the text of the section itself.

The amendment is proposed in order to modify the insulation requirements for slab-on-grade floors and below grade walls. The section clearly states the requirements for providing the appropriate thermal resistance of slab-on-grade floors and below grade walls. The section is proposed to eliminate the requirement of perimeter insulation for monolithic slab-on-grade floors and adjust the requirement for providing thermal resistance at slab-on-grade floors and below grade walls. Research by ASHRAE indicates slab-on-grade insulation is not cost-effective, with a payback expected to exceed 25 years.

Malcolm Verdict, state agencies department manager at the Energy Management Center, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect will be a reduction in construction cost associated with the cost for installation of perimeter slab insulation and below grade wall insulation, as well as reduced maintenance associated with exposed perimeter insulation. Increased operating costs associated with utilities will be negligible. Life cycle costs will be reduced. There will be no fiscal implications for local government as a result of enforcing or administering the section, since this standard applies only to state-owned buildings.

Mr. Verdict 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 a reduction in the amount of general revenue funds required to pay construction costs in new state buildings built in compliance with the section. There will be no effect on small businesses as a result of enforcing the section, since this standards applies only to state-owned buildings. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

The Energy Management Center invites public review and comment on the amendment from state agencies, institutions of higher education, registered architects, professional engineers, design firms, and all other parties. Written comments on the amendment may be submitted through the mail to Lee Gros, AIA, Governor's Office of Budget and Planning, Energy Management Center, Box 12428, Austin, Texas 78711. Submissions should be marked "Comments-Energy Conservation Design Standard." All comments should be postmarked no later than 30 days from publication of this section in the *Texas Register*.

The amendment is proposed under the Texas Government Code, Title 4, §447.004, which provides the Energy Management Center of the Office of the Governor with the authority to adopt, publish, and revise energy conservation standards for all new state buildings and major renovations.

##### *§5.301. Energy Conservation Design Standards for New State Buildings. (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 March 29, 1990.

TRD-9003421

Sheila W. Beckett  
Director  
Governor's Office of  
Budget and Planning

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 463-1931

##### • 1 TAC §5.302

The Energy Management Center in the Governor's Office of Budget and Planning proposes new §5.302, concerning adoption by reference of the "Model Energy Code," 1989 Edition, prepared by the Council of

American Building Officials. The new standard replaces the existing "State Energy Conservation Manual," Number 113SBC607, Part I, Residential Buildings. The standard, set forth in the section, is proposed in order to comply with the Government Code, Title 4, §447.004. The purposes of the new section are to set minimum requirements and provide guidance for the energy efficient design of a new state-owned residential buildings in order to minimize energy use without constraining the building function or the comfort or productivity of the occupants, and to provide criteria for energy efficient design and methods for determining design compliance with these criteria. All new residential state buildings, including residential buildings of state-supported institutions of higher education, are required to meet the standard set forth in the section.

Malcolm Verdict, state agencies department manager at the Energy Management Center, 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. The standard, set forth in the section, does not apply to local government or small businesses and will therefore have no effect on them. There will be negligible first-cost impact, with a positive life cycle cost benefit for new state buildings.

Mr. Verdict 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 a reduction in the amount of general revenue funds required to pay energy costs in new state-owned residential buildings built in compliance with the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

The Energy Management Center invites public review and comment on the section from state agencies, registered architects, professional engineers, design firms, and all other interested parties. Written comments on the section may be submitted through the mail to Lee Gros, AIA, Governor's Office of Budget and Planning, Energy Management Center, Box 12428, Austin, Texas 78711. Submissions should be marked "Comments-Energy Conservation Design Standard." All comments should be postmarked no later than 30 days from publication of this section in the *Texas Register*.

The new section is proposed under the Texas Government Code, Title 4, §447.004, which provides the Energy Management Center of the Office of the Governor with the authority to adopt, publish, and revise energy conservation standards for all new state buildings and major renovations.

§5.302. *Energy Conservation Design Standard for New Residential State Buildings.* The Energy Management Center in the Governor's Office of Budget and Planning adopts by reference the energy conservation design standard entitled "Model Energy Code, 1989 Edition" originally prepared and maintained by the Council of American Building Officials. Copies of the standard are on file with the Governor's Energy Management Center, Room 620, Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78711, and may be viewed during normal office hours.

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 March 29 1990.

TRD-9003420      Sheila W. Beckett  
Director  
Office of Budget and  
Planning

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 463-1931

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• 1 TAC §5.303

The Energy Management Center in the Governor's Office of Budget and Planning proposes new §5.303, concerning the Energy Conservation Design Standard for Major Renovation Projects. The new section is proposed in order to comply with the provisions of the Government Code, Title 4, §447.004. The purposes of the new section are to define what constitutes a major renovation project and to set minimum requirements and provide guidance for the energy efficient design of major renovations in order to minimize energy use without constraining the building function or the comfort or productivity of the occupants, and to provide criteria for energy efficient building design and methods for determining if a major renovation complies with these criteria. All major renovation projects in state-owned buildings, including buildings of state-supported institutions of higher education, are required to meet the standard set forth in the section.

Malcolm Verdict, state agencies department manager at the Energy Management Center, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state agencies as a result of enforcing or administering the section. The standard does not apply to local government or small businesses and will therefore have no fiscal implications for them. There will be negligible first-cost impact with a positive life cycle cost benefit for renovations in state-owned buildings.

Mr. Verdict 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 or administering the section will be a reduction in the amount of general revenue funds required to pay energy costs in

state-owned buildings undergoing major renovation in compliance with the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

The Energy Management Center invites public review and comment on the new section from state agencies, registered architects, professional engineers, design firms, and all other parties. Written comments on the new section may be submitted through the mail to Lee Gros, AIA, Governor's Office of Budget and Planning, Energy Management Center, Box 12428, Austin, Texas 78711. Submissions should be marked "Comments-Energy Conservation Design Standard." All comments should be postmarked no later than 30 days from publication of this section in the *Texas Register*.

The new section is proposed under the Texas Government Code, Title 4, §447.004, which provides the Energy Management Center of the Office of the Governor with the authority to adopt and publish energy conservation standards for all new state buildings and major renovation projects.

§5.303. *Energy Conservation Design Standard for Major Renovation Projects.*

(a) All major renovation is subject to compliance with the Energy Conservation Design Standard for New State Buildings, dated June 1, 1989 The Energy Management Center in the Governor's Office of Budget and Planning adopts the following definition of major renovation: major renovation: a building renovation or improvement valued in excess of \$600,000.

(1) The extent of compliance with the Energy Conservation Design Standard is determined by the replacement value of the building (replacement value is determined by the latest available Market Appraisal Chart published by Market Appraisal Company, Incorporated).

(A) If the cost of the building renovation is less than 50% of the replacement value of the building, compliance with the Energy Conservation Design Standard is required only in the affected area(s).

(B) If the cost of the building renovation is more than 50% of the replacement value of the building, the entire building is subject to compliance with the Energy Conservation Design Standard.

(2) In no case should compliance with the Energy Conservation Design Standard require that the aggregate renovation investment in energy conservation pay back in more than four years, or more than eight years for a central plant renovation.

(b) To save tax dollars and promote energy efficiency, the Energy Management Center in the Governor's Office of Budget and Planning strongly recommends that building renovation and improvement

projects of less than \$600,000 comply, on a limited basis, with the Energy Conservation Design Standard.

(1) If a renovation project requires the functional replacement of a component of a system covered by the Energy Conservation Design Standard, then compliance with the Energy Conservation Design Standard is recommended only for the affected system(s).

(2) The Energy Management Center in the Governor's Office of Budget and Planning recommends a simple payback of four years or less on renovation investments in energy conservation, and eight years for a central plant renovation.

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 March 29, 1990.

TRD-9003419      Sheila W. Beckett  
Director  
Governor's Office of  
Budget and Planning

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 463-1931

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TITLE 16. ECONOMIC  
REGULATION

Part I. Railroad  
Commission of Texas

Chapter 5. Transportation  
Division

Subchapter F. Bills of Lading  
and Waybills.

• 16 TAC §5.103

The Railroad Commission of Texas (RCT) proposes new §5.103, concerning contract carriers providing pickup and delivery service, pursuant to a petition from Campbell's Delivery-Corpus, Incorporated. The new section as proposed would allow a carrier to use a manifest in lieu of bills of lading and waybills in operations rated out of RCT Tariff Number 48 Series. The new section would alleviate the cumbersome and time-consuming process that is required to issue separate bills of lading and waybills when a contract carrier is tendered multiple shipments for delivery in a pedal-type run for one account.

Jackye Greenlee, assistant director-Central Operations, has determined that for the first five-year period the section as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Jan Barton-Gerro, hearings examiner, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that a contract carrier can avoid the cumbersome generation of bills of lading, waybills and other instruments



otherwise required by the Motor Transportation Regulations, while maintaining the documentation and control presently provided by the multiple documents, thus reducing billing and rating time and expense for the contract carrier. There will be no effect on small businesses as a result of enforcing the section. 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 Jan Barton-Gerro, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorize the Commission to regulate motor carriers in all matters.

**§5.103. Contract Carriers Providing Pickup and Delivery Service.** Contract carriers transporting shipments of miscellaneous merchandise in a pickup and delivery service governed by the provisions of Tariff 48 Series prescribed by the Railroad Commission of Texas may comply with the procedures set forth in this section in lieu of the provisions in §§5.91-5.95 of this title (relating to Bills of Lading to Be Issued; Contents of Bills of Lading; Issuance of Waybills; Contents of Waybills; and Waybill to Accompany Shipment).

(1) Contract carriers providing pickup and delivery service shall record all shipments transported daily on a prenumbered route manifest form, using a separate form for each route conducted on each day of operation.

(2) Each route manifest shall include the following information:

- (A) name of carrier;
- (B) date;
- (C) route number;
- (D) name of driver;
- (E) vehicle number;
- (F) starting point of route;
- (G) ending point of route;
- (H) starting time of route;
- (I) ending time of route; and

(J) for each shipment picked up at each route stop point, the following information shall be shown:

(i) name and address of shipper;

- (ii) points of origination and destination;
- (iii) name and address of consignee;
- (iv) number of packages tendered;
- (v) weight; and

(vi) commodity description or the numerical reference to the applicable rate item in RCT Tariff 48 series. This reference may be used in lieu of placing the commodity description on the carrier's invoice or statement of charges.

(3) At such points of pickup where carrier is tendered multiple shipments from one consignor, a manifest listing all shipments so tendered shall be attached to the route manifest, with a cross-reference shown on the route manifest sheet at the applicable point of pickup. The information shown on the shipment manifest shall conform with the requirements of paragraph (2)(J) of this section.

(4) At each point of pickup or delivery, the carrier shall provide either a pickup receipt or a delivery receipt for shipments tendered by a consignor or directed to a consignee. Each receipt shall reflect the actual date of shipment pickup or shipment delivery.

(5) At points of pickup or delivery where multiple shipments have been listed on shipment manifests and cross-referenced to the route manifest, the carrier may, in lieu of issuing pickup or delivery receipts as provided in paragraph (4) of this section, provide the consignor or consignee a copy of such shipment manifest indicating the actual date of pickup or delivery.

(6) Shipments which consist of one or more carrier-furnished package containers with an attached bill of lading shall be in compliance with the delivery receipt requirement of paragraph (4) of this section if, when such shipments are delivered, one of the shipment packages is delivered with a copy of the bill of lading attached and marked to reflect the actual date of delivery.

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 April 2, 1990.

TRD-9003423  
Ciril Payne  
Assistant Director, Legal  
Division-General Law  
Railroad Commission of  
Texas

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 463-7095

## TITLE 22. EXAMINING BOARDS

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

#### Chapter 523. Continuing Professional Education

##### Mandatory Continuing Education (CE) Program

###### • 22 TAC §523.63

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

The Texas State Board of Public Accountancy proposed the repeal of §523.63, concerning mandatory continuing education attendance. The repeal will allow for the adoption of a new §523.63.

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

Mr. Bradley also has determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of enforcing the repeal as proposed will be the utilization of the new proposed §523.63. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

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

###### §523.63. Mandatory CE Attendance.

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 April 4, 1990.

TRD-9003396  
Bob E. Bradley  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 450-7066

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The Texas State Board of Public Accountancy proposes new §523.63,

concerning mandatory continuing education attendance. The new section is necessary to reflect the fiscal impact.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect is undeterminable. The effect will be determined by the policies of individual state agencies concerning reimbursement for individual CPA's cost of CE hours. The effect on local government for the first five-year period the section will be in effect is undeterminable. The effect will be determined by the policies of individual units of local governments concerning reimbursement for individual CPA's cost of CE hours. The cost of compliance with the section for small businesses will be undeterminable. The cost of compliance will be determined by the policies of individual small businesses concerning reimbursement for individual CPA's cost of CE hours. The cost of compliance for small businesses with the cost of compliance for the largest businesses affected by the section is undeterminable. However, there will be no difference for the cost per employee or the cost per hour of labor.

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be conformity with amendments to the Act, §15A, and better educated CPAs who will be better able to serve the public. The possible economic cost to individuals who are required to comply with the section as proposed will be  $20,000 = \text{estimated number of licensees} \times 40 \text{ CE hours per year} \times \$20 \text{ average cost of CE hour}$  \$16 million to small businesses. The possible cost in 1992 is \$8 million; and \$16 million in 1993-1996.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §15A, which provides the Texas State Board of Public Accountancy with the authority to promulgate rules regarding mandatory continuing education requirements.

#### §523.63. Mandatory CE Attendance.

(a) For a 1990 or 1991 license, mandatory continuing education (CE) attendance is required of any licensee engaged to any degree in the practice of public accounting as a condition for a license. The practice of public accounting is defined in the Rules of Professional Conduct, §501.2 of this title (relating to Definitions). The reporting period is September 1-August 31 of the following year.

(1) A licensee in public practice shall accrue a minimum of 40 CE credit hours during the current reporting period, or a minimum of 120 CE credit hours during the current and the two most recent reporting periods, with at least 20 CE credit hours during the current reporting period. Exceptions are as follows.

(A) An initial licensee in public practice must accrue the greater of a minimum of 20 CE credit hours or 4.0 CE credit hours for the full months remaining in the current reporting period not in excess of 40 CE credit hours.

(B) A licensee reentering public practice shall accrue for that license year a minimum of 20 CE credit hours in accounting, auditing, and/or taxation for the current license year prior to engaging in the practice of public accounting. A licensee shall be required to accrue a minimum of 40 CE credit hours for each subsequent license year thereafter. A sworn affidavit must be submitted to the board office reflecting: name, certificate number, date of reentry into public practice, credit hours received, and form of practice, i.e., employee, sole practitioner, member in a firm, and the location of where the licensee will be practicing. This affidavit must be filed within 30 days of the date of reentry into public practice (A blank affidavit may be obtained upon written request from the board).

(C) A licensee who has been licensed for less than three full years must accrue the minimum for an initial licensee plus 40 CE credit hours for each additional year or portion thereof.

(2) A former licensee, whether or not in public practice, whose certificate or registration shall have been revoked for failure to pay the annual license fee for three consecutive years and who makes application for reinstatement, shall pay the required fees and penalties and shall accrue the minimum CE credit hours requirement during the three-year period immediately preceding the date of application for reinstatement. Following reinstatement, a licensee shall conform to mandatory reporting and/or mandatory attendance requirements as outlined herein.

(3) The board may grant exemptions from the mandatory CE attendance requirements as follows:

(A) if a licensee is retired, regardless of age, and completes and forwards to the board an affidavit indicating retirement status and an intent not to practice public accountancy during the following license year;

(B) if a licensee is a nonresident of Texas, is not engaged in the practice of public accountancy in the State of Texas and does not intend to serve Texas clients from out of Texas for the following year. A licensee must petition the board for an exemption and submit an affidavit certifying to this effect;

(C) if a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability;

(D) if a licensee is on extended active military duty, does not practice public accountancy during the reporting period, and files a copy of orders to active military duty with the board; or

(E) if upon petition to the board, a licensee who is engaged in the practice of public accountancy, may be granted on an individual case-by-case basis, an exemption from CE attendance for reasons considered by the board to warrant an exemption. For example, the preparation and signing of routine income tax returns or the performance of routine accounting services for clients requiring an aggregate total of less than 40 hours a year, may be considered the basis for an exemption. Preparation of a financial statement for a client is specifically excluded from this exemption.

(4) The board may not grant exemptions from the requirement to report CE credit hours accrued. A licensee must report CE credit hours accrued on the annual license form, even if the number reported is zero.

(5) A licensee who has been granted the retired or disabled status is not required to accrue continuing education.

(6) Rules applicable to licensees prior to 1990 are hereby adopted by reference.

(b) For a 1992 license, mandatory continuing education (CE) attendance is required of any individual licensee, unless specifically exempted by rule. The reporting period is September 1, 1990-August 31, 1991. The following is the CE credit hour requirement.

(1) An initial licensee in public practice must accrue the greater of a minimum of 20 CE credit hours or 4.0 CE credit hours for the full months remaining in the current reporting period not in excess of 40 CE credit hours.

(2) A licensee in public practice who has been licensed for less than three full years shall accrue the requirements for an initial licensee, plus a minimum of 40 CE credit hours for each additional year.

(3) A licensee in public practice who has been licensed for more than three full years shall accrue a minimum of 40 CE credit hours during the current reporting period, or have accrued at least 120 CE credit hours during the current and two most recent reporting periods with a minimum of 20 CE credit hours during the current reporting period.

(4) An initial licensee not in public practice must accrue 4.0 CE credit hours for the full months remaining in the reporting period or a minimum of 20 CE credit hours, whichever is less.

(5) A licensee not in public practice who has been licensed more than one full year shall accrue a minimum of 20 CE credit hours during the current reporting period.

(6) A former licensee whose certificate or registration has been revoked or suspended, and who makes application for reinstatement, shall pay the required fees and penalties and shall accrue the minimum CE credit hours requirement during the three-year period immediately preceding the date of application for reinstatement. Following reinstatement, a licensee shall conform to mandatory reporting and/or mandatory attendance requirements as outlined herein.

(7) The board strongly supports a minimum of 40 CE credit hours for all licensees; however, the board will consider granting an exemption from the continuing education requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating retirement status during the license year for which the exemption is requested. A licensee who has been granted this exemption and who reenters the work force shall be required to accrue continuing education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing education hours shall be accrued from the technical area only as described in §523.2 of this title (relating to Standards for CPE Program Development);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor.

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting, tax compliance, planning or advice; management advisory services, data processing; treasury, finance; or audit,

(II) representing to the public that the licensee is a CPA or public accountant in connection with the sale of any services or products, including such

designation on a business card, letterhead, promotional brochure, advertisement, or office;

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management advisory services;

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and Subclauses (I)-(III) of this clause, questions shall be resolved in favor of inclusion of the work as the term "association with accounting work."

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue continuing education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing education hours shall be accrued from the technical area only as described in §523.2 of this title (relating to Standards for CPE Program Development);

(C) a licensee is a nonresident of Texas, and submits a sworn statement to the board that the continuing education requirements of the resident state have been met;

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on extended active military duty, does not practice public accountancy during the license year for which the exemption was granted, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance, that is acceptable to the board.

(8) The board may not grant exemptions from the requirement to report CE credit hours accrued. A licensee must report CE credit hours on the annual license notice form, even if the number reported is zero.

(9) A licensee who has been granted the retired or disabled status is not required to accrue continuing education.

(c) For a 1993 license, mandatory continuing education (CE) attendance is required of any individual licensee, unless specifically exempted by rule. The reporting period is September 1, 1991-August 31, 1992. The following is the CE credit hour requirement.

(1) An initial licensee in public practice must accrue the greater of a minimum of 20 CE credit hours or 4.0 CE credit hours for the full months remaining in the current reporting period not in excess of 40 CE credit hours.

(2) A licensee in public practice who has been licensed for less than three full years must accrue the requirements for an initial licensee, plus a minimum of 40 CE credit hours for each additional year.

(3) A licensee in public practice who has been licensed for more than three full years shall accrue a minimum of 40 CE credit hours during the current reporting period, or have accrued at least 120 CE credit hours during the current and two most recent reporting periods with a minimum of 20 CE credit hours during the current reporting period.

(4) An initial licensee not in public practice must accrue the greater of a minimum of 20 CE credit hours or 4.0 CE credit hours for the full months remaining in the current reporting period not in excess of 40 CE credit hours.

(5) A licensee not in public practice who has been licensed for less than two full years shall accrue the requirements for an initial licensee, plus a minimum of 40 CE credit hours for each additional year.

(6) A licensee not in public practice who has been licensed for more than two full years shall accrue a minimum of 40 CE credit hours during the current reporting period, or have accrued at least 60 CE credit hours during the current and most recent reporting period with a minimum of 20 CE credit hours during the current reporting period.

(7) A former licensee whose certificate or registration has been revoked or suspended, and who makes application for reinstatement, shall pay the required fees and penalties and shall accrue the minimum CE credit hours requirement during the three-year period immediately preceding the date of application for reinstatement. Following reinstatement, a licensee shall conform to mandatory reporting and/or mandatory attendance requirements as outlined herein.

(8) The board strongly supports a minimum of 40 CE credit hours for all licensees; however, the board will consider granting an exemption from the continuing education requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating retirement status during the license year for which the exemption is requested. A licensee who has been granted this exemption and who reenters the work force shall be required to accrue continuing education hours missed as a result of the

exemption subject to a maximum of 200 hours. Such continuing education hours shall be accrued from the technical area only as described in §523.2 of this title (relating to Standards for CPE Program Development);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor.

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; data processing; treasury; finance; or audit;

(II) representing to the public that the licensee is a CPA or public accountant in connection with the sale of any services or products, including such designation on a business card, letterhead, promotional brochure, advertisement, or office;

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management advisory services;

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and Subclauses (I)-(III) of this clause, the questions shall be resolved in favor of inclusion of the work as the term "association with accounting work."

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue continuing education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing education hours shall be accrued from the technical area only as described in §523.2 of this title (relating to Standards for CPE Program Development);

(C) a licensee is a nonresident of Texas, and submits a sworn statement to the board that the continuing education requirements of the resident state have been met;

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CE requirement. A licensee must petition the

board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on extended active military duty, does not practice public accountancy during the license year for which the exemption was granted, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance, that is acceptable to the board.

(9) The board may not grant exemptions from the requirement to report CE credit hours accrued. A licensee must report CE credit hours on the annual license notice form, even if the number reported is zero.

(10) A licensee who has been granted the retired or disabled status is not required to accrue continuing education.

(d) For a 1994 license, mandatory continuing education (CE) attendance is required of any individual licensee, unless specifically exempted by rule. The reporting period is September 1, 1992-August 31, 1993. The following is the CE credit hour requirement.

(1) An initial licensee in public practice must accrue the greater of a minimum of 20 CE credit hours or 4.0 CE credit hours for the full months remaining in the current reporting period not in excess of 40 CE credit hours.

(2) A licensee in public practice who has been licensed for less than three full years must accrue the requirements for an initial licensee, plus a minimum of 40 CE credit hours for each additional year.

(3) A licensee in public practice who has been licensed for more than three full years must accrue a minimum of 40 CE credit hours during the current reporting period, or have accrued at least 120 CE credit hours during the current and two most recent reporting periods with a minimum of 20 CE credit hours during the current reporting period.

(4) An initial licensee not in public practice must accrue the greater of a minimum of 20 CE credit hours or 4.0 CE credit hours for the full months remaining in the current reporting period not in excess of 40 CE credit hours.

(5) A licensee not in public practice who has been licensed for less than three full years must accrue the requirements for an initial licensee, plus a minimum of 40 CE credit hours for each additional year.

(6) A licensee not in public practice who has been licensed for more than three full years must accrue a

minimum of 40 CE credit hours during the current reporting period, or have accrued at least 100 CE credit hours during the current and two most recent reporting periods with a minimum of 20 CE credit hours during the current reporting period not in excess of 40 CE credit hours.

(7) A former licensee whose certificate or registration has been revoked or suspended, and who makes application for reinstatement, shall pay the required fees and penalties and shall accrue the minimum CE credit hours requirement during the three-year period immediately preceding the date of application for reinstatement. Following reinstatement, a licensee shall conform to mandatory reporting and/or mandatory attendance requirements as outlined herein.

(8) The board strongly supports a minimum of 40 CE credit hours for all licensees, however, the board will consider granting an exemption from the continuing education requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating retirement status during the license year for which the exemption is requested. A licensee who has been granted this exemption and who reenters the work force shall be required to accrue continuing education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing education hours shall be accrued from the technical area only as described in §523.2 of this title (relating to Standards for CPE Program Development);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor.

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting, tax compliance, planning or advice; management advisory services; data processing, treasury; finance; or audit;

(11) representing to the public that the licensee is a CPA or public accountant in connection with the sale of any services or products, including such designation on a business card, letterhead, promotional brochure, advertisement, or office;

(III) offering testimony in a court of law purporting to have

expertise in accounting and reporting, auditing, tax, or management advisory services;

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and Subclauses (I)-(III) of this clause, the questions shall be resolved in favor of inclusion of the work as the term "association with accounting work."

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue continuing education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing education hours shall be accrued from the technical area only as described in §523.2 of this title (relating to Standards for CPE Program Development);

(C) a licensee is a nonresident of Texas, and submits a sworn statement to the board that the continuing education requirements of the resident state have been met;

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on extended active military duty, does not practice public accountancy during the license year for which the exemption was granted, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance, that is acceptable to the board.

(9) The board may not grant exemptions from the requirement to report CE credit hours accrued. A licensee must report CE credit hours on the annual license notice form, even if the number reported is zero.

(10) A licensee who has been granted the retired or disabled status is not required to accrue continuing education.

(e) For a 1995 or later license, mandatory continuing education (CE) attendance is required of any individual licensee, unless specifically exempted by rule. The reporting period is September 1-August 31, of the following year. The following is the CE credit hour requirement.

(1) An initial licensee must accrue the greater of a minimum of 20 CE credit hours or 4.0 CE credit hours for the full months remaining in the current reporting period not in excess of 40 CE credit hours.

(2) A licensee who has been licensed less than three full years must accrue the requirements for an initial licensee, plus 40 CE credit hours for each additional year.

(3) A licensee who has been licensed for more than three full years must accrue a minimum of 40 CE credit hours during the current reporting period, or have accrued at least 120 CE credit hours during the current and two most recent reporting periods with a minimum of 20 CE credit hours during the current reporting period.

(4) A former licensee whose certificate or registration has been revoked or suspended, and who makes application for reinstatement, shall pay the required fees and penalties and shall accrue the minimum CE credit hours requirement during the three-year period immediately preceding the date of application for reinstatement. Following reinstatement, a licensee shall conform to mandatory reporting and/or mandatory attendance requirements as outlined herein.

(5) The board strongly supports a minimum of 40 CE credit hours for all licensees; however, the board will consider granting an exemption from the continuing education requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating retirement status during the license year for which the exemption is requested. A licensee who has been granted this exemption and who reenters the work force shall be required to accrue continuing education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing education hours shall be accrued from the technical area only as described in §523.2 of this title (relating to Standards for CPE Program Development);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor.

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; data processing; treasury; finance, or audit;

(II) representing to the public that the licensee is a CPA or public accountant in connection with the sale of

any services or products, including such designation on a business card, letterhead, promotional brochure, advertisement, or office;

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management advisory services,

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and Subclauses (I)-(III) of this clause, the questions shall be resolved in favor of inclusion of the work as the term "association with accounting work."

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue continuing education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing education hours shall be accrued from the technical area only as described in §523.2 of this title (relating to Standards for CPE Program Development);

(C) a licensee is a nonresident of Texas, and submits a sworn statement to the board that the continuing education requirements of the resident state have been met;

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on extended active military duty, does not practice public accountancy during the license year for which the exemption was granted, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance, that is acceptable to the board.

(6) The board may not grant exemptions from the requirement to report CE credit hours accrued. A licensee must report CE credit hours on the annual license notice form, even if the number reported is zero.

(7) A licensee who has been granted the retired or disabled status is not required to accrue continuing education.

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 April 4, 1990.

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 450-7066

## Part XXIV. State Board of Veterinary Medical Examiners

### Chapter 571. Licensing

#### • 22 TAC §571.4

The State Board of Veterinary Medical Examiners proposes an amendment to §571.4, concerning special licenses, as the section refers to the Veterinary Licensing Act (the Act) as Article 7465a. The Act was changed to Article 8890 during the 71st Legislative Session.

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

Mr. Wilson also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will not be applicable, as the public is relatively unaffected by this particular proposed section. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Donald B. Wilson, Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Box 113, Austin, Texas 78704, (512) 447-1183.

The amendment is proposed under Texas Civil Statutes, Article 8890, §7(a), which provide the State Board of Veterinary Medical Examiners with the authority to "... make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

#### §571.4. *Special Licenses.*

(a) Section 10A provisions. Under the provisions of the Veterinary Licensing Act, §10A, the State Board of Veterinary Medical Examiners shall offer the state board jurisprudence examination to applicants for special licensure at least annually under the following conditions.

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

(5) Renewals will follow the provisions set forth in the Veterinary Licensing Act, Article 8890 [7465a], §12(1)-(6).

(6) (No change.)

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

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

Issued in Austin, Texas, on March 26, 1990.

TRD-9003392

Donald B. Wilson  
Executive Director  
Texas Board of Veterinary  
Medical Examiners

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 447-1183

### Chapter 573. Rules of Professional Conduct

#### • 22 TAC §573.50

The State Board of Veterinary Medical Examiners proposes an amendment to §573.50, concerning controlled substances records keeping for drugs on hand to remove the reference to the word "prescribed", as this is not applicable to drugs kept on the premises.

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

Mr. Wilson also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will not be applicable, as the public is relatively unaffected by this particular proposed section. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Donald B. Wilson, Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Box 113, Austin, Texas 78704, (512) 447-1183.

The amendment is proposed under Texas Civil Statutes, Article 8890, §7(a), which provide the State Board of Veterinary Medical Examiners with the authority to "... make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

§573.50. *Controlled Substances Records Keeping for Drugs on Hand.* Texas veterinarians shall maintain at their place of business records of all scheduled drugs listed in the Texas Controlled Substances Act in their possession. These records shall be maintained for a minimum of five years. The form for keeping records of those drugs shall contain the following information in addition to the name of the drug:

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

(3) date administered[,] or dispensed[, or prescribed];

(4) quantity administered[,] or dispensed[, or prescribed];

(5)-(7) (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 March 26, 1990.

TRD-9003393

Donald B. Wilson  
Executive Director  
Texas Board of Veterinary  
Medical Examiners

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 447-1183

### Chapter 575. Practice and Procedure

#### • 22 TAC §575.1

The State Board of Veterinary Medical Examiners proposes an amendment to §575.1, concerning definitions, to change the article number for the Veterinary Licensing Act to Article 8890 in accordance with legislation passed during the 71st Legislative Session.

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

Mr. Wilson 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 not be applicable, as the public is relatively unaffected by this particular proposed section. There will be no effect on small businesses as a result of enforcing the section. 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 Donald B. Wilson, Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Box 113, Austin, Texas 78704, (512) 447-1183.

The amendment is proposed under Texas Civil Statutes, Article 8890, §7(a), which provide the State Board of Veterinary Medical Examiners with the authority to "... make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

§575.1. *Definitions.* The definitions contained in Texas Civil Statutes, Article 8890 [7465a] and the Administrative Procedure and Texas Register Act, (Texas Civil Statutes, Article 6252-13a) are hereby adopted for use in conjunction with the rules of practice and procedure in this chapter, insofar as they are applicable thereto.

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 March 26, 1990.

Earliest possible date of adoption: April 2, 1990

For further information, please call: (512) 447-1183

◆ ◆ ◆  
• 22 TAC §575.19

The State Board of Veterinary Medical Examiners proposes an amendment to §575.19, concerning motions for rehearing, to bring the section in line with the current Administrative Procedures and Texas Register Act as it relates to the time frame required for motions for rehearing.

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

Mr. Wilson 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 not be applicable, as the public is relatively unaffected by this particular proposed section. There will be no effect on small businesses as a result of enforcing the section. 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 Donald B. Wilson, Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Box 113, Austin, Texas 78704, (512) 447-1183.

The amendment is proposed under Texas Civil Statutes, Article 8890, §7(a), which provide the State Board of Veterinary Medical Examiners with the authority to "... make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

**§575.19. Motions for Rehearing.** All motions before the board must be filed in accordance with the Administrative Procedure and Texas Register Act, Article 6215-13a, §16. A motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 20 [15] days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the board within 30 [25] days after the date of rendition of the final decision or order, and board action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If board action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The board may by written order extend the period of time for filing the motions and replies and taking board action, except that an extension may not extend the period for board action beyond 90 days after the date of the final decision or order. In the event of an exten-

sion, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may by agreement with the approval of the board provide for a modification of the times provided in this section.

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

Issued in Austin, Texas, on March 26, 1990.

TRD-9003394

Donald B. Wilson  
Executive Director  
Texas Board of Veterinary  
Medical Examiners

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 447-1183

◆ ◆ ◆  
**TITLE 25. Health Services**  
**Part I. Texas Department**  
**of Health**

**Chapter 98. HIV and STD**  
**Control**

**Subchapter A. Texas HIV**  
**Services Grant Program**  
**General Provisions**

The Texas Department of Health proposes new §§98.1-98.8, 98.21- 98.30, and 98.41-98.44, concerning HIV Services Grant Program.

The sections concerning general provisions cover introduction, definitions, forms, funds, non-discrimination, general program requirements, development and evaluation of the program, and program review.

The sections concerning AIDS/HIV services providers cover: who may apply to become a provider; provider application-selection-contract process; client complaint, internal reconsideration, due process requirements; confidentiality; model workplace guidelines; payment for services; denial of application/modification, suspension, termination of provider approval-criteria; denial of an application to provide AIDS/HIV services-procedure; modification, suspension or termination of provider status-procedure; and exceptions from appeals procedure.

The sections concerning AIDS/HIV services: clients cover: eligibility requirements; applications; residency/documentation of residency; and criteria for denial of application-modification, suspension, or termination of client benefits.

The sections implement the provisions of Article 2, Texas Civil Statutes, Article 4419b-4 (Senate Bill 959, 71st Legislature, 1989), relating to the establishment of a grant program to deliver HIV services to eligible persons.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period

the proposed sections are in effect there will be fiscal implications as a result of enforcing and administering the sections. The effect on state government will be a cost not to exceed \$8,000, for each year. These costs arise from the statutory requirement for regional public hearings before grants awards are made and costs that will arise through the procedures for the resolution of conflicts among the department and the providers in the form of internal reconsiderations for provider application denial and due process hearings for modification, suspension, or termination of provider status. There may be fiscal implications for local governmental entities and non-profit organizations that choose to apply for funds through the grant program. These costs would arise through the enforcement of rules of requiring more formalized program procedures and the enforcement of rules that require providers to adopt and enforce client complaint procedures, and formalized procedures for the denial of applications for services and the modification, suspension, or termination of services to clients. The department is unable at this time to determine the number of future applicants for grant funds; nor can the department predict at this time the number of reconsiderations or due process procedures that providers may be required to undertake on behalf of applicants for services and clients whose participation is modified, suspended, or terminated. There will be no impact upon local employment.

Mr. Seale also has determined that each year for the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the establishment and support for consortia of health care and community based organizations which can develop or have developed a comprehensive ambulatory community and home based HIV support care at reduced costs to eligible persons with the HIV virus. There will be no effect on small businesses as a result of enforcing the sections. 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 the Texas Department of Health, HIV Division, Services Program, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 45 days after publication of the proposed sections in the *Texas Register*.

◆ ◆ ◆  
• 25 TAC §§98.1-98.8

The new sections are proposed under Texas Civil Statutes, Article 4419b-4, §2, which authorize the Texas Board of Health to adopt rules to implement a state grant program to non-profit community organizations and governmental entities; Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and the General Appropriations Act, 71st Legislature, 1989, Chapter 1263, Article II, Section 26, p. 11-23, and Article V.

**§98.1. Introduction.** The purpose of these sections is to establish a system for the provision of services by providers to clients as authorized in the Human Immunodeficiency Virus Services Act,

Texas Civil Statutes, Article 4419b-4, Article 2. The sections are adopted under the authority of the Human Immunodeficiency Virus Services Act and the current General Appropriations Act.

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

**Act—Human Immunodeficiency Virus Services Act** (Texas Civil Statutes, Article 4419b-4 (Acts of the 71st Legislature, Chapter 1195, 1989 (Senate Bill 959))).

**AIDS—Acquired immune deficiency syndrome** as defined by the Centers for Disease Control of the United States Public Health Service.

**Applicant—A nonprofit community organization or other entity that applies to the department for approval to become a provider.**

**Board—The Texas Board of Health.**

**Client—An individual who, under these sections, is determined by a provider to be eligible for services.**

**Commissioner—The commissioner of health.**

**Communicable Disease Prevention and Control Act—The Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81.**

**Department—The Texas Department of Health.**

**Family—A group of two or more persons related by birth, marriage, or adoption who reside together. All such related persons are considered as members of one family.**

**HIV—Human immunodeficiency virus** as defined by the Centers for Disease Control of the United States Public Health Service.

**Legally responsible person—A parent, managing conservator, or other person that is legally responsible for the support of a minor, a ward, or himself/herself.**

**Medical transportation—Transportation services that are required to obtain appropriate and timely AIDS/HIV services for clients.**

**Minor—A person who has not reached his or her 18th birthday and who has not had the disabilities of minority removed in court or who is not married or recognized as an adult by the State of Texas.**

**Person—An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.**

**Program—The HIV Services Grant Program, created by Acts of the 71st Legislature, Chapter 1195, Article 2, 1989 (Texas Civil Statutes, Article 4419b-4, Article 2).**

**Provider—A person that has been approved by the department and that has entered into a contract with the department to deliver services purchased by the**

department to clients for the purposes of the Act, Article 2.

**Region—Public health region of the department.**

**Request for proposal (RFP)—A solicitation providing guidance and instructions issued by the department to potential providers interested in submitting an application to deliver purchased services to carry out the purposes of the Act, Article 2.**

**Services—Individual or group counseling and other social services; home health care; medical transportation; temporary shelter; provision of food or clothing at no cost or reduced cost; and other activities determined by the department in the approval and contracting process as appropriate to carry out the intent of the Act, Article 2.**

**Support—The contribution of money or services necessary for a person's maintenance including food, clothing, shelter, transportation, and health care.**

**Texas resident—An individual who is physically present within the geographic boundaries of the state, and who:**

(A) has an intent to remain within the state, whether permanently or for an indefinite period;

(B) actually maintains an abode within the state (i.e., house or apartment, not merely a post office box); and

(C) does not claim residency in any other state or country; or

(D) is under 18 years of age and his/her parent(s), managing conservator, or guardian is a bona fide resident of Texas;

(E) is a person residing in Texas and his/her legally dependent spouse is a bona fide resident of Texas; or

(F) is an adult residing in Texas and his/her legal guardian is a bona fide resident of Texas.

**§98.3. Forms.** Forms which have been developed by the department for use in the program will be provided to applicants, providers, and clients as necessary.

**§98.4. Funds.** The board may seek, receive, and expend any funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer the Human Immunodeficiency Virus Services Act, except as provided by other law.

**§98.5. Non-Discrimination.** The Texas Department of Health operates in compliance with the Civil Rights Act of

1964, Public Law 88-352, Title VI, and Part 80 of Title 45, Code of Federal Regulations, so that no person will be excluded from participation, or otherwise subjected to discrimination on the grounds of race, color, national origin, or handicapping conditions.

**§98.6. General Program Requirements.**

(a) As authorized by the Human Immunodeficiency Virus Services Act, the board, in these rules, has established a program in the department to provide for the delivery of services to clients.

(b) The department through the grant process shall endeavor to provide for the delivery of services to those populations which demonstrate unmet needs due to their inaccessibility and/or unavailability. The grant process shall be structured to meet these unmet needs according to criteria that include:

(1) coordination of the use of federal, local, and private funds;

(2) encouragement of community-based service provision;

(3) addressing of needs that are not met by other sources of funding;

(4) provision of funding as extensively as possible across regions of the state in amounts that reflect regional needs;

(5) encouragement of cooperation among local providers;

(6) prevention of unnecessary duplication of services within a community; and

(7) availability of health resources in a community.

**§98.7. Development and Evaluation of Program.**

(a) The board shall appoint a 15 member statewide AIDS/HIV Services Advisory Committee representative of a:

(1) social worker with extensive knowledge of case management in AIDS/HIV;

(2) registered nurse with considerable expertise in caring for AIDS/HIV;

(3) physician actively engaged in medical management of AIDS/HIV;

(4) volunteer worker regularly involved for at least one year in an AIDS/HIV service agency;

(5) nursing home representative with first hand knowledge of AIDS/HIV care in the long term care setting;

(6) family member of a person with AIDS/HIV;

(7) financial evaluator with experience in developing cost-of-care analyses in the medical setting;



(8) hospital administrator from a facility providing care to substantial numbers of AIDS/HIV clients in out-patient and in-patient areas;

(9) Texas Department of Human Services representative with broad experience in obtaining services for the AIDS/HIV client;

(10) mental health representative involved in providing comprehensive emotional guidance to numerous clients with AIDS/HIV;

(12) home health representative with expertise in providing care in the home for those with AIDS/HIV;

(13) hospice representative with broad experience in working with terminally ill persons with AIDS;

(14) person with AIDS/HIV; and

(15) minority representative with interest and experience working with minority groups in relation to AIDS/HIV.

(b) The committee is created for the purpose of advising and assisting the board and the department in planning and administering the development of a comprehensive system of AIDS/HIV services. Committee responsibilities will include:

(1) evaluation of existing services and unmet needs in developing AIDS/HIV services networks;

(2) review of the goals and targets of the request for proposal application packets;

(3) evaluation of ongoing program efforts;

(4) definition of both short-range and long-range goals and objectives for the program; and

(5) development of review criteria and standards for program.

(c) The program advisory committee may identify and recommend to the department essential elements of service that should be considered in general or regional service development. The department shall consider the committee recommendations during the development of provider contracts required in §98.22 of this title (relating to Provider Application; Selection; Contract Process).

#### §98.8. Program Review.

(a) Program review activities will be accomplished through monitoring systems developed to ensure the delivery of appropriate AIDS/HIV services.

(b) For economies of scale, and with the consent of the commissioner, the program may contract for concurrent or retrospective program reviews.

(c) The department will establish a program review system to evaluate the de-

livery of AIDS/HIV services. The program review system will allow for technical assistance to the providers.

(d) The department will require providers to report to the department:

(1) the demographic information on eligible individuals;

(2) the number of clients receiving services and costs of service per client;

(3) the fiscal and financial management reports of expenditures;

(4) the program accomplishments;

(5) an annual report on applicants ineligible for services; and

(6) a report on the networking and coordination of services with other providers.

(e) Other health related data may be required by the department; however, the provider will be given 60 days advance notice prior to the end of the contract term.

(f) The department shall annually prepare a report that is available to the public consisting of summarized data regarding the type, level, quality, and cost-effectiveness of services provided during the preceding fiscal year.

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 April 2, 1990.

TRD-9003386 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: June 30, 1990

For further information, please call: (512) 458-7209

## AIDS/HIV Services Providers

### • 25 TAC §§98.21-98. 30

The new sections proposed under Texas Civil Statutes, Article 4419b-4, §2, which authorize the Texas Board of Health to adopt rules to implement a state grant program to non-profit community organizations and governmental entities; Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health; and the General Appropriations Act, 71st Legislature, 1989, Chapter 1263, Article II, Section 26, p. 11-23, and Article V.

#### §98.22. Provider Application; Selection; Contract Process.

(a) To administer the program effectively and to receive the maximum benefits from available funds, the

department shall contract for services on a request for proposal (RFP).

(b) The department shall publish a public notice of the RFP in the *Texas Register* at least 30 days prior to the date on which the application is due. Local published notices or direct contact by the department with potential applicants will also be utilized.

(c) After public notice has been given the department will forward the application packet within 10 working days of receiving a request.

(d) Complete applications at a minimum must include:

(1) a description of the objectives established by the applicant for the conduct of the program during the contract period;

(2) documentation that the applicant has consulted with appropriate local health department or public health district officials, health authority, community groups, and individuals with expertise in HIV education or treatment and a knowledge of the needs of the population to be served or as specified in the RFP or renewal documents;

(3) a description of the methods the applicant will use to evaluate the activities conducted under the program to determine if the objectives are met; and

(4) any other information required by these sections or requested by the department in the application package.

(e) Regional public hearings will be conducted in the region in which the applicant(s) is located before awarding an initial grant, or grants totaling in excess of \$25,000.

(1) At least 10 days before such a public hearing, the department shall give notice to each state representative and state senator who represents any part of the region in which any part of the contracted funds will be expended.

(2) Public hearings will not be required for the renewal of a contract.

(f) Complete applications for funding will initially be reviewed by program staff designated by the commissioner or the commissioner's designee and by review panels composed in such a manner that individual panel members:

(1) are involved with health care delivery but are not employees of the department; and

(2) are not members of, employed by, or otherwise associated with a particular application under review by a particular panel.

(g) After the review described in subsection (f) of this section, the program will make the final selection of providers in the program; preference will be given to

consortia of health care and community-based organizations which can develop or have developed comprehensive ambulatory community and home-based HIV support programs offering appropriate and compassionate care at reduced costs.

(h) Applicants approved by the program must execute contracts with the department. Applicants that are not selected will receive written notification to that effect from the department within 30 days after the awards have been approved and will be given the opportunity for an informal reconsideration conducted under the provisions of §98.28 of this title (relating to Denial of an Application to Provide AIDS/HIV Services; Procedure).

(i) A provider must agree to deliver the number and/or type of services during the contract period designated and accepted by the department.

(j) The program may expedite the renewal of contracts with providers so that services may be provided to clients without gaps in service.

(k) Contracts executed between the department and providers under this section are governed by the requirements in the Uniform Grant and Contract Management Standards (UGCMS), 1 Texas Administrative Code §§5.141-5.167.

(l) A provider must give assurances in the contract that the provider will abide by the requirements of the Act, the UGCMS, and these sections.

#### §98.23. Client Complaint, Internal Reconsideration, Due Process Requirements.

(a) Client complaints.

(1) To obtain and continue provider status, an applicant for approval or a provider must have in place a procedure to resolve client complaints that assures confidentiality to the extent possible in an effective procedure. At a minimum, the complaint procedure must include:

(A) an assurance that a timely and impartial complaint investigation procedure is available;

(B) an assurance that the provider will attempt to resolve client complaints;

(C) an assurance that provider has in place an internal complaint review procedure for client complaints; and

(D) that the results of the investigation are provided to all parties in the complaint.

(2) Failure of an applicant or provider to provide a complaint procedure for clients is grounds for the denial of an

application, or modification, suspension, or termination of provider status.

(b) Internal reconsideration and due process procedures. The applicant or provider must assure that provider has in place procedures for the resolution of conflicts between the provider and an applicant for services or client.

(1) The conflict resolution procedures must include at least an opportunity for an informal reconsideration of the provider's decision to deny an individual's application for services and due process procedures for the denial, modification, suspension, and termination of the client status.

(2) Unless granted variance by the commissioner in accordance with subsection (c) of this section, the procedures must provide at least the protection to the client that the department's informal reconsideration and due process hearing procedures afford to the provider.

(c) Variance. A provider may apply to the commissioner in writing for a variance from the requirements of subsection (b)(1)(B) of this section.

(1) In considering the application for the variance, the commissioner may consider:

(A) the personnel and other resources available to the applicant or provider; and

(B) the nature of the services delivered by the provider.

(2) The commissioner's decision will be in writing and given to the provider by mail.

(d) Due process procedure. The due process procedure must include at least:

(1) a timely written notice to the applicant for services or client of the basis of the providers decision and disclosure of the reasons upon which the decision is taken;

(2) an opportunity for the client to be represented by counsel;

(3) an opportunity to examine the documentary evidence, if any;

(4) an opportunity for the applicant or client to cross-examine witnesses; and

(5) a written decision rendered by an impartial referee.

(e) Opportunity for an informal reconsideration. Failure of a provider to afford an individual, whose application for services was denied, an opportunity for an informal reconsideration; or failure to afford a client, aggrieved by the provider's decision to modify, suspend, or terminate services, the opportunity to participate in a

due process procedure is grounds for termination of the providers approval and contract cancellation.

(f) Informal hearing procedures. A provider may adopt the board's informal hearing procedures in §§1.51-1.55 of this title (relating to Informal Hearing Procedures) to satisfy the requirement for a due process procedure. A copy of the board's informal hearing procedure may be obtained from the department's Office of General Counsel, 1100 West 49th Street, Austin.

#### §98.24. Confidentiality.

(a) Confidentiality of all records is essential. All information obtained in connection with the examination, care, or services provided to any client under a program, which is carried out through a contract under these sections, shall not, without the client's consent, be disclosed, except as may be necessary to provide services to the client, or as may be required by law. Information derived from any program may be disclosed:

(1) in statistical or other summary form; or

(2) for clinical purposes, but only if the identity of the individuals diagnosed or provided care under such program is not disclosed.

(b) To obtain and continue provider status, all applicants or providers must have a policy in place to protect client confidentiality and must assure the department that each individual participating in the provider's activities has been informed of the policy and the fact that civil and criminal penalties exist in the Communicable Disease Prevention and Control Act for a person who commits the offense of violating the confidentiality of persons, as protected under the provisions of the Act.

(c) Failure of an applicant or a provider to have a confidentiality policy and procedure in place is grounds for denial of an application or termination of the provider's approval and contract cancellation.

#### §98.25. Model Workplace Guidelines.

(a) To obtain and continue provider status, all applicants or providers must have a policy in place that is consistent and at least as comprehensive as the model guidelines for HIV/AIDS policies and education programs adopted by reference in §97.19 of this title (relating to Model HIV/AIDS Workplace Guidelines) for direct care providers and clients. Copies of the guidelines may be obtained from the department's Public Health Promotion Division, 1100 West 49th Street, Austin.

(b) Failure of an applicant or a provider to have workplace guidelines and

procedures in place is grounds for denial of an application or termination of the provider's approval and contract cancellation.

**§98.26. Payment for Services.**

(a) Reimbursement to providers for services delivered will be contingent upon a valid signed contract between the provider and the department.

(b) The department will reimburse the provider for services rendered in accordance with the contract between the provider and the department. The department will only be obligated to pay those funds as specified and expended in accordance with the contract.

(c) The department will require documentation of the delivery of services by the provider, as follows.

(1) Requests for payment will be denied if they are incomplete, submitted on an improper form, contain inaccurate information, or are not submitted within 90 days from the date services were delivered.

(2) Requests for payment which have been denied must be resubmitted in correct form within 30 days from the notice of denial or within the initial 90 day filing deadline, whichever is later.

(3) Corrections must be made on the original request for payment form if possible, and a copy of the denial notice must accompany the resubmitted request for payment.

(4) If a new request is submitted, the original request must accompany the new request for payment form.

(d) Overpayments made to providers must be reimbursed to the department by lump sum payment or, at the department's discretion, deducted from current claims due to be paid to the provider.

(e) The opportunity for a due process hearing are available for the resolution of conflicts relating to payment issues between the department and a provider in accordance with §98. 29 of this title (relating to Modification, Suspension, or Termination of Provider Status; Procedure).

**§98.27. Denial of Application; Modification, Suspension, Termination of Provider Approval; Criteria.**

(a) The department may, for cause, deny the application and modify, suspend, or terminate the approval of a provider after written notice, and written notice of an opportunity for an informal reconsideration or an opportunity for a due process have been given to the provider.

(b) An application may be denied if the:

(1) applicant has not submitted a complete application;

(2) applicant is not an entity listed in §98.21 of this title (relating to Who May Apply for Provider Status);

(3) applicant has not provided the assurances, policies, procedures required by these sections relating to client confidentiality, client complaints, informal reconsideration, due process, and workplace guidelines; and

(4) applicant fails or refuses to execute a contract with the department;

(c) Provider status may be modified, suspended, or terminated for:

(1) providing false or misleading information which is material to the continuance of provider status;

(2) failure of the provider to perform in accordance with the requirements of the Human Immunodeficiency Virus Services Act and the applicable provisions of the General Appropriations Act;

(3) failure of the provider to perform in accordance with these sections;

(4) failure of the provider to perform in accordance with the provisions of the contract; or

(5) failure of the provider to perform in accordance with the rules prescribed in the Uniform Contracts and Grants Management Standards (UGCMS), 1 Texas Administrative Code, §§ 5.141-5.167.

(d) The department may suspend or cancel payment for services delivered if false or fraudulent requests for payments are submitted by a provider.

(e) A provider's contract may not be terminated during the pendency of due process hearing. Payments due to be paid to providers may be withheld during the pendency of a hearing, and payments shall resume if the final determination is in favor of the provider.

**§98.28. Denial of an Application to Provide AIDS/HIV Services; Procedure.**

(a) An applicant aggrieved by the program's decision to deny an application to become a provider may request an informal reconsideration from the department.

(b) An applicant must request an informal reconsideration in writing.

(c) The applicant's request must be received by the department within 20 days from the receipt of the program's decision letter.

(d) Failure to request reconsideration and notify the department within the 20-day period written notice will be deemed a waiver of the opportunity for an informal reconsideration and the proposed action will become final.

(e) The informal reconsideration will be conducted by an impartial panel of three members appointed by the commissioner. The members may not have participated in the program's decision to deny the application.

(f) The informal reconsideration will consist primarily of a review of the applicants documentation; the board's relevant rules; the authorizing statute; and the current General Appropriations Act; however, the panel may permit the applicant requesting the reconsideration to appear before the panel if desired.

(g) The panel will affirm, reverse, or modify the program's decision. The panel's decision will be binding on the program and the applicant.

**§98.29. Modification, Suspension, or Termination of Provider Status; Procedure.**

(a) Before the department may modify, suspend, or terminate a provider's status, the department must offer the provider the opportunity for a due process hearing.

(b) The Administrative Procedure and Texas Register Act, §§12-20, Texas Civil Statutes, Article 6252-13a, do not apply to the modification, suspension, or termination of provider status under this section. The department shall conduct due process hearings in accordance with the board's informal hearing procedures, §§1.51-1.55 of this title (relating to Informal Hearing Procedures). Copies of the board's informal hearing procedures may be obtained from the department's Office of General Counsel, 1100 West 49th Street, Austin.

**§98.30. Exceptions from Appeals Procedure.** The department is not required to offer an informal reconsideration or an informal hearing for the denial, modification, suspension, or termination of provider status, if the department's actions result from the exhaustion of funds appropriated to the department for the administration of the Human Immunodeficiency Virus Services Act, Article 2.

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 April 2, 1990.

TRD-9003387 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: June 30, 1990

For further information, please call: (512) 458-7209



## AIDS/HIV Services; Clients

### • 25 TAC §§98.41-98. 44

The new sections are proposed under Texas Civil Statutes, Article 4419b-4, §2, which authorize the Texas Board of Health to adopt rules to implement a state grant program to non-profit community organizations and governmental entities; Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and the General Appropriations Act, 71st Legislature, 1989, Chapter 1263, Article II, Section 26, p. 11-23, and Article V.

#### §98.41. Eligibility Requirements.

(a) An individual will be eligible to receive services when the individual receives provider approval after meeting all of the following requirements:

(1) have at least an HIV infection;

(2) is a bona fide resident of Texas, and furnishes documentation of residency as required by §98.43 of this title (relating to Residency; Documentation of Residency);

(3) except as provided in subsection (b) of this section, have an income of less than 200% of the federal poverty income guidelines at the time the individual makes application;

(4) makes application through the provider.

(b) An individual who applies to receive counseling services only is exempt from the income maximum of 200% of the federal poverty income guidelines.

(c) To maintain eligibility for receipt of services, a client must meet the following requirements in addition to those listed in subsection (a) of this section:

(1) maintain Texas residency and, upon demand, furnish evidence of residency to the provider or the department in accordance with §98.43 of this title (relating to Residency; Documentation of Residency); and

(2) except as provided in subsection (b) of this section, have an income of less than 200% of the federal poverty income guidelines.

(d) To regain eligibility for receipt of services, a former client must reapply for services in cases where eligibility has lapsed.

#### §98.42. Applications.

(a) Persons meeting the eligibility requirements set forth in §98.19 of this title (relating to Eligibility Requirements) must make application for benefits through a provider.

(b) A complete application shall consist of all of the following:

(1) a properly completed, signed, and original application for services, on a form provided or approved by the department;

(2) documentation which is acceptable to the department to provide evidence of bona fide Texas residency (see §98.43 of this title (relating to Residency; Documentation of Residency));

(3) a properly completed and signed statement of personal income; and

(4) have at least an HIV infection.

(c) All documentation must be provided in English or have an accurate English translation attached to the document.

(d) An application shall be deemed incomplete for any one of the following reasons:

(1) failure to provide information requested in the application form;

(2) lack of supporting documents;

(3) lack of, or improper signatures;

(A) the application must be signed by the applicant;

(B) an application signed with a "mark" by the applicant must be attested to by a notary; or

(C) if a member of the applicant's immediate family signs for the applicant, the reason they are doing so must be stated on the application;

(4) lack of legal residency documentation; or

(5) failure to provide financial data.

(e) Incomplete applications will be returned to the submitting applicant for correction, with the deficiencies noted.

(f) If the application is incomplete, the provider may not determine the applicant's eligibility for client to receive services. The eligibility date will be determined when a properly completed, signed, and notarized, if necessary, application is received. Services may not begin until an eligibility date has been established.

(g) The eligibility date will be based on the date the provider receives a complete application for services as specified in this section.

#### §98.43. Residency; Documentation of Residency.

(a) The provider must require and the client must present documentation of Texas residency during the provider's review of the client's application for services. Documents that may provide evidence of residency include:

(1) documents issued by the state or federal government, e.g., driver's license or identification card issued by the Texas Department of Public Safety; a motor vehicle registration or automobile registration form; a current Texas voter registration card; or a current Texas Medicaid card;

(2) documents relating to the applicant's income, e.g., a recent payroll check; retirement or social security check; or disability check; and

(3) documents relating to the applicant's living expenses, e.g., rental or lease receipts; utility payment receipt.

(b) All documents must be in the name of the applicant unless the applicant is a dependent minor or a ward. In that event, the documents may be in the name of the legally responsible person.

(c) A provider must verify residency periodically during the receipt of services and if requested by the provider, a client must provide additional documentation.

(d) Providers may obtain a list of possible sources of documentation of residency from the department.

#### §98.44. Denial of Application; Modification, Suspension, or Termination of Client Benefits; Criteria.

(a) Individuals applying for services or clients from a provider will have their application denied or services modified, suspended, or terminated by the provider for any of the following reasons.

(1) Services will be denied, modified, suspended, or terminated if:

(A) the person is not a bona fide resident of the State;

(B) the person fails or refuses to provide the periodic documentation of residency required in §98.41 of this title (relating to Eligibility Requirements);

(C) the person does not have at least an HIV infection;

(D) the client's income increases above the maximum 200% of the federal poverty income guideline; or

(E) the client notifies the provider in writing that they no longer want to receive services.

(2) Services may be denied, modified, suspended, or terminated if:

(A) the applicant or client submits an application form or any document required in support of the application which contains a misstatement of fact which is material to the provider's determination that the applicant/client is eligible for program benefits;

(B) the client submits false claims to the provider;

(C) the client has not requested or utilized services during any period of 12 consecutive months;

(D) program funds are curtailed; or

(E) funds allocated for payments on behalf of the client are exhausted.

(b) Denial, modification, suspension, or termination of services to a client will be governed by the providers informal reconsideration and due process procedures required by §98.28 of this title (relating to Denial of an Application to Provide AIDS/HIV Services; Procedure), §98.29 of this title (relating to Modification, Suspension, or Termination of Provider Status; Procedure), and §98.30 of this title (relating to Exceptions from Appeals Procedure).

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

Issued in Austin, Texas, on April 2, 1990.

TRD-9003388

Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: June 30, 1990

For further information, please call: (512) 458-7209

## Chapter 127. Registry for Providers of Health-Related Services

The Texas Department of Health proposes an amendment to §127.2, the repeal of §127.3, and new §127.3 and §127.4, concerning the registry for providers of health-related services. The amendment approves two occupations for inclusion on the registry, and establishes qualifications for placement on the registry. The repeal of existing §127.3 removes obsolete language. The new sections establish guidelines for processing applications for the approval of an individual's placement on the registry, and establish fees for processing applications for placement on the registry.

Stephen Seale, Chief Accountant III, has determined that there will be fiscal implications as a result of administering the sections and repeal.

The effect on state government will be an estimated additional cost of \$20,582 for fiscal year 1990, \$57,968 for fiscal year 1991, and \$67,163 for each year for fiscal years 1992-1994. There will be an estimated increase in revenue equal to the additional cost amounts for those fiscal years which will compensate for the additional costs.

There will be no fiscal implications for local governments as a result of enforcing or promulgating the sections and repeal. There will be no effect on local employment in the state.

Mr. Seale also has determined that for each year of the first five years the sections and repeal are in effect the public benefit anticipated as a result of enforcing the sections and repeal will be to identify health-related service individuals who should be listed on the registry. There will be no effect on small businesses as a result of enforcing the sections and repeal. The anticipated economic cost to persons who choose to comply with the sections and repeal as proposed will be \$30 each year.

Comments on the proposal may be submitted to Becky Berryhill, Program Administrator, Texas Department of Health, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7539.

### • 25 TAC §127.2

The amendment is proposed under House Bill 2473 (Texas Session Laws 1989, 71st Legislature, Chapter 1240, §5), which provides the Texas Board of Health with the authority to adopt rules establishing a registry, setting fees, and administering the registry; and the Health and Safety Code, §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

### §127.2. *Approved Occupations.*

(a) The following occupations are approved for inclusion on the registry: [There are no occupations approved by the Texas Board of Health for inclusion on a registry at the time of adoption of this chapter.]

- (1) dispensing optician; and
- (2) medical laboratory practitioner.

(b) Inclusion [Placement] of an occupation of providers of a specific health-related service on a registry does not constitute an evaluation of a provider's training or competence or a regulation of the scope of the practice of the provider.

(c) A person placed on the registry may not represent in any manner that the person is licensed, certified, inspected, or otherwise regulated by the department. A person in violation of this subsection may

be referred to the appropriate governmental [state] agency for action under the Deceptive Trade Practices Act or other applicable law.

(d) A dispensing optician is eligible for placement on the registry if the person is not licensed as an optometrist or physician and sells or delivers to the consumer fabricated and finished spectacle lenses, frames, contact lenses, or other ophthalmic devices prescribed by an optometrist or physician.

(e) A medical laboratory practitioner is eligible for placement on the registry if the person is a medical technologist (clinical laboratory scientist), a medical laboratory technician (clinical technician), or any other individual who performs technical procedures in a clinical laboratory.

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 April 3, 1990.

TRD-9003449

Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: June 30, 1990

For further information, please call: (512) 458-7539

### • 25 TAC §127.3, §127.4

The new sections are proposed under House Bill 2473 (Texas Session Laws 1989, 71st Legislature, Regular Session, Chapter 1240, §5), which provides the Texas Board of Health with the authority to adopt rules establishing a registry, setting fees, and administering the registry; and Health and Safety Code, §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

### §127.3. *Application and Approval of Individual's Placement on Registry.*

(a) An official application form shall be submitted to the department by each applicant.

(b) The application shall be accompanied by the fee as set out in §127.4 of this title (relating to Fees).

(c) Application processing requirements shall be as follows.

(1) Time periods. The department shall comply with the following procedures in processing applications for placement on the registry.

(A) The following periods of time shall apply from the date of receipt of

an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required:

- (i) a letter of acceptance of application—20 working days; and
- (ii) a letter of application deficiency—20 working days.

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time period for denial includes notification of the proposed decision and of the opportunity for an informal hearing. The time periods are as follows:

- (i) a letter of approval—20 working days; and
- (ii) a letter of denial of approval—90 days (this time limit reflects the time allowed for the informal hearing; however, in most cases, the time will be much shorter).

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the program administrator. If the program administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for placement on the registry exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(3) Appeal. If a request for reimbursement under paragraph (2) of this subsection is denied by the program administrator, the applicant may appeal to the commissioner of health for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner of health at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The program administrator shall submit a written report of the facts related to the processing of the

application and of any good cause for exceeding the applicable time period. The commissioner of health shall provide written notice of the decision to the applicant and the program administrator. An appeal shall be decided in favor of the applicant if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant full reimbursement of all fees paid in that particular application process shall be made.

(d) An application shall be approved if the applicant meets the requirements in §127.2 of this title (relating to Approved Occupations) for the applicable occupation.

(e) An application shall be disapproved if the applicant has:

- (1) not met the requirements in §127.2 of this title (relating to Approved Occupations); or
- (2) failed or refused to properly complete or submit any application form, endorsement, or fee or deliberately presented false information on any form or document required by the department.

(f) If an application is disapproved, the applicant may request informal reconsideration of the determination by the chief, bureau of licensing and certification. The request shall be made in writing to Chief, Bureau of Licensing and Certification, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, within 10 days of the applicant's receipt of the notice of disapproval.

(g) Upon approval of an application, the applicant's name shall be placed in the registry for the appropriate occupation for a period of one year from the date of approval. The department shall issue evidence of placement on the registry to each approved applicant.

(h) A person must reapply annually in accordance with subsections (a) and (b) of this section in order to continue to remain on the registry.

§127.4. Fees.

(a) The schedule of fees shall be as follows:

- (1) dispensing optician (initial application)—\$30;
  - (2) medical laboratory practitioner (initial application)—\$30; and
  - (3) annual reapplication (any category)—\$30.
- (b) All fees are nonrefundable.

(c) An applicant whose personal check for placement on or reapplication to the registry is not honored by the financial institution may reinstate the application by remitting to the department a money order or cashier's check for the amount within 30

days of the date of the applicant's receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution. An applicant who is reapplying will be removed from the registry if the amount is not remitted within 30 days.

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

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TRD-9003451

Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: June 30, 1990

For further information, please call: (512) 458-7539

◆ ◆ ◆  
Chapter 229. Food and Drug  
Tanning Facilities

• 25 TAC §§229.341-229.349

The Texas Department of Health proposes new §§229.341-229.349, concerning tanning facilities. The new sections cover general provisions; definitions; permitting of tanning facilities; permitting fees; revocation, cancellation, suspension or probation of a permit; report of changes; advertising; construction and operation of tanning facilities; and enforcement and penalties.

The new sections will implement the provisions of the Tanning Facility Regulation Act, House Bill 2352, 71st Legislature, Regular Session, 1989, which provides the department with the authority to establish standards and permitting requirements for the operation of tanning facilities.

Stephen Seale, Chief Accountant III, has determined that for the first five year period these sections will be in effect, there will be fiscal implications as a result of enforcing or administering these sections as proposed. The effect on state government will be an estimated additional cost of \$85,000 and an estimated increase in revenue of \$85,000 for each year of fiscal years 1990-1994. There will be no effect on local government. The cost of compliance for small businesses will be a \$50 permitting fee per tanning facility for first year and a \$35 renewal permitting fee per facility per annum over the next four years. There will be no effect on local employment.

Mr. Seale also has determined that for each year of the first five years the sections will be in effect the public benefit will be assurance of the safety of tanning devices throughout the state. There is no anticipated economic cost to persons required to comply with the section.

Comments on the proposed sections may be submitted to Dennis E. Baker, Director, Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7248. Comments will be accepted for a period of 30

days following publication in the *Texas Register*. In addition, public hearings will be held concerning the proposal on Tuesday, May 1, 1990, at 9 a.m., auditorium, Texas Department of Health, 1100 West 49th Street, Austin; Wednesday, May 2, 1990, at 9 a.m., auditorium, University of Houston, West Houston Institute at Cinco Ranch, 4242 South Mason Road, Katy (for directions telephone (713) 395-2800); and Thursday, May 3, 1990, at 9 a.m., conference room, Texas Department of Health, Public Health Region 5, 2561 Matlock Road, Arlington.

The new sections are proposed under the Texas Food, Drug, and Cosmetic Act, Texas Health and Safety Code, §431.241, which provides the board with the authority to adopt rules to establish standards to implement the Food, Drug, and Cosmetic Act; the Tanning Facility Regulation Act, Texas Civil Statutes, Article 8910, §9 (Senate Bill 2352, 71st Legislature, 1989), which provides the board with the authority to adopt rules to implement the Act; and Health and Safety Code, §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

#### §229.341. General Provisions.

(a) These sections provide for the permitting and regulation of tanning facilities using ultraviolet lamps.

(b) The Tanning Facility Regulation Act, Texas Civil Statutes, Article 8910 (House Bill 2352, 71st Legislature, Regular Session, 1989), requires the Texas Board of Health to adopt rules regulating tanning facilities.

(c) These sections do not apply to a phototherapy device used by or under the supervision of a licensed physician trained in the use of phototherapy devices.

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

**Act**—The Tanning Facility Regulation Act, Texas Civil Statutes, Article 8910 (House Bill 2352, 71st Legislature, Regular Session, 1989).

**Authorized agent**—An employee of the department designated by the commissioner to enforce this Act.

**Commissioner**—The commissioner of health.

**Department**—The Texas Department of Health.

**Health authority**—A physician designated to administer state and local laws relating to public health.

**Operator**—An individual designated by the permit holder to control operations of the tanning facility and to instruct and assist the consumer in the proper operation of the tanning equipment.

**Person**—An individual, partnership, corporation, or association.

**Phototherapy device**—A piece of equipment that emits ultraviolet radiation

and that is used by a health care professional in the treatment of disease.

**Radiation**—Ultraviolet radiation.

**Radiation machine**—Any device capable of producing radiation.

**Tanning device**—Any equipment that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and that is used for tanning of human skin, including a sunlamp, tanning booth, or tanning bed. The term also includes any accompanying equipment, including protective eyewear, timers, and handrails.

**Tanning facility**—A business that provides persons access to tanning devices.

#### §229.343. Permitting of Tanning Facilities.

(a) A person may not operate a tanning facility without a current and valid permit to operate the facility that is issued by the department.

(b) The permit shall be displayed in an open public area of the tanning facility.

(c) Each person having a tanning facility on the effective date of these sections shall apply for a permit of such facility no later than 60 days following the effective date of these sections.

(d) Each person acquiring or establishing a tanning facility after the effective date of these sections shall apply to the department for a permit of such facility prior to beginning operation.

(e) No permits shall be transferable from one person to another or from one tanning facility to another.

(f) The application required in subsections (c) and (d) of this section shall be completed on forms provided by the Department and shall contain all the information required by such forms and any accompanying instructions.

(g) On the forms provided for applying for permitting of each tanning facility, the facility shall provide the:

(1) name, physical address, mail address, and telephone number of the tanning facility;

(2) name(s), mail address(es), and telephone number(s) of the owner(s) of the tanning facility;

(3) name(s) of the tanning facility operator(s);

(4) hours of operation of each tanning facility;

(5) manufacturer(s), model number(s), and type(s) of ultraviolet lamp(s) or tanning equipment located at the tanning facility;

(6) name(s) of the tanning equipment supplier(s), installer(s), and service agent(s);

(7) geographic areas of the state to be covered, if the application is for a mobile tanning facility;

(8) copies of any posted warnings or notices which are not required by this section and which address the safety and proper use of tanning equipment and protective devices;

(9) copies of the consent forms and statements which the consumer, parent, or guardian will be required to sign pursuant to §229.348(c)(3) of this title (relating to Construction and Operation of Tanning Facilities);

(10) procedures which the operator(s) will be required to follow for the correct use of tanning equipment, to include:

(A) instructions to the consumer;

(B) use of protective eyewear;

(C) suitability of prospective consumers for tanning equipment use;

(D) determination of duration of tanning exposures;

(E) periodic testing of tanning equipment and timers;

(F) handling of complaints of injury from consumers;

(G) records to be maintained on each consumer; and

(11) application form which shall be signed and verified.

#### §229.344. Permitting Fee.

(a) All tanning facilities in Texas shall pay an initial permit fee of \$50.

(b) All tanning facilities shall pay an annual renewal fee of \$35 before January 1 of each year following issuance of the initial permit.

#### §229.345. Revocation, Cancellation, Suspension, and Probation of a Permit.

(a) The department may revoke, cancel, suspend, or probate a permit to operate a tanning facility if the facility has:

(1) failed to pay a permit fee or an annual renewal fee for a permit;

(2) obtained or attempted to obtain a permit by fraud or deception;

(3) violated any of the provisions of the Act; or

(4) violated any of the provisions of these sections.

(b) Prior to revoking, canceling, suspending, or probating a permit the department shall give the permit holder written notice of the proposed action, including the reasons and an opportunity for a hearing.

(c) Any hearing for the revoking, canceling, suspending, or probating of a permit shall be in accordance with the department's formal hearing procedures in Chapter 1 of this title (relating to Board of Health).

**§229.346. Report of Changes.** The permit holder shall notify the department in writing before making any change which would render the information contained in the application for the permitting, reported pursuant to §229.343 of this title (relating to

Permitting of Tanning Facilities), no longer accurate. This requirement shall not apply for changes involving replacement of designated original equipment lamp types with lamps which have been certified with the United States Food and Drug Administration (FDA) as equivalent lamps under the FDA regulations and policies applicable at the time of replacement of the lamps. The facility owner shall maintain manufacturer's literature demonstrating the equivalence of any replacement lamps.

**§229.347. Advertising.** No person, in any advertisement, shall refer to the fact that the person or the person's facility is permitted with the Department pursuant to the provisions of §229.343 of this title (relating to Permitting of Tanning Facilities), and no person shall state or imply that any activity

under such permit has been approved by the department. A tanning facility may not claim, or distribute promotional materials that claim, that using a tanning device is safe or free from risk. The only claims that may be made for tanning are cosmetic.

**§229.348. Construction and Operation of Tanning Facilities.**

(a) Physical facilities.

(1) Warning signs shall be in accordance with the following requirements.

(A) A tanning facility shall post a warning sign in a conspicuous location where it is readily visible by persons entering the establishment. The sign shall have dimensions of no less than 36 inches to a side and shall contain the following wording:

DANGER: ULTRAVIOLET RADIATION

Repeated exposure to ultraviolet radiation may cause chronic sun damage characterized by wrinkling, dryness, fragility, and bruising of the skin, and skin cancer.

Failure to use protective eyewear may result in severe burns or permanent injury to the eyes.

Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women taking oral contraceptives who use this product may develop discolored skin.

IF YOU DO NOT TAN IN THE SUN, YOU WILL NOT TAN  
FROM USE OF AN ULTRAVIOLET OR SUNLAMP.

(B) A tanning facility shall post a warning sign, one sign for each tanning device, in a conspicuous location

that is readily visible to a person about to use the device. The sign shall have dimen-

sions of no less than 24 inches to a side and shall contain the following language:



## DANGER: ULTRAVIOLET RADIATION

1. Follow the manufacturer's instructions for use of this device.
2. Avoid too frequent or lengthy exposure. As with natural sunlight, exposure can cause serious eye and skin injuries and allergic reactions. Repeated exposure may cause skin cancer.
3. Wear protective eyewear. Failure to use protective eyewear may result in severe burns or permanent damage to the eyes.
4. Do not sunbathe before or after exposure to ultraviolet radiation from sunlamps.
5. Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medication, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women using oral contraceptives who use this product may develop discolored skin.

IF YOU DO NOT TAN IN THE SUN, YOU WILL NOT  
TAN FROM USE OF THIS DEVICE.

(C) The lettering on each warning sign shall be red on white background. Letters shall be at least 10 millimeters high for all words shown in capital letters and at least five millimeters high for all lower case letters.

(2) Only tanning equipment manufactured and certified to comply with 21 Code of Federal Regulations (CFR) Part 1040, §1040.20, Sunlamp products and ultraviolet lamps intended for use in sunlamp products, shall be used in tanning facilities. Compliance shall be based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR Part 1010, §1010.3.

(3) All tanning equipment shall have a timer which complies with the requirements of 21 CFR Part 1040, §1040.20(c)(2). The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer interval shall have an error greater than plus or minus 10% of the maximum timer interval for the product.

(4) The facility shall control the interior temperature of a tanning device so that it may not exceed 100 degrees Fahrenheit.

(5) There shall be physical barriers to protect consumers from injury induced by touching or breaking the lamps.

(6) Stand-up booths shall:

(A) have physical barriers or other means such as handrails or floor markings to indicate the proper exposure distance between ultraviolet lamps and the consumer's skin;

(B) be constructed to withstand the stress of use and the impact of a falling person;

(C) have rigid doors which open outward; and

(D) handrails and nonslip floors.

(7) Tanning beds shall be sanitized after each use.

(b) Protective goggles.

(1) Each consumer shall be provided with protective goggles and instructions for their use. The operator may not allow a person to use a tanning device if that person does not use the protective eyewear.

(2) Protective goggles shall meet the requirements of 21 Code of Federal Regulations Part 1040, §1040.20(c)(5).

(3) Protective goggles shall be properly sanitized before each use. Exposure to the ultraviolet radiation produced by

the tanning equipment itself is not considered a sanitizing agent.

(c) Operation.

(1) Personnel. A tanning facility shall have an operator present during operating hours.

(2) Notice; liability.

(A) A tanning facility shall give each customer a written statement warning that:

(i) failure to use the eye protection provided to the customer by the tanning facility may result in damage to the eyes;

(ii) overexposure to ultraviolet light causes burns;

(iii) repeated exposure may result in premature aging of the skin and skin cancer;

(iv) abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain:

(I) foods;

(II) cosmetics; or

(III) medications,

including:

- (-a-) tranquilizers;
- (-b-) diuretics;
- (-c-) antibiotics;
- (-d-) high blood pressure medicines; or
- (-e-) birth control pills; and

(v) any person taking a prescription or over-the-counter drug should consult a physician before using a tanning device.

(B) Compliance with the notice requirements does not affect the liability of a tanning facility operator or a manufacturer of a tanning device.

(3) Signed warning statement.

(A) Each time a customer uses a tanning facility or each time a person executes or renews a contract to use a tanning facility the person shall sign a written statement acknowledging that the person has read and understood the required warnings in the Act before using the device and agrees to use the protective eyewear that the tanning facility provides.

(B) Before any person between 14 and 18 years of age uses a tanning device, the person shall give the tanning facility a statement signed by the person's parent or legal guardian stating that the parent or legal guardian has read and understood the warnings given by the tanning facility, consents to the minor's use of a tanning device, and agrees that the minor will use the protective eyewear that the tanning facility provides. A person under 14 years of age must be accompanied by a parent or legal guardian when using a tanning device.

(C) For illiterate or visually handicapped persons, the warning statement shall be read by the operator in the presence of a witness. Both the witness and the operator shall sign the statement.

(4) Consumer log. A record shall be kept by the facility operator of each consumer's total number of tanning visits and tanning times.

(5) Injury report. A written report of any tanning injury shall be forwarded to the department within five working days of its occurrence or knowledge thereof. The report shall include:

(A) the name of the affected individual;

(B) the name and location of the tanning facility involved;

(C) the nature of the injury;

(D) the name and address of health care provider, if any; and

(E) any other information considered relevant to the situation.

(6) Replacement of lamps. Defective or burned-out lamps or filters shall be replaced with a type intended for use in that device as specified on the product label on the tanning equipment, or with lamps or filters that are equivalent under the Food and Drug Administration regulations and policies applicable at the time of lamp manufacture.

(7) Training requirements. Each operator must be sufficiently knowledgeable in the correct operation of the tanning devices used at the facility to adequately inform and assist each customer in the proper use of the tanning devices. The operator must be able to demonstrate such knowledge concerning the:

(A) requirements of these sections and the Act;

(B) procedures for correct operation of the facility;

(C) recognition of injury or overexposure;

(D) manufacturer's procedures for operation and maintenance of tanning equipment;

(E) emergency procedures in case of injury; and

(F) exposure times for all skin types.

**§229.349. Enforcement and Penalties.**

(a) Inspections. The commissioner or an authorized agent shall have access at all reasonable times to any tanning facility to inspect the facility to determine if the Act is being violated.

(b) Criminal penalty.

(1) A person, other than a customer, commits an offense if the person knowingly or recklessly violates the Act or a rule adopted under the Act.

(2) An offense under the Act is a Class C misdemeanor.

(c) Injunction.

(1) If the commissioner, an authorized agent, or a health authority finds that a person has violated, or is violating, or threatening to violate the Act and that the violation or threat of violation creates an

immediate threat to the health and safety of the public, the commissioner, authorized agent, or health authority may petition the district court for a temporary restraining order to restrain the violation or threat of violation.

(2) If a person has violated, or is violating or threatening to violate the Act, the commissioner, an authorized agent, or a health authority may petition the district court for an injunction to prohibit the person from continuing the violation or threat of violation.

(3) On application for injunctive relief and a finding that a person is violating or threatening to violate the Act, the district court shall grant any injunctive relief warranted by the facts.

(d) Venue. Venue for a suit brought under the Act shall be in the county in which the violation or the threat of violation is alleged to have occurred or in Travis County.

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 April 3, 1990.

TRD-9003448 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: June 30, 1990

For further information, please call: (512) 458-7248

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**Chapter 289. Occupational  
Health and Radiation  
Control**

**Texas Regulations for Control  
of Radiation**

• **25 TAC §289.126**

The Texas Department of Health proposes an amendment to §289.126, which adopts by reference Part 12 of the Texas Regulations for the Control of Radiation. Part 12 is titled "Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services." The amendment to Part 12 will add new §12.23 concerning a schedule of fees for radioactive waste disposal site license and add explanatory language to existing §12.11 and §12.21 about the new §12.23. The amendment establishes the fee necessary for department resources which will be required to review and process an application for a radioactive waste disposal site license. Costs of hearings and other regulatory activities associated with a radioactive waste disposal site license are also included on an actual cost basis. Federal requirements describe the extent and type of review that the State of Texas must perform and the time in which this must be completed (15 months). The amendment is proposed at

this time because the agency anticipates an application will be forthcoming from the Texas Low-Level Radioactive Waste Disposal Authority (TLLRWDA). In addition, §12.22 of Part 12 is amended to include a fee for post-closure operations at conventional uranium recovery facilities. A definition of post-closure is also added.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications as a result of enforcing or administering the section as proposed. Only one licensee comes under the post-closure category in the amended section. The estimated increase in revenue for state government is \$4,800 per year for the first five-year period the section will be in effect. The TLLRWDA has been designated and funded by the state to select and acquire a radioactive waste disposal site. TLLRWDA must complete its characterization and assessment and apply to the department for a license. Therefore, this fee applies to another state agency and involves a transfer of funds to the department. There will be no effect on local government. There is no fiscal implication for small businesses, since no small businesses currently come under the section. No impact is anticipated on local employment as a result of implementing the section.

Ruth E. McBurney, C.H.P., director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, 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 compliance with Texas statutes regarding the licensure of a site within the state for the disposal of radioactive waste. The fee will provide funding to enable the department to comply with appropriate federal requirements concerning the review of an application for the radioactive waste disposal site license. Additionally, the post-closure fee for conventional uranium recovery facilities will allow the department to continue regulatory activities mandated by the federal government throughout the lifetime of conventional facilities. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be presented in writing to the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 30 days following publication of this proposed amendment in the *Texas Register*. In addition, a public hearing on the amendment will be held Thursday, April 26, 1990, at 10 a.m., at the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin.

The amendment is proposed under the Health and Safety Code, Chapter 401, as amended by Chapters 172, 840, 913, and 930, Acts of the 71st Legislature, 1989, which provides the Board of Health with the authority to ensure effective regulation of sources of radiation; §401.051 which provides the board with the authority to adopt rules and guidelines relating to the control of radiation; §401.201 which provides the department with the authority to regulate the disposal of radioactive waste; and §401.301

which provides the department with the authority to collect fees for processing license applications and other regulatory activities.

*§289.126. Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services.*

(a) The Texas Department of Health adopts by reference Part 12, "Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services" of the department's document titled "Texas Regulations for Control of Radiation, as amended in June 1990 [March 1989].

(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 April 2, 1990.

TRD-9003390 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: June 30, 1990

For further information, please call: (512) 835-7000

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Chapter 301. Wastewater  
Surveillance and Technology  
Construction Standards for On-  
Site Sewerage Facilities  
Facilities

• 25 TAC §301.18

The Texas Department of Health proposes new §301.18, concerning construction standards for on-site sewerage facilities. The section covers the regulation of on-site sewerage facilities on recharge zones of the Edwards Aquifer. Generally the new section covers general information, design, and construction criteria and procedures for the sewerage facilities. Specifically the new section covers purpose; applicability; definitions; authorized agents for licensing; prohibited systems; permit requirements for new on-site sewerage facilities; conditions for obtaining a permit to construct; license to operate; conditions for obtaining such license; terms for licenses; revocation or suspension of licenses; existing on-site sewerage facilities; exceptions for certain lots; connection to organized central sewage collection systems; and notice. The proposed section is necessitated by the repeal of the Texas Water Code, §26.031 and §26.032. The repealed sections established specific requirements for the protection of the Edwards Aquifer in Kinney, Uvalde, Medina, Bexar, Comal, Hays, and Williamson Counties, with the addition of Travis County. Protection of the quality of water continues to be necessary because of the importance of the Edwards Aquifer as a drinking water source. The highly

permeable nature of the Edwards Aquifer and its potential for rapid recharge justify regulation of activities conducted on the recharge zone to protect and maintain existing water quality. Therefore, the department is proposing new §301.18.

Stephen Seale, Chief Accountant III, has determined that for the first five year period the section is in effect there will be fiscal implications as a result of enforcing or administering the section as proposed. There will be no cost for state government. Local governmental entities in the areas impacted by this section may be affected dependent upon whether or not similar rules for the impacted area are enforced prior to the implementation of this section. The cost of compliance with this section for owners of on-site sewage disposal facilities will be the required permit fee and the employment of professional on-site sewerage facility designers and certified installers for the construction of the facility which could cost from \$2,000 to \$10,000 depending on the topographical condition and type of facility. Projected costs for small and large businesses on a per employee basis are not estimated to vary significantly.

Mr. Seale also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section are reduced potential for contamination of the Edwards Aquifer; minimized exposure of citizens to the disease transmission potential of human and domestic waste; and the prevention of health hazards by providing for specific regulation and proper planning of the location, design, construction, installation, operation, and maintenance of on-site sewerage facilities over the environmentally sensitive Edwards Aquifer Recharge Zone. The costs to persons will be as described for small businesses. There is no anticipated effect on local employment.

Written comments on the proposal may be submitted to James E. Pope, P.E., Director, Division of Water Hygiene, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7293. Public comments will be accepted for 30 days after publication of the proposal in the *Texas Register*. A public hearing will be held at 9 a.m., Wednesday, April 25, 1990, in the Auditorium of the Texas Department of Health, 1100 West 49th Street, Austin; and 10 a.m., Thursday, May 3, 1990, Uvalde Civic Center Reading Room, Uvalde.

This section is proposed under Health and Safety Code, §366.012, which provides the Texas board of Health with the authority to adopt rules governing the installation and operation of on-site sewage disposal systems; §341.002, which provides the board with the authority to adopt rules for sanitation and health protection; §341.037 which provides the Board with the authority to take necessary action to protect a spring, well, pond, lake, reservoir, or other stream in Texas from any condition or pollution that results from sewage and that may endanger public health; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

**§301.18. On-site Sewerage Facilities on Recharge Zones of the Edwards Aquifer.**

(a) Purpose. The purpose of this section is to regulate on-site sanitary sewerage facilities having the potential for causing pollution on the recharge zones of the Edwards Aquifer.

(b) Applicability. This section specifically applies to the Edwards Aquifer recharge zones and are not intended to be applied to any other aquifers in the State of Texas.

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

(1) Construction—Any activity which will alter or otherwise disturb the topographic or geologic characteristics of property on the Edwards recharge zone, exclusive of vegetation clearing.

(2) Edwards Aquifer—That portion of an arcuate belt of porous, waterbearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut Formation north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(3) On-site sewerage facilities—Septic tanks, pit privies, cesspools, sewage holding tanks, and injection wells used to dispose of sewage, chemical toilets, treatment tanks, and all other facilities, systems, and methods used for the disposal of sewage other than the disposal systems operated under a permit issued by the Texas Water Commission.

(4) Recharge zone—Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, and including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the Division of Water Hygiene of the Texas Department of Health and at the Texas Water Commission. A generalized map illustrating the recharge zone in Travis, Williamson, Hays, Comal, Bexar, Medina, Uvalde, and Kinney Counties is shown in subsection (p) of this section. The map is

illustrative only, and any person interested in reviewing the precise area proposed to be regulated should consult the official maps located in the Division of Water Hygiene of the Texas Department of Health and at the Texas Water Commission.

(d) Authorized agents for licensing. The commissioners courts of Bexar, Comal, Hays, Kinney, Medina, Travis, Uvalde, and Williamson Counties are designated as the authorized agents for the area of their respective counties regulated in this section, exclusive of those areas within the corporate limits of Hollywood Park, Shavano Park, and Hill Country Village in which those municipalities are respectively designated as authorized agents. Upon receiving written certification from the commissioner of Health that the order and rules adopted by the commissioners court of one of these counties pursuant to Texas Health and Safety Code, Chapter 366, are as stringent as this section, the commissioners court of that county may regulate on-site sewerage facilities on the recharge zone in that county according to those rules rather than this section. In counties where the order and the rules adopted by a commissioners court is in conflict with this section, then the more stringent of the rules shall apply.

(e) Prohibited systems.

(1) Nontreatment. Pit privies, cesspools, and injection wells used to dispose of sewage, and any other system utilizing naturally or artificially produced holes, cavities, or drilled wells for the disposal of sewage are prohibited.

(2) Proximity to Nueces, Dry Frio, Frio, or Sabinal Rivers. No private sewage facility may be installed closer than 75 feet from the banks of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde county line to the recharge zone.

(f) Permit requirements for new on-site sewerage facilities/application for a permit to construct. A permit to construct must be obtained from an authorized agent prior to commencing the construction or installation of, or a substantial modification to, on-site sewerage facilities on the recharge zone. In order to obtain a permit to construct, the applicant shall submit to the authorized agent:

(1) a properly completed application form;

(2) the required fee;

(3) the results of percolation tests performed by a registered professional engineer or a registered professional sanitarian (either having demonstrated to the authorized agent expertise in conducting percolation tests); and

(4) a scaled technical drawing or drawings reflecting that the proposed on-site sewerage facilities will comply with these sections.

(g) Conditions for obtaining a permit to construct. In order to obtain a permit to construct, the following conditions must be met.

(1) Texas Department of Health requirements. The design of on-site sewerage facilities, when not in conflict with this section, must at a minimum meet the requirements of the construction standards in this undesignated head or stricter local requirements.

(2) Minimum lot sizes. Each lot or tract of land on the recharge zone on which on-site sewerage facilities are to be located must have an area of at least one acre (43,560 square feet) per living unit.

(3) Alternate site or disposal method. Whenever the percolation rate of the site's natural soil is less than five minutes per inch or more than 60 minutes per inch, an alternative on-site sewerage treatment and disposal system, such as an evapotranspiration bed, an aerobic unit or a low-pressure pipe system, must be considered. All alternative on-site waste disposal systems must be designed by a registered professional engineers or registered professional sanitarians.

(4) Construction on excessive slopes. Permits to construct may not be granted for on-site sewerage facilities on lots on which the on-site sewerage facility would be placed at an excessive slope, unless proper construction techniques to overcome the effects of the slope are utilized. Excessive slopes are defined as slopes greater than 30%.

(5) Disposal by conventional or alternative soil absorption systems. When disposal by conventional or alternative soil absorption is proposed, a minimum of four percolation tests spaced uniformly over the proposed absorption field site must be performed. This requirement does not apply to a lined evapotranspiration bed system. Percolation tests must be performed in accordance with the procedures in §301.13(b) of this title (relating to Design Standards for Effluent Disposal Systems). The percolation test must be performed by a registered professional engineer or registered professional sanitarian.

(h) License to operate. A license to operate must be obtained from the authorized agent prior to operating a new on-site sewerage facility on the recharge zone and shall be issued after satisfactory completion and approval of construction.

(i) Conditions for a license to operate.

(1) Application for a permit. The construction, installation, or substantial modification of an on-site sewerage facility must be made in accordance with the conditions of the approved design and requirements of the applicable construction permit.

(2) **Inspection and licensing.** No components of an on-site sewerage facility may be covered until an inspection has been made and approval of construction is issued by the authorized agent. Absorption trenches or beds, or evapotranspiration beds may not be backfilled, until the authorized agent has determined, as evidenced by the issuance of a license that the installation, construction, or substantial modification complies with these standards and the special conditions in the permit to construct.

(j) **Terms for licenses.**

(1) **Period.** Licenses shall be issued for a term determined by the authorized agent.

(2) **Transferral of licenses.** With prior written notification of the authorized agent, licenses may be transferred to succeeding owners provided that the on-site sewerage facility has not been substantially modified. Fees for license transfer may be required by the authorized agent.

(3) **Renewal of licenses.** Licenses may be renewed by the authorized agent provided that the system is functioning properly, and that no unauthorized modifications have been made.

(k) **Revocation or suspension of licenses.** Neither the provision in this subsection concerning the revocation of a license nor any other provision of this section shall preclude the commissioner of health or any authorized governmental entity from acting to prevent or curtail pollution of the Edwards Aquifer, to abate a nuisance, or to protect the public health. The authorized agent may revoke or suspend a license when there is:

(1) an increase in the volume of or change in the nature of the wastewater being treated by the on-site sewerage facility, or a reduction of the capacity of the facility;

(2) a failure of the holder of the license to properly maintain or operate the on-site sewerage facility;

(3) a malfunction of the on-site sewerage facility;

(4) evidence that the on-site sewerage facility is causing or will cause pollution of the Edwards Aquifer;

(5) failure to comply with the terms and conditions of the license or this section; or

(6) any other reason which the authorized agent determines to be sufficient to revoke or suspend the license.

(l) **Existing on-site sewerage facilities.** On-site sewerage facilities licensed by, or registered with, the appropriate authorized agent at the time of adoption of this section shall remain licensed or registered under the terms and conditions of the current license or registration. Any relicensing shall be performed under the terms and conditions of this section. An on-site sewerage facility installed on the recharge zone prior to April 11, 1977, in either Uvalde or Kimney counties is not required to be permitted or licensed, provided the facility is not causing pollution, is not a threat to the public health, or is not a nuisance, and has not been substantially modified.

(m) **Exceptions for certain lots.** Lots platted and recorded with the county in its official plat record, deed, or tax records of the following counties prior to the date indicated, are exempted from the one-acre minimum lot size requirement, pursuant to the conditions of subsection (n) of this section:

(1) Kimney, Uvalde, Medina, Bexar, and Comal Counties—March 26, 1974;

(2) Hays County—June 21, 1984;

(3) Travis County—November 21, 1983; and

(4) Williamson County—May 21, 1985.

(n) **Connection to an organized central sewerage collection system.** The department encourages the development of central collection and treatment systems to serve developments on the recharge zone. In this regard, the department makes the following conditions and requirements.

(1) **Proximity to existing sewerage collection system.** No person may cause or allow the installation of an on-site sewerage facility when any part of the facility is to be located within 300 feet in horizontal distance (measured on the closest practicable access route) of any part of an existing central collection system, unless one of the following requirements have been met:

(A) the person has received a written denial of service from the owner or

governing body of the central collection/treatment system; or

(B) the person has received a written determination from the authorized agent that it is not feasible for the person to connect to the organized sewerage collection.

(2) **Proximity to new sewerage collection system.** Whenever a new central collection system is developed within 300 feet in horizontal distance (measured on the closest practicable access route) from any part of an existing private sewerage facility, that private facility must be connected to the central collection system within 120 days after receiving notice from the owner or governing body of the organized disposal system that the private system can connect, unless the conditions in paragraph (1) of this subsection have been met.

(o) **Notice.** Any person, or his agents or assignees, desiring to construct a residential development with two or more lots in which on-site sewerage facilities will be utilized in whole or in part on the recharge zone and desiring to sell, lease, or rent the lots therein, must inform in writing each prospective purchaser, lessee, or renter of the following.

(1) **Conditions of this section.** Each lot within the regulated development is subject to the terms and conditions of this section.

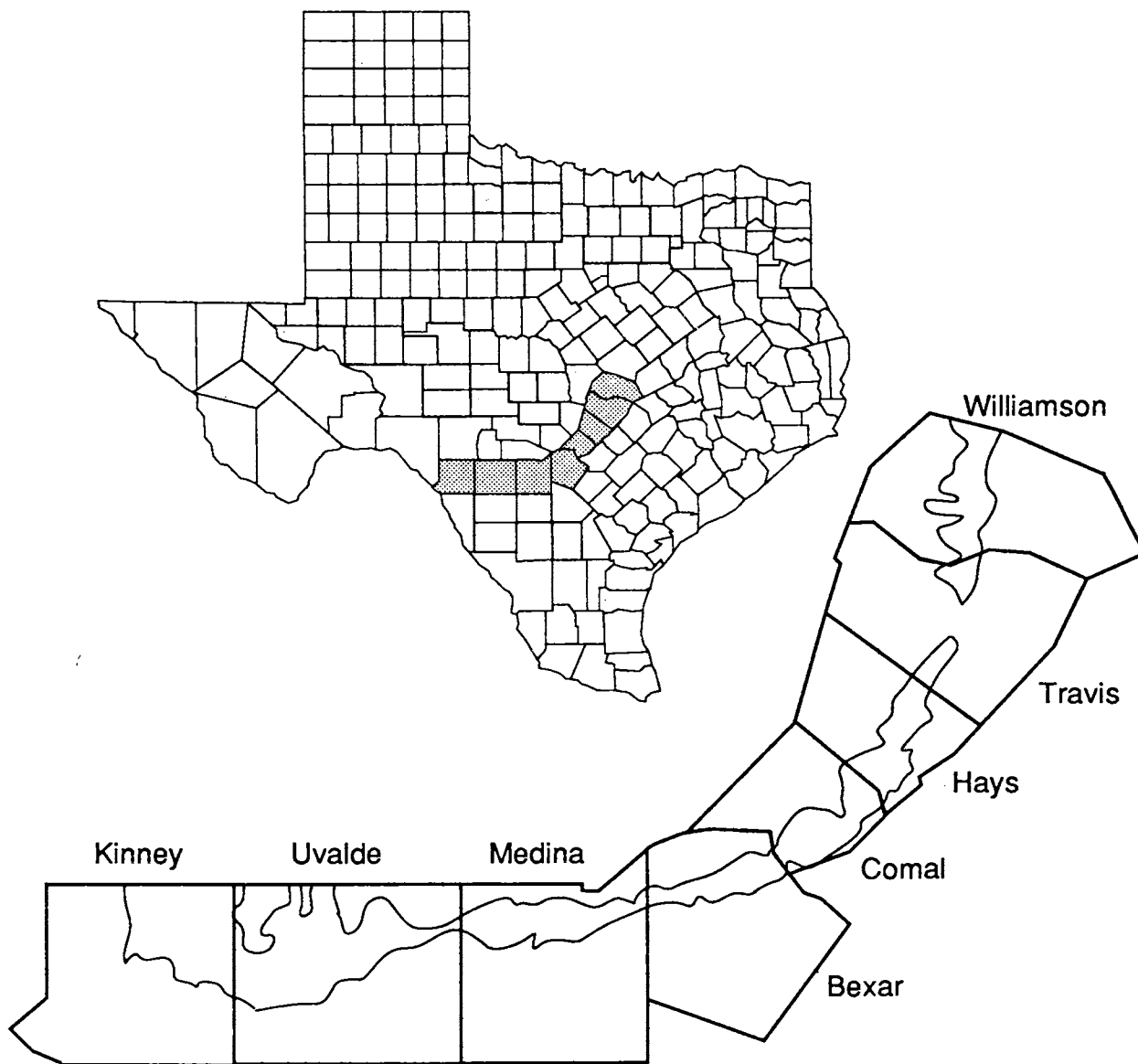
(2) **Required construction permit.** A permit to construct shall be required before an on-site sewerage facility can be constructed in the subdivision.

(3) **Required license to operate.** A license to operate shall be required for the operation of such an on-site sewerage facility.

(4) **Status of applicable water pollution abatement plan application or approval.** Whether or not an application for a water pollution abatement plan as defined in 31 TAC Chapter 313, has been made, and whether or not it has been approved, the application shall include any restrictions or conditions placed on that approval.

(p) **Generalized map of the Edwards Aquifer and its recharge zone.** This subsection comprises the following map.

(p.) Generalized map of the Edwards Aquifer and its Recharge Zone.  
This subsection comprises the following map.



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 April 2, 1990.

TRD-9003389 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: June 30, 1990

For further information, please call: (512) 458-7293

◆ ◆ ◆  
**Chapter 337. Water Hygiene**  
**Public Water Systems**

• 25 TAC §§337.205-337.207

The Texas Department of Health proposes amendments to §§337.205-337.207, concerning public water systems. The sections cover water treatment, water distribution, and water storage. The major changes will include: the addition of a requirement for third party certification for all direct and indirect additives used for treating drinking water; the revision of requirements for third party certification of pipes and related components; and the revision of certification requirements for coating material. The department is proposing the amendments because the United States Environmental Protection Agency will no longer certify direct or indirect additives.

Mr. Stephen L. Seale, Chief Accountant III, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections. There will be no impact on local employment.

Mr. Seale 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 a positive health benefit associated with preventing potential contamination of water supplies by chemicals of unknown quality. There will be no effect on small businesses as a result of enforcing the sections. There will be no possible economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to James E. Pope, Director, Division of Water Hygiene, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7533. Comments will be accepted for 45 days from the date of publication of the proposed sections in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §341.002, which provides the Texas Board of Health with the authority to adopt rules covering public water systems, and establish standards and procedures for the management and control of sanitation and for health protection measure; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health,

the Texas Department of Health, and the commissioner of health.

§337.205. *Water Treatment.*

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

(g) **Effective January 1, 1992, all chemicals and process media used in treatment of water supplied by public water systems must conform to Standard 60 of the American National Standards Institute/National Sanitation Foundation (ANSI/NSF) for direct additives and Standard 61 of ANSI/NSF for indirect additives. Conformance with these standards must be obtained by certification of the product by an agency recognized by the department.**

§337.206. *Water Distribution.*

(a) Design and standards. All potable water distribution systems including pump stations, mains, ground, and elevated storage, shall be designed, installed and constructed in accordance with current AWWA standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, departmental review may be based upon ASTM, commercial and other recognized standards utilized by design engineers.

(1) **Effective January 1, 1992, all pipes and related products must conform to ANSI/NSF Standard 61 and must be certified by an agency recognized by the department.**

(2) All plastic pipe proposed for use in public water systems must bear the National Sanitation Foundation Seal of Approval and have an ASTM design pressure rating of at least 150 psi or a standard dimension ratio of 26.

(3) No pipe which has been used for any purpose other than the conveyance of drinking water shall be accepted and relocated for use in any public drinking water supply.

(b)-(g) (No change.)

(h) **Water hauling. When drinking water is distributed by tank truck or trailer, in lieu of distribution piping, it must be accompanied in the following manner.**

(1) (No change.)

(2) The equipment used to haul the water must be approved by this department and must be constructed as follows.

(A) (No change.)

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic

or fiberglass materials used as contact surfaces must be approved by either the United States Environmental Protection Agency, the United States Food and Drug Administration, the United States Public Health Service, or the National Sanitation Foundation. **Effective January 1, 1992, all such surfaces must conform to ANSI/NSF Standard 61 and be certified by an agency recognized by the department.**

(C)-(L) (No change.)

§337.207. *Water Storage.*

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

(c) Design and construction of clear wells, standpipes, reservoirs, and elevated tanks. All facilities for potable water storage shall be covered and designed, fabricated, erected, tested and disinfected in strict accordance with current AWWA standards, and shall be provided with the minimum number, size, and type of roof vents, manways, drains, sample connections, access ladders, overflows, liquid level indicators, and other appurtenances as specified in these sections. Bolted tanks shall be designed, fabricated, erected, and tested in strict accordance with current AWWA Standard D103. The roof of all tanks shall be designed and erected so that no water ponds at any point on the roof and, in addition, no area of the roof shall have a slope of less than 3/4 inch in 12 inches.

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

(8) All clear wells, ground reservoirs, standpipes, and elevated tanks shall be painted, disinfected, and maintained in strict accordance with current AWWA standards. However, no temporary coatings, wax grease coatings, or coating materials containing lead will be allowed. No [or any] other coatings will be allowed which are not approved for use (as a contact surface with potable water) by the United States Public Health Service (USPHS), the United States Environmental Protection Agency (EPA), National Sanitation Foundation (NSF), or the United States Food and Drug Administration (FDA). **Effective January 1, 1992, all coatings must conform to ANSI/NSF Standard 61 and must be certified by an agency recognized by the department.**

(9)-(11) (No change.)

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

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

Issued in Austin, Texas, on April 3, 1990.

TRD-9003447 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Proposed date of adoption: June 30, 1990

For further information, please call: (512) 458-7533

## TITLE 28. INSURANCE

### Part I. State Board of Insurance

#### Chapter 19. Agent's Licensing

##### Subchapter J. Standards of Conduct for Licensed Agents

###### • 28 TAC §19.907

The State Board of Insurance proposes new §19.907, concerning a code of ethics for insurance agents. The new section is necessary to codify established guidelines and goals for the ethical conduct of insurance agents and health maintenance organization agents. The proposed section would require each applicant for an original agent's license, and each applicant for renewal of an agent's license, to sign a statement affirming that the applicant has read and subscribes to the code of ethics for insurance agents. The code of ethics for insurance agents is set forth in the proposed section. The code of ethics for insurance agents is a guide for agents' conduct and sets goals for agents to achieve, but it is not a rule as such.

Jack Evins, deputy commissioner for licensing, has determined that for the first five-year period the proposed section is in effect there will be a negligible fiscal implication for state government as a result of

enforcing or administering the section. The state will have to print and distribute copies of the code of ethics with applications for agents' original or renewal licenses. This expense is not expected to exceed \$1,000 per year. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Jack Evins 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 increased awareness of the standards of conduct an insurance agent should strive to achieve. There will be no effect on small businesses as a result of enforcing the section. 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 Tony Schrader, Director, Market Conduct, State Board of Insurance, P.O. Box 149091, Austin, Texas 78714-9091.

The new section is proposed under the Insurance Code, Articles 1.04; 1.14-2, §3A; 3.75, §8; 21.07, §13; 21.07-3, §21; 21.14, §26; and 23.23(a), and under the Texas Health Maintenance Organization Act, §15(g) and §15A(h). The Insurance Code, Article 1.04, authorizes the State Board of Insurance to determine policy and rules. The Insurance Code, Article 1.14-2, §3A, authorizes the State Board of Insurance to monitor the activities of surplus lines agents and promulgate rules. The Insurance Code, Article 3.75, §8, authorizes the State Board of Insurance to establish rules including, but not limited to, requirements for licensing agents. The Insurance Code, Article 21.07, §13, authorizes the State Board of Insurance to establish and amend rules and regulations for

the administration of Article 21.07, which concerns licensing of agents. The Insurance Code, Article 21.07-3, §21, authorizes the State Board of Insurance to establish and amend rules for the administration of the Managing General Agents' Licensing Act. The Insurance Code, Article 21.14, §26, authorizes the State Board of Insurance to require answers under oath from insurance companies and their local recording agents or solicitors. The Insurance Code, Article 23.23(a), authorizes the State Board of Insurance to promulgate rules necessary to license and control agents of non-profit legal services corporations. The Texas Health Maintenance Organization Act, §15(g) and §15A(h), authorizes the board to promulgate such rules and regulations as are necessary to provide for the licensing of health maintenance organization agents.

###### *§19.907. Code of Ethics for Insurance Agents.*

(a) Scope. All persons described as agents in the Insurance Code, Article 21.02, and all persons described as health maintenance organization agents in the Texas Health Maintenance Organization Act, §15, are required to comply with this section.

(b) Statement required. Effective June 1, 1990, all persons filing an agent's original application for license or an agent's application for license renewal must sign a statement that says the applicant for an original agent's license or a renewal agent's license has read and subscribes to the code of ethics for insurance agents.

(c) Text of code. The code of ethics for insurance agents reads as follows.



## CODE OF ETHICS FOR INSURANCE AGENTS

### Preamble

This Code of Ethics for Insurance Agents applies to all agents licensed in Texas. This Code is meant to serve as a guide for agents in the conduct of their profession. This Code also sets goals for agents to strive to achieve and, as such, is intended to provide an objective measure of performance.

### General Consideration

I believe in the insurance business and its future and that the insurance agent is the instrument through which insurance reaches its maximum benefit to society and attains its most effective distribution.

I believe that insurance is a business of public trust and that the public's rights in the insurance business are paramount.

I regard the insurance business as an honorable occupation and believe that it affords the agent a distinct opportunity to serve society.

I will strive to render the full measure of service expected from an agent.

I realize that only through unselfish service will the insurance business retain public confidence, and I will seek to elevate the standards of my business in accordance with this Code and encourage others to do likewise.

I will strive to make the insurance business a self-policing profession.

I will meet all financial obligations on a timely basis.

I will not condone any form of unfair or illegal discrimination, including, but not limited to, racial and sexual discrimination.

### Duties to the Public

I will endeavor to enhance the public understanding of insurance and risk management.

I will act in a professional manner to maintain and enhance the integrity and competence of the insurance business.

I will accurately, honestly, and completely disclose all information essential to the consumer's decision.

I will preserve the confidentiality of all pertinent information developed through my association with the insurance consumer.

I will continue to improve my knowledge, skills, and competence through study and application.

I will remain current on the financial stability of companies with which I place business.

I will be informed with respect to insurance-related laws and regulations and observe them both in letter and spirit.

I will analyze the insurance needs of my clients and recommend the coverage suited to those needs to the best of my ability.

I will work with national, state, and local authorities to heighten safety and reduce risks in my community.

#### Duties to Insurance Companies

I will respect the authority vested in me by insurance companies to act on the companies' behalf.

I will use care in the selection of risks.

I will disclose complete and accurate information to insurers to allow insurers to make sound underwriting decisions.

#### Duties to Fellow Agents

I will compete on a fair and honorable basis.

I will strive to maintain dignified and honorable relationships with members of other professions.

I will not make false statements, misrepresentations, or omissions of fact in my dealing with other agents.

I will strictly observe all laws relating to the conduct of my business and avoid any conduct or activity that would cause unjust harm to others.

I will work with my fellow agents for the betterment of the insurance business and assist in maintaining the integrity of this Code of Ethics.

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 March 29, 1990.

TRD-9003305      Nicholas Murphy  
                         Chief Clerk  
                         State Board of Insurance

Earliest possible date of adoption: May 11, 1990

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

◆            ◆            ◆  
**TITLE 34. Public Finance**  
**Part IV. Employees**  
**Retirement System**

**Chapter 77. Benefits**

• **34 TAC §77.9, §77.11**

The Employees Retirement System of Texas proposes new §77.9 and §77.11, concerning

additional retirement option and reduction factors for age and retirement options, Judicial Retirement System of Texas Plan II (JRS-II). The addition of §77.9 will make JRS-II consistent with JRS-1 and the Employees Retirement System in that there will be an option that will pay three-fourths to the designated beneficiary at the death of the retiree. The addition of §77.11 will provide for interest rates and mortality, service, and other tables necessary for the retirement system after considering the actuarial investigation.

William S. Nail, 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.

Mr. Nail also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that as of this date, no judges have retired under JRS-II. The adoption of §77.9 and §77.11 will put the actuarial tables and retirement options in

place in anticipation of future retirements under JRS-II. There will be no effect on small businesses as a result of enforcing the section. 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 William S. Nail, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The new sections are proposed under Title 8, Texas Government Code, §839.103 and §840.005, which provides the Board of Trustees of the Employees Retirement System of Texas with the authority to provide optional service retirement annuities and adopt interest rates and mortality, service, and other tables the board considers necessary for the retirement system.

*§77.9. Additional Retirement Option.* A Judicial Retirement System of Texas Plan Two (JRS-II) member applying for service or disability retirement may elect to receive

in lieu of the standard annuity or other options, but as an actuarial equivalent thereof, the following service retirement to be known as Option 5: after the retiree's death, three-fourths of the reduced annuity is payable to and throughout the life of the person designated by the member at the time of retirement.

**§77.11. Reduction Factors For Age and Retirement Options—Judicial Retirement System of Texas Plan Two (JRS-II).**

(a) Tables for calculation of optional factors.

(1) The service retirement reduction factors for optional forms of service retirement annuities are independent of the sex of the member and of the nominee and are based on the UP-1984 Table with an age set back of one year for retiring members and an age set back of eight years for nominees. The interest assumption is 8.5%.

(2) The disability retirement reduction factors for optional forms of disability retirement annuities are independent of the sex of the member and of the nominee and are based on 85% of the 1965 Railroad Retirement Board Disabled Annuity Mortality Table for disability retirees and on the UP-1984 Table with an age set back of eight years for nominees. The interest assumption is 8.5%.

(3) Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets; P.O. Box 13207; Austin, Texas 78711-3207. The UP-1984 Table, along with the adjustments described in paragraphs (1) and (2) of this subsection and 85% of the 1965 Railroad Retirement Board Disabled Annuity Mortality Table are adopted by reference and made a part of this rule for all purposes.

(b) Option factors. Option factors for service retirement and option factors for disability retirement for a member of the JRS-II have been developed by the actuaries and are adopted by reference subject to the limitations of this subsection. Both sets of option factors are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets; P.O. Box 13207; Austin, Texas 78711-3207.

(c) Formula for reduction factors for death before age 65.

(1) A death benefit annuity of the Judicial Retirement System of Texas Plan Two on behalf of a member dying before age 65 while not eligible for an unreduced service retirement benefit is reduced for each whole or partial calendar month that occurs during the period from the date of death to the 65th birthday, including the months that contain the dates of death and birthday. For the first 120 months (ages 55-64), the annuity is reduced

by one-third of one percent per month. For the next 60 months (ages 50-54), the annuity is reduced by one-fourth of one percent per month. For the next 60 months (ages 45-49), the annuity is reduced by one-sixth of one percent per month. For the next 120 months (ages 35-44), the annuity is reduced by one-twelfth of one percent per month.

(2) A death benefit annuity on behalf of a member dying before age 65 while eligible for an unreduced service retirement benefit (i.e. with 25 or more years of service credit) shall not be reduced for age.

(d) Reduction factors for death before age 65. Reduction factors for death before age 65 have been developed and are adopted by reference subject to the limitations of this subsection. The set of reduction factors is available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets; P.O. Box 13207; Austin, Texas 78711-3207.

(e) Reserve factors. The reserve factors vary by the age of the retiree and the age of the nominee, if applicable. The mortality basis is the UP-1984 Table with an age set back of one Year for retirees and an age set back of eight years for nominees. The interest assumption is 8.5%. Member contributions are assumed to be 25% of the standard benefit reserve. For disability retirement, the mortality basis is 85% of the 1965 RRB Disabled Annuity Mortality Table for disabled members. The reserve factors are adopted by reference and made a part of this rule for all purposes. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets; P.O. Box 13207; Austin, Texas 78711-3207.

(f) Dollar limitations for maximum annual benefit. Service retirement annuities shall conform to dollar limitations and applicable adjustments under the Internal Revenue Code of 1986, §415, (26 United States Code §415) as determined by the federal Commissioner of Internal Revenue.

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 April 3, 1990.

TRD-9003452

Clayton T. Garrison  
Executive Director  
Employees Retirement  
System of Texas

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 476-6431 ext 213



## TITLE 37. PUBLIC SAFETY AD CORRECTIONS

### Part I. Texas Department of Public Safety

#### Chapter 13. Controlled Substances Regulations

##### Precursor Chemical Regulations • 37 TAC §§13.71-13.88

The Texas Department of Public Safety proposes new §§13.71-13.88, concerning precursor chemical regulations. The new sections promulgate regulations to be followed by distributors and purchasers of statutory chemical precursors. These regulations establish the department procedures for reporting sales or transactions, obtaining proper permits, and maintaining inventories and records. Peace officers have statutory authority to conduct audits, inspect records, and make complete copies of all such records pertaining to chemical precursors.

Tom Haas, manager of financial services, 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.

B. C. Lyon, captain, Narcotics Service, 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 to ensure the public's health and welfare are not jeopardized by the proliferation of these chemical substances by their use in the illicit manufacture of a controlled substance or controlled substance analogue. There will be no effect on small businesses as a result of enforcing the section. 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 John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The new sections are proposed under the Health and Safety Code, §481.077(b) and §481.078(b)(e), which provides the Department of Public Safety with the authority to file rules with the secretary of state regarding named chemical precursors, reporting of sales or transfers, required permitting, required inventories, and authorizing peace officers to conduct inspections, audits, and copying of any and all records.

##### §13.71. General Information.

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

(1) Apparatus—Any chemical laboratory equipment designed, made, or adapted to manufacture a controlled substance or a controlled substance analogue including:

(A) the following items listed under Health and Safety Code, Chapter 481, §481.080(a):

- (i) condensers;
- (ii) distilling apparatus;
- (iii) vacuum dryers;
- (iv) three-neck flasks;
- (v) distilling flasks;
- (vi) tableting machines;
- (vii) encapsulating machines; and

(B) the following additional items determined by the director to jeopardize public health and welfare by evidenced use in the illicit manufacturer of controlled substances or controlled substance analogues:

- (i) filter funnels, buchner funnels, and separatory funnels;
- (ii) erlenmeyer flasks, two-neck flasks, single neck flasks, round bottom flasks, Florence flasks, thermometer flasks, and filtering flasks;
- (iii) Soxhlet extractors;
- (iv) transformers;
- (v) flask heaters;
- (vi) heating mantles; and
- (vii) adaptor tubes.

(2) Annual permit—A permit issued by the department to a person authorizing the distribution or purchase of a precursor inside or outside the state for one year from the date of issue.

(3) Clandestine laboratory—An illicit chemical laboratory or similar operation, as the term is used in the Health and Safety Code, §481.060(c), consisting of a sufficient combination of precursor and apparatus items used or usable in the manufacture or synthesis of a controlled substance or a controlled substance analogue.

(4) Distribute—To act as a distributor.

(5) Distributor—A manufacturer, wholesaler, retailer or a person who otherwise furnishes or transfers a precursor.

(6) Lawful possession—The possession of a precursor in compliance with state or federal law.

(7) Legitimately established business—A business that is concerned with the activity of distribution or purchase of commodities and that conforms with all recognized and accepted principles, standards, rules, and laws governing such activities.

(8) One-time permit—A permit issued by the department to a person authorizing a single distribution or purchase of a precursor inside or outside the state.

(9) Otherwise furnish—To initiate a transaction resulting or intending to result in the distribution of a precursor to any person in this state, regardless of whether the person initiating the transaction is the owner or possessor of the item or merely a broker.

(10) Permit application—A form obtained from the department to be submitted by any person seeking an annual or one-time permit.

(11) Purchase—To act as a purchaser.

(12) Purchaser—A person who seeks or obtains the distribution of or who otherwise receives a precursor, whether through purchase, lease, loan, gift, or other transfer.

(13) Precursor—Any of the precursor substances listed under Health and Safety Code, Chapter 481, §481.077(a).

(14) Readily retrievable records—Records kept in an automated data processing system or in a mechanized recordkeeping system if kept in a manner so that they can be separated from all other records in a reasonable time or in a manner so that the required items are visually distinguishable from other items appearing on the records identified by means of an asterisk, red-line, high-light, or in some other similar manner.

(15) Recipient—A purchaser.

(16) Renewal notice—A notice mailed by the department to annual permit holders approximately 30 days before expiration of the permit advising the holder of the need to renew the permit before expiration.

(17) Report for sales or transfers—A report made on a NAR-22 form that is provided by the department to record each distribution or purchase of a precursor or a report made after department approval on a computer-generated report form which contains the same information in the same format.

(18) Waiver letter—A notice issued by the department that permits, when accompanied by a letter of authorization, the distribution of a precursor to the purchaser named in the letter of authorization and that waives the required 21-day waiting period before distribution or delivery.

(b) Terms. The terms "Act," "Controlled Substance," "Director," "Department," and "Person" shall have the meaning assigned them in the Health and Safety Code, Chapter 481.

(c) Department information. For information relating to precursor items, for questions about required reports, or for other needs:

(1) written correspondence should be directed to the following address: Texas Department of Public Safety, Narcotics Service, Precursor/Apparatus Section, P.O. Box 4087, Austin, Texas 78773-0001.

(2) Telephone inquiries should be directed to the same unit at (512) 465-2150.

### §13.72. Applicability.

(a) The provisions of the Penal Code, Chapter 7, §1.03(b), concerning criminal responsibility for conduct of another, apply to the Act.

(b) Nothing in these sections shall be construed as authorizing or permitting any person to do any act which such person is not authorized or permitted to do under federal law or rule, or under other state law or rule; nor shall compliance with these sections be construed as compliance with federal or other state law or rule unless expressly provided in such other law or rule.

### §13.73. Persons Required to Obtain a Permit.

(a) Unless otherwise exempted by law or by these sections, a person who is located inside the state must obtain a permit from the department if:

(1) the person distributes a precursor to another person who is located inside the state; or

(2) if the person purchases a precursor from another person who is located inside or outside the state.

(b) Unless otherwise exempted by law or by these sections, a person who is located outside the state must obtain a permit from the department if the person places an order to purchase or take delivery while in this state.

(c) The permit may be an annual permit or a one-time permit.

### §13.74. Persons Exempt From the Permit Requirements.

(a) A person is exempt from the permit requirements who:

(1) distributes a precursor to an educational or research program of a private school, a school district, or a public or private institution of higher education;

(2) purchases any such item for a private school, a school district, or a public or private institution of higher education engaged in an educational or research program for the educational entity;

(3) is a law enforcement officer in the actual discharge of official duties or an employee or agent of a federal, state, or local governmental entity, if that person distributes or purchases any such item while

acting in the usual course of his business or employment;

(4) has a valid letter of authorization under §13.76 of this title (relating to Letter of Authorization From a Purchaser);

(5) distributes or purchases any such item within a single corporation or other entity;

(6) is an employee of any distributor or purchaser required to obtain a permit and who is acting under the permit or letter of authorization of the employer;

(7) is a distributor located outside the state;

(8) is a purchaser located outside the state except as provided in §13.73(b) of this title (relating to Persons Required to Obtain a Permit).

(b) A distributor must require proof of exemption from a person claiming such exemption unless such proof has been previously established.

(c) Upon demand of a distributor, a person who claims an exemption shall present to the distributor proof of the exemption, including:

(1) proof of agency employment through an agency identification card; or

(2) the name and telephone number of a supervisor to be contacted in order to verify employment.

#### *§13.75. Requirements for Issuance of a Permit.*

(a) The director shall issue a one-time permit to an applicant to distribute or purchase a precursor if the applicant:

(1) has made proper application to the department on an application obtained from the department;

(2) has not furnished material information that is false or fraudulent on such application or any other application filed under this Act or this chapter;

(3) demonstrates the item will be used solely for legitimate purposes; and

(4) has not been convicted of a felony involving the delivery or the manufacture of a controlled substance or a controlled substance analogue.

(b) The director may waive the requirements of subsection (a)(4) of this section based upon the circumstances surrounding the conviction after considering the age of the applicant at time of conviction, the time that has elapsed since the conviction, and the current reputation of the applicant in the community of residence and business operation.

(c) A one-time permit for purchase must be presented in person by the purchaser to the distributor at the time of deliv-

ery or distribution so the distributor can complete the information required under §13.79 of this title (relating to Instructions for Completing the NAR-22 Form).

(d) The director shall issue an annual permit to an applicant to distribute or purchase a precursor if the applicant meets all of the requirements of a one-time permit and the applicant represents a legitimately established business.

#### *§13.76. Letter of Authorization From a Purchaser.*

(a) In lieu of a permit, a legitimately established business may purchase a precursor from a distributor within this state by presenting or providing to the distributor a letter of authorization that contains the following:

(1) name of business;

(2) physical address to include number and street name, city, state, and zip code;

(3) area code and telephone number;

(4) business license or comptroller tax identification number;

(5) a complete description of how the precursor will be used; and

(6) the signature of the individual authorizing the purchase on behalf of the legitimately established business.

(b) A purchaser who orders a precursor through an automated ordering system without a permit must provide a letter of authorization to the distributor.

(c) A purchase order or purchase voucher submitted by a purchaser to a distributor will suffice as a letter of authorization if it contains all of the information required in subsection (a) of this section and if it is retained on file by the distributor.

(d) The distributor will retain on file the original letter of authorization and it may be used for future purchases. The purchaser must issue a new letter when any information required in the original letter changes.

#### *§13.77. Distribution Requirements and Letter of Waiver.*

(a) The Health and Safety Code, Chapter 481, §481.077(f) requires a 21-day waiting period before delivery of a precursor. Except as provided by this section, a distributor may not distribute any such item before the required waiting period has passed.

(b) If a purchaser has met the permit, exception, or letter of authorization requirements of this chapter, a distributor may distribute a precursor:

(1) after the required waiting period has passed, if the distributor has

submitted the required report of the prospective transaction to the department;

(2) before the required waiting period has elapsed, if a letter of waiver has been issued by the department; or

(3) before the required waiting period has elapsed, if a permit has been issued by the department.

(c) A letter of waiver is a notice issued by the department to a purchaser that, when presented to a distributor along with a letter of authorization, allows the distributor to complete the transaction before the required 21-day waiting period has elapsed.

(d) The director will issue a letter of waiver if:

(1) there is a pattern or history of regular supply and purchase of a precursor between the distributor and the purchaser; or

(2) the purchaser has established a record or history of utilizing the precursor solely for a lawful purpose.

(e) Distributors shall assist the department in determining which purchasers qualify or no longer qualify under subsection (d)(1) of this section for a letter of waiver.

(f) A one-time or annual permit, when issued by the department to a purchaser, allows a distributor to complete the transaction before the required 21-day waiting period has elapsed, provided:

(1) proper permit identification is presented to the distributor under §13.79(c)(2) of this title (relating to Instructions for Completing the NAR-22 Form); and

(2) no alterations have been made to the permit, if it is a one-time permit; or

(3) the distributor is furnished the permit number, if it is an annual permit.

#### *§13.78. Reporting Sales or Distributions.*

(a) Except as provided by this section, a NAR-22 form will be used by all distributors to report sales or distributions of a precursor 21 days before delivery.

(b) When authorized by the director, a comprehensive monthly report of sales or distributions may be made to the department by a distributor. A comprehensive monthly report may be:

(1) a single NAR-22 form with all information tabulated for each individual purchaser; or

(2) a single NAR-22 form with the total monthly information tabulated for each purchaser.

(c) When making a comprehensive monthly report, distributors will attach the

original (white) copy of any one-time permit to the original (white) copy of the NAR-22 form.

(d) Except as provided in subsection (g) and (h) of this section, comprehensive monthly reports are due on the 15th day of the month following the month covered by the report.

(e) When authorized by the director, a comprehensive monthly report may be accomplished through computer-generated reports, provided:

(1) the Narcotics Service, Precursor/Apparatus Section, has received a request to approve such reports at least 30 days before the first month for which approval is sought;

(2) the method of reporting is approved by the department, including:

(A) hard copy;

(B) magnetic tape;

(C) IBM compatible diskette;

or

(D) other similar compatible method; and

(3) the information contained in the report is in the same order and contains the same information as it appears in the applicable parts of the NAR-22 form.

(f) The distributor is responsible for the accuracy of the computer-generated report and will promptly make corrections of any data entry or transmission errors. The department may rescind authorization to use computer-generated reports with 30 days notice.

(g) A manufacturer or wholesaler of a precursor will be deemed to be in compliance with the reporting requirements of these sections if:

(1) a report containing all of the information required in a comprehensive monthly report has been submitted by the end of the next calendar year following the reporting month;

(2) the information is made available by telephone or letter at any earlier time upon request; and

(3) all information required in the report remains readily available for a two year period from the date of each transaction.

(h) In the event a complete report is not forthcoming upon request by the director, a letter shall be sent certified mail, return receipt requested, demanding that all information required by statute be provided no later than 30 days after the date the demand letter was mailed. The demand letter may require submission of all or part of

the information maintained for the past two year period and may require strict compliance with the reporting requirements of these sections for a stated period of time.

### *§13.79. Instructions for Completing the NAR-22 Form.*

(a) Part I contains information required from or about the distributor and must be completed by the distributor. Section H is completed by recording the measured amount of precursor distributed in the space beside that precursor.

(b) Part II contains information to be completed by a distributor who distributes to a legitimately established business under either a letter of authorization or a permit.

(1) The name of the business, the business address, the area code and telephone number, and the permit number will be recorded in the appropriate spaces. Leave the permit number blank if there is none because the transaction is being conducted under a letter of authorization.

(2) If the order is made in person, the name of the purchaser's employee, who presents the letter of authorization or the permit number, will be recorded on line C. The purchaser's employee must sign in Part V as purchaser on line A.

(3) If the order is made under a letter of authorization received by mail or other indirect ordering process to be filled by shipment, the name of the individual authorizing the purchase will be recorded on line C by the distributor.

(4) If the order is made under a permit number received by mail, telephone, or other indirect ordering process to be filled by shipment, the name of the individual giving the permit number will be recorded on line C by the distributor.

(5) When the order is not made in person, no purchaser signature is required and the distributor must sign the form on line B of Part V to verify that the order was received by mail or telephone as required by subsection (e) of this section.

(c) Part III contains information to be completed about a purchaser under a one-time permit.

(1) The distributor will complete lines A, B, and C of Part III from information observed on a state driver's license or state issued identification card that has been physically presented by the purchaser and inspected by the distributor.

(2) To ensure proper identification, the distributor will compare the picture on the driver's license or identification card with the appearance of the individual possessing the one-time permit.

(3) The information on the one-time permit and the driver's license or identification card should be basically the same.

(4) The name, date of birth (DOB), and driver's license number or identification card number will be compared and must match.

(5) The home address will also be compared and should match. If it is different the address on the one-time permit will be recorded on line B.

(6) If the purchaser owns or operates a motor vehicle used during the transaction, the distributor will record the year, state, and number of the motor vehicle license displayed on the vehicle.

(d) Part IV contains information to be completed by a distributor about an exempt agency or person.

(1) The name, area code, telephone number, and address of the exempt agency or person will be recorded on lines A and B.

(2) If the order is made in person by an employee or agent of an exempt agency, the distributor will request the employee or agent to show proof of employment or agency by displaying agency identification.

(3) If the employee or agent presents such identification, that person's name will be entered on line C and check the YES box.

(4) If the employee or agent does not present such identification, request the name, area code, and telephone number of the person's supervisor. Record this information on lines A and C and check the NO box.

(5) At the time of delivery, the employee or agent must sign in Part V as purchaser on line A.

(6) If the order from an exempt agency or person is received by mail, telephone, or other indirect ordering process to be filled by shipment to the exempt agency, the distributor will record the name, the area code and telephone number, the address of the agency, and the name of the person making the order on lines A, B, and C. No purchaser signature is required and the distributor must sign the form on line B of Part V to verify that the order was received by mail or telephone as required by subsection (e) of this section.

(e) Part V contains signature blanks, mailing information, and a notice.

(1) Signature on line A of purchaser in Part II, III, or IV.

(A) A person who is a purchaser conducting the transaction in person on behalf of a business or an exempt agency will sign line A.

(B) A person who is a purchaser conducting the transaction in person with a one-time permit will sign line A.

This signature should be reasonably similar to the signature on the one-time permit and the signature on the driver's license or identification card. Comparison of these signatures is required to discourage forgery or fraud.

(2) Signature on line B of distributor or as witness to purchaser's signature.

(A) The distributor will always sign line B to certify proper completion of the form.

(B) The distributor must sign line B as a witness to the purchaser's signature when required by the sections. When signature of the purchaser is not required, the signature of the distributor on line B also verifies that the order was received by mail or telephone and that the transaction was completed.

#### *§13.80. Reporting Discrepancy, Loss, or Theft.*

(a) The Health and Safety Code, Chapter 481, §481.077(i) requires the department to be notified not later than the third day after the date that:

(1) a purchaser learns of a discrepancy in the amount of a precursor ordered and the amount received, if not back ordered; or

(2) a distributor learns of a loss or theft from current inventory or during shipment.

(b) The report may be submitted on regular business letterhead or other type of reporting form. The report must contain the following information:

(1) name, address, area code, and telephone number of the business or other person submitting the report; and

(2) the printed or typed name of the individual submitting the report and the date the report is prepared.

(c) If the report is of a discrepancy it must include the name of the item ordered, the difference in the amount actually received, and the amount shipped according to the shipping statement or invoice.

(d) If the report is of a loss or theft from current inventory, it must include the name and amount of items lost or stolen, the physical location where the loss or theft occurred, and the date of discovery of the loss or theft.

(e) If the discrepancy, loss, or theft occurred during shipment of the item, the report must include the name of the common carrier or person who transported the item and the date that the item was shipped.

#### *§13.81. Reporting Receipt of a Precursor Without a Permit.*

(a) Every person located in this state who, without proper permit under these sections, purchases or obtains by whatever means a precursor from a distributor inside or outside this state must, within three days of receipt of such item, submit a report to the department containing the following information:

(1) name, address, area code, and telephone number of the person who received the item;

(2) the typed or printed name of the individual making the report;

(3) the name, amount, or quantity of the item received; and

(4) the reason for obtaining the item without proper permit.

(b) This report may be combined with a report under §13.80 of this title (relating to Reporting Discrepancy, Loss, or Theft).

#### *§13.82. Regulated Chemical Precursors.*

(a) These sections are intended to apply to the chemical precursors most commonly used in clandestine laboratory operations.

(b) The list of precursor chemicals covered by these sections will not change unless future enforcement activities reveal a change in the widespread use of other chemical precursors in clandestine laboratory operations. The director may by rule add or delete chemical precursors to the list.

(c) These sections do not apply to a precursor that has been mixed or combined with other non-controlled chemicals or substances in the manufacture or production of a substance used for legitimate purposes, provided the precursor could only be reclaimed through a distillation or extraction process.

(d) Inquiries about a particular precursor should be resolved by contacting the department as provided in §13.71(b) of this title (relating to General Information).

#### *§13.83. Out-of-State Business Activities.*

(a) Distributors who are located in this state must meet:

(1) the permit requirements of §13.73 of this title (relating to Persons Required to Obtain a Permit); and

(2) the reporting requirements of §13.78 of this title (relating to Reporting Sales or Distributions).

(b) If the purchaser is located outside the state at the time of order and at the time of receipt, the distributor need not require a permit, a letter of authorization, or a waiver letter from the purchaser as otherwise required by these sections.

(c) If the purchaser is located inside the state at the time of order or at the time

of receipt, the distributor must require a permit, a letter of authorization, or a waiver letter from the purchaser as required by these sections.

(d) This section does not exempt from prosecution any person who distributes any of these items with the knowledge or intent that the recipient will use them to unlawfully manufacture a controlled substance or controlled substance analogue.

#### *§13.84. Record Keeping Requirements for Distributors.*

(a) The Health and Safety Code, Chapter 481, §481.077(a), requires every distributor of a precursor to make an accurate and legible record of each distribution and to maintain the record for at least two years after the date of transaction.

(b) If the NAR-22 form is completed, the record of distribution is automatically generated. The second (yellow) copy will remain in the distributor's booklet to meet this record keeping requirement.

(c) If the record of distribution is recorded or maintained in an automated data processing system which provides a comprehensive monthly report to the department, this record keeping requirement will be satisfied as long as the record is readily retrievable for at least two years after the date of transaction.

(d) An original letter of authorization and, if applicable, a waiver letter will be maintained on file for at least two years after the date of transaction.

(e) If a purchaser has an annual permit, the distributor is not required to maintain on file any letter of authorization or waiver letter.

(f) These requirements apply only to a distributor and do not apply to an individual purchaser, a legitimately established business purchaser, or an exempt agency purchaser who has lawful possession of a precursor and who does not redistribute the precursor. The precursor may be re-distributed:

(1) to persons associated with the individual purchaser's stated use; or

(2) by a legitimately established business or exempt agency during the day-to-day use of the item in the legitimate activities of the business or agency.

#### *§13.85. Inventory Requirements of Distributors.*

(a) The Health and Safety Code, Chapter 481, §481.077(k) requires every distributor of a precursor to maintain inventory records in accordance with rules established by the director.

(b) Every distributor shall conduct an initial inventory to include all precursors covered by these sections that are in stock

at the time of inventory. Another inventory of precursors must be conducted at least once each two years after the initial inventory.

(c) If the distributor is a business that routinely conducts an annual inventory of all items, this inventory will meet the inventory requirements, provided that each precursor covered by these sections is identified by an asterisk, red-line, highlight, or in some other similar manner readily distinguished from all other items appearing on the inventory.

#### *§13.86. Audits and Inspections of Distributors.*

(a) The Health and Safety Code, Chapter 481, §481.077(k), allows a peace officer to conduct an audit and to inspect all records of distributors.

(b) Every distributor shall:

(1) have the records required by these sections readily retrievable;

(2) allow a peace officer at any reasonable time to conduct an audit and to inspect records of purchases, distributions, or inventories; and

(3) allow a peace officer to make full and complete copies of these records.

(c) If an automated data processing system is utilized to maintain these records and if no printer is available on site, then:

(1) a hard copy printout must be made available within 72 hours of the audit; and

(2) the individual providing the printout must make a certification stating that the printout is true and correct as of the date of entry and that such information has not been altered, amended, or modified.

(d) Unless the owner or agent in charge of the business premises consents in writing, no inspection authorized by this section or by the Act shall extend to:

(1) financial data;

(2) pricing data; or

(3) sales data, other than shipment data.

(e) Refusal or interference with a peace officer's authority to conduct an audit, to inspect records, or to copy records will be grounds for revocation, denial, or modification of a permit.

#### *§13.87. Revocation, Denial, or Modification of a Permit.*

(a) The director may revoke, deny, or modify a permit to distribute or purchase a precursor in this state for a violation of the Act or these sections.

(b) Such action will be based on the knowledge, intent, and circumstances

surrounding the violation and may be taken in addition to filing any criminal charges.

#### *§13.88. Permit Holder Required to Update Information.*

(a) Not later than the seventh day after the date of the change, every person who holds an annual permit from the department must notify the department of any change in the holder's business name, address, area code, and telephone number.

(b) Notification must be in writing to the address or by telephone at the telephone number found in §13.71(b) of this title (relating to General Information).

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 March 27, 1990.

TRD-9003400

Joe E. Milner  
Director  
Texas Department of  
Public Safety

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 465-2000

## Part VI. Texas Department of Criminal Justice

### Chapter 160. Receipt and Disbursement of Work Program Residents' Earned Funds

#### • 37 TAC §§160.1-160.8

The Texas Department of Criminal Justice proposes new §§160.1-160.8, concerning receipt and disbursement of work program residents' earned funds. The new section establishes rules for the receipt and disbursement of funds received by participants in the Texas Department of Criminal Justice Pardons and Paroles Division on-site industries employment and training program; at a work facility.

Carl Reynolds, general counsel, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the section will be in effect will be an estimated increase in revenue of \$78,900 in 1991; and \$105,200, in 1992-1994.

Mr. Reynolds 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 not be applicable, as the public is relatively unaffected by this particular proposed section. There will be no effect on small businesses as a result of enforcing the sections. 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 Carl Reynolds, P.O. Box 13084, Austin, Texas 78711-3084.

The new sections are proposed under the Government Code, Title 4, §§496.051-496.062, which provides the Texas Department of Criminal Justice with the authority to grant work program privileges, under the Work Program Plan, which shall include programs and procedures for eligible persons in the custody of the institutional division of the Texas Department of Criminal Justice to contribute to court ordered restitution, payment of court costs, support for the person's family and dependents, savings for the person's release, and the expenses of the person's room, board, and maintenance.

*§160.1. Conditional Work Program Contract.* Each inmate who agrees to be transferred to a work facility as a resident in a training and employment program shall enter into a conditional work program contract regarding the receipt and disbursement of earned funds. (Texas Civil Statutes, Government Code, §496.054(b)(4)).

*§160.2. Residents' Contributions.* The voluntary agreement shall include provisions for the resident's contributions to the owner/operator/manager of the work facility. (Texas Civil Statutes, Government Code, §496.054(4)(A)).

*§160.3. Distribution of Residents' Contributions.* These contributions shall be distributed from the resident's earnings received for participation in the on-site industries training and employment after deductions have been made to pay all applicable state and federal taxes; not more than:

(1) 20% of the resident's earnings is to be used to pay toward the cost of being quartered in the facility;

(2) 15% of the resident's earnings is to be used to pay toward the cost of court ordered restitution to the victim or victims of the resident's crime(s); or in the event the amount of restitution is not specified in the judgment of the court; the sentence of the court, or an order revoking probation, then 5.0% of the resident's earnings shall be paid to the Compensation to Victims of Crime Fund and 10% shall be allocated equally between the cost of being quartered in the facility and the resident's savings account for the resident's benefit upon release;

(3) 5.0% of the resident's earnings is to be used to partially reimburse the Pardons and Paroles Division for the cost of supervision;

(4) 20% of the resident's earnings is to be placed in a designated savings account for the resident for the resident's benefit upon release;

(5) 20% of the resident's earnings is to be distributed toward the support



of any legal dependents. If there are no such dependents, then 20% of the resident's earnings shall be allocated equally between the cost of being quartered in the facility and the resident's savings account for the resident's benefit upon release. (Texas Civil Statutes, Government Code, §496.054(4)(A)).

*§160.4. Maximum Deductions.* The total maximum deductions from the earnings of the resident shall not exceed 80% of the resident's earned funds. (Texas Civil Statutes, Government Code, §496.054(4)(A)).

*§160.5. Accounting.* The owner/operator/manager of the work facility shall keep and maintain accurate accounts both electronically and with the ability to reduce to hard copy of the receipt and distribution of said funds earned by the resident. Such accounting is subject to inspection by appropriate authorities including the Texas Department of Criminal Justice Pardons and Paroles Division.

*§160.6. Transfer of Residents' Funds Upon Release.* Any amounts remaining in the resident's designated savings account at the time of the resident's release shall be conveyed to the resident in the form of a check or money order upon his release from the facility. (Texas Civil Statutes, Government Code, §496.054(b)(3) and (4)).

*§160.7. Transfer of Residents' Funds Upon Release to Another Facility or Institution.* In the event the resident is transferred from the facility for any reason, any funds held for the resident in any designated account, shall be transferred to the institution, agency, or responsible officer, or department receiving custody of the resident for safekeeping and administration for the resident's benefit, in accordance with the rules and regulations of the receiving institution, agency, or responsible officer or department. (Texas Civil Statutes, Government Code, §496.054(b)(3) and (4)).

*§160.8. Discretion to Change Disbursement Percentages.* The Texas Department of Criminal Justice may change the

percentages of disbursements in each category (a)-(e) for good cause and within the perimeters of state and federal law upon 15 days written notice of such change to the resident. (Texas Civil Statutes, Government Code, §496.054(b)(3) and (4)).

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 April 4, 1990.

TRD-9003470 Carl Reynolds  
General Counsel  
Texas Department of  
Criminal Justice

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 459-2708

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part II. Texas Rehabilitation Commission**

**Chapter 117. Special Rules and Policies**

• **40 TAC §117.2**

The Texas Rehabilitation Commission proposes new §117.2, concerning commission special rules and policies. The Texas Rehabilitation Commission (TRC) proposes new §117.2 concerning sick leave pooling. The commission proposes adopting by reference TRC Administrative Policies and Procedures Manual (APPM), 23.6, 6.13 General Policies: Sick Leave Pool, which was approved, and placed into effect, by the TRC board on February 24, 1990.

Charles Harrison, controller, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an estimated additional cost of \$10,200 per year comprised of one-half FTE Clerk III and additional computer time. There will be no effect on local government for the first five years the section is in effect.

Dale Place, deputy commissioner for Administrative/Support Services, has determined that for each year of the first five

years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to increase awareness of the creation, operation, and use of a sick leave pool to benefit commission employees who suffer catastrophic injury or illness. There will be no effect on small businesses as a result of enforcing the section. 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 Dale Place, Deputy Commissioner for Administrative Support Services, 4900 North Lamar Boulevard, Suite 4007, Austin, Texas 78751-2316.

The new section is proposed under Texas Civil Statutes, Article 6252-8e, §3 (Senate Bill 357, 71st Legislature, 1989) and the Texas Human Resources Code, Title 7, which provide the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for hearings, and other regulations necessary to carry out the purposes of this chapter.

*§117.2. Sick Leave Pool.*

(a) The commission proposes to adopt by reference Texas Rehabilitation Commission (TRC) Administrative Policies and Procedures Manual (APPM) 23.6, paragraph 6.13, General Policies: Sick Leave Pool and an attached form.

(b) Copies are available for review in the Human Resource Management, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, Texas 78751. Copies are available on request.

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 April 3, 1990.

TRD-9003475 Charles W. Schiesser  
Assistant Commissioner  
Texas Rehabilitation  
Commission

Earliest possible date of adoption: May 11, 1990

For further information, please call: (512) 483-4051

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# Withdrawn Sections

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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*.

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## TITLE 22. EXAMINING BOARDS

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

#### Chapter 523. Continuing Professional Education

#### Mandatory Continuing Education (CE) Program

##### • 22 TAC §523.63

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption a proposed repeal of §523.63 which appeared in the January 23, 1990, issue of the *Texas Register* (15 TexReg 312). The effective date of this withdrawal is April 2, 1990.

Issued in Austin, Texas, on April 2, 1990

TRD-9003398      Cynthia Hairgrove  
Attorney, Enforcement  
Coordinator  
Texas State Board of  
Public Accountancy

Effective date: April 2, 1990

For further information, please call: (512)  
450-7066



The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption a proposed new §523.63 which appeared in the January 23, 1990, issue of the *Texas Register* (15 TexReg 312). The effective date of this withdrawal is April 2, 1990.

Issued in Austin, Texas, on April 2, 1990

TRD-9003399      Cynthia Hairgrove  
Attorney, Enforcement  
Coordinator  
Texas State Board of  
Public Accountancy

Effective date: April 2, 1990

For further information, please call: (512)  
450-7066



# 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 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division

#### • 16 TAC §3.74

The Railroad Commission of Texas adopts an amendment to §3.74, without changes to the proposed text as published in the February 13, 1990, issue of the *Texas Register* (15 TexReg 753).

The proposed amendment is in response to legislative changes to Chapter 92 of the Texas Natural Resources Code passed by the 70th Legislature in 1987. The amendment will have the effect of increasing the applicability of §3.74 to larger qualified subdivisions up to 640 acres and qualified subdivisions located on barrier islands.

No comments were received regarding adoption of the amendment.

The Railroad Commission amends the section pursuant to the Texas Natural Resources Code, Title 3, Chapter 92, §92.004, which provides that the Railroad Commission shall adopt rules governing the contents of an application for a qualified subdivision.

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 April 2, 1990.

TRD-9003477  
 Kent Hance  
 Chairman  
 Railroad Commission of  
 Texas  
 Effective date: May 1, 1990  
 Proposal publication date: February 13, 1990  
 For further information, please call: (512) 463-6923

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 1. Texas Board of Health

#### Clinical Health Services

#### • 25 TAC §1.91

The Texas Department of Health adopts under federal mandate amendments to §1.91, concerning fees for clinical health services. Section 1.91(b) provides that the department shall base the calculation of fees in the schedule of fees upon the current federal poverty income guidelines. The amendment changes the schedule of fees as a result of new federal poverty income guidelines mandated under the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239.

The amendments are adopted under federal mandate for the following reasons. The Omnibus Budget Reconciliation Act of 1981 required all states to charge fees for clinical health services according to the federal pov-

erty income guidelines. Under this authority, the Board of Health adopted a schedule of fees in §1.91 which followed the federal guidelines. The Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, has modified the federal poverty guidelines, to become effective April 1, 1990. Therefore, the Board of Health is modifying the schedule of fees in §1.91 under federal mandate, to be effective on April 1, 1990.

The amendment is adopted under the Texas Health and Safety Code, §12.032, which provides the Board of Health with the authority to charge fees for Public Health Services; §12.001, which provides the board with the authority to implement by law every duty imposed by law on the board, the department and the commissioner of health; the Omnibus Budget and Reconciliation Act of 1989, Public Law 101-239, which raises the level of income for coverage by clinical health services to 133% of poverty; and Texas Civil Statutes, Article 6252-13a, §10, which provides the board to adopt rules under federal mandate.

#### §191. Fees for Clinical Health Services.

(a) (No change.)

(b) Schedule of fees.

(1) (No change.)

(2) The following schedule of fees lists the fees covering clinical health services provided at public health clinics. Local health department contractors may use the following schedule or their own schedule. Public health regions will use the following schedule.

### Schedule of Fees for Clinical Health Services

% Poverty Income	Family Size	Charge/Visit
0-132	[0-100]	\$00.00
133-199	[133-199]	\$ 4.00
200+	1-8	\$15.00

(3)-(9) (No change.)

(c) (No change.)

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

Issued in Austin, Texas, on April 2, 1990.

TRD-9003391  
 Robert A. MacLean, M.D.  
 Deputy Commissioner for  
 Professional Services  
 Texas Department of  
 Health  
 Effective date: April 1, 1990  
 For further information, please call: (512) 458-7773

## Chapter 37. Maternal and Child Health Services

### Chronically Ill and Disabled Children's Services

#### • 25 TAC §37.90

The Texas Department of Health adopts an amendment to §37.90, without changes to the text as proposed in the January 2, 1990,

issue of the *Texas Register* (15 TexReg 16).

The amendment to §37.90 changes the date of the designation of comprehensive cleft/craniofacial teams from February 1, 1990 to September 1, 1990. The amendment will allow additional time for designation of the comprehensive cleft/craniofacial teams affiliated teams and eliminate the need of an interim appeals process.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Health and Safety Code, §35.003, which provides the Board of Health with the authority to adopt rules, concerning the provision of services to eligible chronically ill and disabled children; and §12.001, which provides the Texas Board of Health with the authorization to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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 April 2, 1990.

TRD-9003410 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: April 23, 1990

Proposal publication date: January 2, 1990

For further information, please call: (512) 458-7355

## Chapter 115. Home Health Care Agencies

### Licensing and Regulation

#### • 25 TAC §§115.5, 115.8, 115.17

The Texas Department of Health adopts the amendments to §§115.5, 115.8, and 115.17, without changes to the text as proposed and published in the January 2, 1990, issue of the *Texas Register* (15 TexReg 17).

The amendments establish requirements which concern Class A agencies that withdraw from the Medicare program during the temporary licensure period, and eliminate the 50-mile limit to establish a Class B branch office requirement.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Health and Safety Code, §142.012, which provides the Texas Board of Health with the authority to adopt rules concerning home health agencies; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the commissioner of health.

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 April 2, 1990.

TRD-9003411 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: April 23, 1990

Proposal publication date: January 2, 1990

For further information, please call: (512) 458-7245

#### • 25 TAC §115.18

The Texas Department of Health adopts an amendment to §115.18, without changes to the proposed text as published in the December 19, 1989, issue of the *Texas Register* (14 TexReg 6636).

The purpose of the amendment is to assure that home health agencies providing home dialysis will recruit and employ qualified home dialysis technicians and nurses.

The amendment reduces the years of experience requirement of home dialysis technicians and requires an examination or a competency evaluation of dialysis technicians and nurses completing the agency's 80 hour orientation program.

The Home Health Services Advisory Council voted unanimously at its August 4, 1989, meeting to oppose the reduction in the work experience for home dialysis technicians. They considered a reduction in the existing requirements for technicians to be inappropriate. The council was concerned that patients would be at risk if they were to receive care from technicians with minimal work experience and knowledge. The council voted to maintain the original language of the section.

One commenter stated dialysis technicians should have two full years of home dialysis experience prior to participating in the home program and the orientation and training program should be a minimum six-week course rather than an 80-hour program.

The agency understands the concerns expressed by the commenter and the Home Health Services Advisory Council who object to the decrease in the work experience requirements. The agency is in favor of the proposed section as there is no evidence to demonstrate that a reduction in the work experience requirements or extending the time of the orientation training program would be inappropriate or result in minimally qualified or incompetent home dialysis technicians.

The commenters are the Texas Home Health Services Advisory Council and Dallas Nephrology Associates.

The amendment is adopted under the Health and Safety Code, §142.012, which provides the Texas Board of Health with the authority to adopt rules governing home health care agencies; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, Texas Department of Health, and the commissioner of health.

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 April 2, 1990.

TRD-9003409 Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: April 23, 1990

Proposal publication date: December 19, 1989

For further information, please call: (512) 458-7245

## Chapter 145. Long-Term Care

### Subchapter E. Procedures on Long-Term Care Facilities

#### • 25 TAC §145.91

The Texas Department of Health adopts an amendment to §145.91, with changes to the proposed text as published in the November 14, 1989, issue of the *Texas Register* (14 TexReg 5993).

The amendment to §145.91 is adopted to provide a penalty for a facility's failure to verify a prospective employee's criminal conviction record and failure to deny or terminate the employment of individuals who are unemployable in accordance with §145.94 of this title (relating to investigation of Facility Employees). The amendment also provides for penalties if the facility continued to permanently employ an individual who had a conviction, making them unemployable, and if such an employee is involved in abuse or neglect which seriously injures the resident or causes a resident's death. Additionally, the amendments will add current statutory references. The amendment complies with House Bill 1466 and Senate Bill 332, 71st Legislature, 1989.

Section 145.91 sets forth policies and procedures which guide department staff in the implementation of the administrative penalties system for nursing homes. These rules also provide policy and procedure information for nursing homes, facility residents, and the general public.

Four comments were received on the proposed amendments. The following is a summary of the comments and the department's actions.

One commenter recommended that in §145.91(r) the references to Texas Civil Statutes, Article 4442c, and 25 TAC §§145.251-145.261, concerning medication aide training and issuing permits to administer medications, be revised to reflect the current statutory references. The department accepted this comment and has changed the wording accordingly.

Another commenter suggested that the department delay adoption of this amendment until the state remedy system required by the Omnibus Budget Reconciliation Act of 1987 is developed by the department and the Texas Department of

Human Services. The department realizes that with the implementation of the state remedy system the administrative penalty system may be discontinued. However, the department believes that prompt implementation of this new penalty is essential to protecting facility residents from possible abuse, neglect, and exploitation. It may be some months before a state remedy system to combine state licensure and federal sanctions is developed. Therefore, the department does not accept the comment.

A commenter stated that a mechanism for a review panel should be implemented if this penalty is adopted. This panel would consider appeal cases of prospective facility employees with a past conviction occurring 10 or more years prior to application for employment with the nursing home, who have not received other convictions since that time, and who have been good citizens. The department's response is that Senate Bill 332 and House Bill 1466, 71st Legislature, 1989, do provide for specific exceptions if certain criteria are met. They do not provide for a review panel to consider other cases for possible exemption from the stated restrictions on employment; therefore, the department does not accept this comment.

Lastly, one commenter stated that the proposed penalty amounts seemed excessive in relation to existing administrative penalties and suggested an alternate wording to include that the penalty applies only if the facility "knowingly" performed any of the acts outlined in the proposed section. The

department believes that the proposed penalty amounts for the outlined acts are not excessive given the threat of or actual harm to residents' health and safety. There are similar existing penalties in conditions (R), (S), and (T) in the schedule in §145.91, concerning conditions and assessments for deficiencies/violations warranting administrative penalties for nursing homes. Under the proposed wording for conditions (U)(2) and (3) in the schedule, it is implied that a penalty will be assessed only after the facility fails to comply with 25 TAC §145.94, concerning investigation of facility employees, which outlines the process for verification of criminal convictions on prospective employees and continues to permanently employ a person with a conviction. Adding the term "knowingly" would be redundant. Therefore, the department does not accept this comment.

The Texas Health Care Association was the only group to comment on the proposed sections, and their comments were generally disapproving with recommendations as expressed in the summary of comments.

The amendment is adopted under the Health and Safety Code, §242.037, which provides the Texas Board of Health with the authority to adopt rules covering the licensing of nursing homes; §§242.066-242.069, which provides the Texas Department of Health with the authority to assess administrative penalties; §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty im-

posed by law on the Texas Board of Health, Texas Department of Health, and the commissioner of health; and the Human Resources Code, Chapter 106 (Senate Bill 332 and House Bill 1466, 71st Legislature, 1989), covering criminal history checks of employees in certain facilities serving the elderly or disabled.

#### *§145.91. Administrative Penalties.*

(a)-(q) (No change.)

(r) Conditions and assessments for deficiencies/violations warranting administrative penalties for nursing homes are described in the schedule that follows. The conditions and the subconditions or elements in the schedule primarily relate to existing standards in §§145.11-145.25 of this title (relating to Minimum Licensing Standards for Nursing Homes). Some conditions or elements relate to the rules or standards of this title which apply to nursing homes, such as §§145.251-145.263 of this title (relating to Medication Aides), and some conditions or elements relate directly to the Health and Safety Code, Chapter 242, or other laws. All conditions or elements which relate to such existing standards or directly to the Health and Safety Code, Chapter 242, or other laws have the appropriate section, subsection, or citation referenced. The standards are of Title 25 of the Texas Administrative Code.

DESCRIPTION OF CONDITIONS AND ELEMENTS OF CONDITIONS	FIRST OCCURRENCE (1)	SECOND OCCURRENCE (2)	THIRD OR SUBSEQUENT OCCURRENCE (3)	EACH OCCURRENCE (4)
A. - T. (No Change)				
U. Failure to verify the criminal conviction record of an employee/ applicant as required by 25 TAC §145.94 and/or failure to deny or terminate the permanent employment of a person identified in the criminal conviction report as unemployable (based on §145.94) or otherwise known by management to be unemployable (based on §145.94).				
1. The facility permanently employs an individual convicted of a crime or crimes.				\$1,000
2. The facility permanently employs an individual convicted of a crime or crimes and the employee is involved in the abuse or neglect of one or more residents.				\$5,000
3. The facility permanently employs an individual convicted of a crime or crimes and the employee is involved in the abuse or neglect of one or more residents which results in the SERIOUS INJURY (defined in element T) or DEATH of a resident. §145.94(a) through (1) §145.13(a)(2)(P)				\$10,000

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 April 2, 1990.

TRD-9003385

Robert A. MacLean, M.D.  
Deputy Commissioner for  
Professional Services  
Texas Department of  
Health

Effective date: April 23, 1990

Proposal publication date: November 14, 1989

For further information, please call: (512) 458-7709

## TITLE 31. NATURAL RESOURCE AND CON- SERVATION

### Part II. Texas Parks and Wildlife Department

#### Chapter 51. Executive

##### Sick Leave Pool

###### • 31 TAC §51.141

The Texas Parks and Wildlife Commission adopts new §51.141, without changes to the proposed text as published in the February 9, 1990, issue of the *Texas Register* (15 TexReg 686).

Texas Civil Statutes, Article 6252-8e requires each agency to establish a sick leave pool for the benefit of its employees. The new section is adopted to meet that requirement.

The new section will allow increased ability to retain experienced, trained employees who would otherwise be lost to state service after suffering certain catastrophic illness or injury.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Revised Statutes, Article 6252-8e which provides the Texas Parks and Wildlife Commission with the authority to prescribe procedures for the sick leave pool.

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 April 3, 1990.

TRD-9003444

Boyd M. Johnson  
General Counsel  
Texas Parks and Wildlife  
Department

Effective date: April 24, 1990

Proposal publication date: February 9, 1990

For further information, please call: (512) 389-4805

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter M. Inheritance Tax

###### • 34 TAC §3.230

The Comptroller of Public Accounts adopts an amendment to §3.230, without changes to the proposed text as published in the March 2, 1990, issue of the *Texas Register* (15 TexReg 1145).

As a result of recent legislative changes, the Probate Code, §410, was amended to eliminate the requirement of the Comptroller's Office to approve probate certificates.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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 April 2, 1990.

TRD-9003413

Bob Bullock  
Comptroller of Public  
Accounts

Effective date: April 23, 1990

Proposal publication date: March 2, 1990

For further information, please call: (512) 463-4004

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 3. Income Assistance Services

##### Subchapter V. Medicaid Eligibility

###### • 40 TAC §§3. 2201, 3.2203-3.2208

The Texas Department of Human Services (DHS) adopts amendments to §§3. 2201 and 3.2203-3.2207, and new §3.2208 concerning Medicaid eligibility, in its Income Assistance Services chapter. The purpose of the amendments is to comply with the Family Support Act of 1988 which mandates that aid to families with dependent children (AFDC) families who lose their AFDC eligibility because of increased income from earnings are potentially eligible to receive up to 12 months of Medicaid and up to 12 months of child care. The benefits help ensure stable

transition from dependency to self-reliance. Also in this issue of the *Texas Register*, DHS is adopting related changes in Chapter 10, Family Self-support Services, concerning child day care services and Title IV-A funded child care.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 33, which provides the department with the authority to administer public assistance programs.

The adopted amendments are effective April 1, 1990, to comply with federal requirements.

**§3.2201. Eligibility Requirement.** Aid to families with dependent children (AFDC) clients must meet requirements for Medicaid eligibility as stipulated in the Social Security Act, 1902(a)(10).

**§3.2203. Four Months Post Medicaid Eligibility.** Aid to families with dependent children (AFDC) clients who are denied AFDC because of receipt of child support are eligible for four months post Medicaid as stipulated in the Social Security Act, 406(h).

###### **§3.2204. Type Program 07 Medicaid.**

(a) Aid to families with dependent children (AFDC) clients who are denied AFDC because of new or increased earnings are eligible for 12 months post Medicaid, as stipulated in the Social Security Act, 1925.

(b) Clients receiving 12 months post Medicaid must submit status reports in the fourth, seventh, and 10th months. Clients who submit incomplete reports or who fail to submit a report without good cause will be denied benefits.

(c) Clients will be denied benefits if information on the status report they submit indicates one or more of the following:

(1) no eligible child is in the home;

(2) the caretaker relative has no earnings in one of the previous three months; however, a report of no earnings for a month on the status report returned in the fourth month does not cause ineligibility; or

(3) the average monthly income, less child care costs, exceeds 185% of the federal poverty level. This results in denial in the seventh and tenth months.

###### **§3.2205. Type Program 37 Medicaid.**

(a) Aid to families with dependent children (AFDC) clients who are denied AFDC because a caretaker, second parent, or disqualified legal parent is no longer eligible for the earned income disregard are eligible for up to 12 months post Medicaid as stipulated in the Social Security Act, 1925.

(b) Clients receiving 12 months post Medicaid must submit status reports in the fourth, seventh, and 10th months. Clients who submit incomplete reports or who fail to submit a report without good cause will be denied benefits.

(c) Clients will be denied benefits if information on the status report that they submit indicates one or more of the following:

(1) no eligible child is in the home;

(2) the caretaker relative has no earnings in one of the previous three months; however, a report of no earnings for a month on the status report returned in the fourth month does not cause ineligibility; or

(3) the average monthly income, less child care costs, exceeds 185% of the federal poverty level. This results in denial in the seventh and tenth months.

**§3.2206. Third-Party Resources.** Aid to families with dependent children (AFDC) clients must comply with third-party resources requirements as stipulated in the Social Security Act, §1902(a)(25), and Public Law 99-272, 9503.

**§3.2207. Failure to Comply.** If an aid to families with dependent children (AFDC) client fails to comply with third-party resources requirements without good cause, he is ineligible for AFDC, as stipulated in Public Law 99-272, 9503.

**§3.2208. Children Born to Mothers in Prison.** The Texas Department of Human Services (DHS) provides medical coverage for children born to mothers incarcerated in a Texas Department of Criminal Justice facility if the child is not eligible for Medicaid and there is no other means to pay the medical bills. Eligibility is limited to the child's first 28 days of life. However, if a child is admitted or readmitted to a hospital during the first 28 days of life and remains in the hospital after the first 28 days of life, eligibility continues until the child's discharge from the hospital. Coverage is limited to the same services paid for by Medicaid. Reimbursement for covered services is subject to the reimbursement methodologies and limitations of the Texas Medical Assistance Program.

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 April 4, 1990.

TRD-9003471 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: April 4, 1990

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

## Chapter 10. Family Self-support Services

### Child Day Care Services

The Texas Department of Human Services (DHS) adopts amendments to §§10.3102, 10.3106, 10.3107, 10.3114, 10.3116, 10.3122, 10.3123, 10.3155, 10.3159, 10.3160, 10.3165, 10.3167, 10.3170, 10.3172, and 10.3173, concerning child day care services, and new §§10.3301-10.3307 and 10.3320-10.3324, concerning Title IV-A funded child care, in its Family Self-support Services chapter. The purpose of the amendments is to comply with the Family Support Act of 1988, which mandates that aid to families with dependent children (AFDC) families, who lose their AFDC eligibility because of increased income from earnings, are potentially eligible to receive up to 12 months of Medicaid and up to 12 months of child care. The benefits help ensure stable transition from dependency to self-reliance. Also in this issue of the *Texas Register*, DHS is publishing related changes in Chapter 3, Income Assistance Services, concerning Medicaid eligibility.

- 40 TAC §§10.3102, 10.3106, 10.3107, 10.3114, 10.3116, 10.3122, 10.3123, 10.3155, 10.3159, 10.3160, 10.3165, 10.3167, 10.3170, 10.3172, 10.3173

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The adopted amendments are effective April 1, 1990, to comply with federal requirements.

**§10.3102. Eligibility and Priorities for Services in Purchase-of-Services (POS) Facilities.**

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

(f) Policy for eligibility for transitional child care services is as specified in §10.3320 of this title (relating to Eligibility for Transitional Child Care Services).

**§10.3106. Employment-Related and Training-Related Day Care in Purchase-of-Services (POS) Facilities.**

(a)-(n) (No change.)

(o) Policy for transitional child care during employment interruption is as specified in §10.3324 of this title (relating to Transitional Child Care During Employment Interruption).

**§10.3107. Hours of Care in Purchase-of-Services (POS) Facilities.**

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

(f) Policy for hours of care for tran-

sitional child care is as specified in §10.3321 of this title (relating to Hours of Care).

**§10.3114. Maximum Payment Rates for Purchase-of-Services (POS) Facilities.**

DHS establishes maximum payment rates for each day of enrollment for each age group. The maximum rates are listed in DHS' Family Self-support Handbook or may be obtained from DHS regional day care staff. Policy for maximum payment rates for Title IV-A funded child care is as specified in §10.3302 of this title (relating to Basis of Payment for Self-Arranged Title IV-A Funded Child Care).

**§10.3116. Rate Determination Methods in Purchase-of-Services (POS) Facilities.**

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

(d) Policy for rate determination methods in POS facilities for Title IV-A funded child care is as specified in §§10.3303, 10.3304, and 10.3305 of this title (relating to Maximum Payment Rates; Rate Determination Method for Cost of Title IV-A Funded Child Care; and Rate Determination for Administrative Cost for Purchase-of-Service Facilities.).

**§10.3122. Collection of Parent or Caretaker Fees in Purchase-of-Services (POS) Facilities.**

Contractors must collect the fees from the family at least monthly either before or after services are delivered. Contractors keep the collected fees and may use them as the local participation share or to provide additional day care services. Contractors must document compliance with their collection policies and keep copies of receipts given to the parents or caretakers. Policy for collection of parent or caretaker fees for transitional child care is as specified in §10.3322 of this title (relating to Collection of Parent or Caretaker Fees for Transitional Child Care).

**§10.3123. Waiver or Reduction of Fees in Purchase-of-Services (POS) Facilities.**

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

(e) Policy for reduction of fees for transitional child care is as specified in §10.3323 of this title (relating to Reduction of Fees for Transitional Child Care).

**§10.3155. Eligibility and Priorities For Service in Provider Agreement Facilities.**

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

(f) Policy for eligibility for transitional child care services is as specified in §10.3320 of this title (relating to Eligibility for Transitional Child Care Services).

**§10.3159. Employment-Related and Training-Related Day Care in Provider Agreement Facilities.**



(a)-(n) (No change.)

(o) Policy for transitional child care during employment interruption is as specified in §10.3324 of this title (relating to Transitional Child Care During Employment Interruption).

**§10.3160. Hours of Care in Provider Agreement Facilities.**

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

(f) Policy for hours of care for transitional child care services is as specified in §10.3321 of this title (relating to Hours of Care).

**§10.3165. Maximum Payment Rates for Provider Agreements.** The Texas Department of Human Services (DHS) establishes maximum payment rates for each day of enrollment for each age group. The maximum rates are listed in DHS' Family Self-support Handbook or may be obtained from DHS regional day care staff. Policy for maximum payment rates for Title IV-A funded child care is as specified in §10.3302 of this title (relating to Basis of Payment for Self-Arranged Title IV-A Funded Child Care).

**§10.3167. Rate Determination Methods in Provider Agreement Facilities.** Payment rates for provider agreement facilities are determined by either the published rate method or standard rate method. Payment may not exceed the applicable Texas Department of Human Services (DHS) maximum rate. Policy for rate determination methods for cost of Title IV-A funded child care is as specified in §§10.3303, 10.3304, and 10.3305 of this title (relating to Maximum Payment Rates; Rate Determination Method for Cost of Title IV-A Funded Child Care; and Rate Determination for Administrative Cost for Purchase-of-Service Facilities).

**§10.3170. Transportation of Children by Provider Agreement Facilities.**

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

(c) Policy for transportation for children of Title IV-A-funded-child-care clients is as specified in §10.3306 of this title (relating to Rates for Self-Arranged Title IV-A Funded Child Care).

**§10.3172. Collection of Parent or Caretaker Fees in Provider Agreement Facilities.**

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

(d) Policy for collection of parent or caretaker fees for transitional child care is as specified in §10.3322 of this title (relating to Collection of Parent or Caretaker Fees for Transitional Child Care).

**§10.3173. Waiver or Reduction of Fees in Provider Agreement Facilities.**

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

(c) Policy for reduction of fees for transitional child care is as specified in §10.3323 of this title (relating to Reduction of Fees for Transitional Child Care).

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 April 4, 1990.

TRD-9003472 Cathy Rossberg  
Agency Liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: April 1, 1990

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

◆ ◆ ◆  
**Title IV-A Funded Child Care**

◆ ◆ ◆  
• **40 TAC §§10. 3301-10.3307,  
10.3320-10.3324**

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which provide the department with the authority to administer public assistance programs.

**§10.3301. Purchase of Title IV-A Funded Child Care Services.** Unless otherwise specified, child day care services policy as specified in §§10.3101-10.3173 of this title (relating to Child Day Care Services) for provider agreement facilities and for purchase of services contractors, including brokers, apply to the purchase of Title IV-A funded child care services.

**§10.3302. Basis of Payment for Self-Arranged Title IV-A Funded Child Care.** The Texas Department of Human Services (DHS) will reimburse eligible families for expenses incurred for self-arranged child care, according to policy approved by the Texas Board of Human Services.

**§10.3303. Maximum Payment Rates.** The Texas Department of Human Services (DHS) establishes the maximum payment rates for Title IV-A funded child care for each day of enrollment for each age group. The maximum rate is the lesser of the following:

(1) The statewide limit set by DHS in its federally approved state plan;

(2) the provider's published rate up to the 75th percentile of the local market rate, as determined from documentation of local market rate studies performed in accordance with 45 Code of Federal Regulations, Part 255.4.

**§10.3304. Rate Determination Method for Cost of Title IV-A Funded Child Care.** The Texas Department of Human Services (DHS) determines the facility's published rates for each age group served and confirms that the rate is paid by parents or caretakers who do not receive a subsidy. Policy for payment is as specified in §10.3303 of this title (relating to Maximum Payment Rates).

**§10.3305. Rate Determination for Administrative Cost for Purchase-of-Service Facilities.** The Texas Department of Human Services (DHS) determines an administrative fee for Title IV-A funded child care services based on cost study documentation of the cost of fulfilling additional requirements unique to the provision of DHS purchased child care.

**§10.3306. Rates for Self-Arranged Title IV-A Funded Child Care.** The Texas Department of Human Services (DHS) will establish and pay a standard rate per child per day for self-arranged child care with unregulated providers. When the self-arranged care is with a regulated provider, DHS will determine the rates as specified in §10.3304 of this title (relating to Rate Determination Method for Cost of Title IV-A Funded Child Care).

**§10.3307. Transportation for Children of Title IV-A Funded Child Care Clients.** Transportation for children receiving Title IV-A funded child care services may be authorized when:

(1) the need for transportation is established for the family;

(2) the child care facility offers transportation services; and

(3) transportation is part of the provider's published rate for child care services.

**§10.3320. Eligibility for Transitional Child Care Services.** The Texas Department of Human Services (DHS) guarantees child care for families meeting the eligibility requirements stated in 45 Code of Federal Regulations, §256.2.

**§10.3321. Hours of Care.** Hours of care authorized for transitional child care must be reasonably related to the parent or caretaker's hours of employment, as follows.

(1) Full-time child care is authorized when the parent or caretaker works 25 hours or more per week.

(2) Part-time child care is authorized when the parent or caretaker works for less than 25 hours per week.

**§10.3322. Collection of Parent or Care-**

taker Fees for Transitional Child Care. Staff at facilities must collect the assessed parent or caretaker fee at least monthly. Facilities keep the fees that are collected. The Texas Department of Human Services (DHS) reduces its reimbursement to the provider by the amount of the fees assessed for each transitional child care client.

§10.3323. *Reduction of Fees for Transitional Child Care.* The assessed parent or caretaker fee must be reviewed for possible reduction if there are extenuating circumstances that would jeopardize the family's economic self-sufficiency. However, the parent or caretaker fee must not be waived entirely.

§10.3324. *Transitional Child Care During Employment Interruption.* If the employment of a parent or caretaker is interrupted, child care may continue for a period of two weeks if the parent or caretaker is waiting to begin employment.

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 April 4, 1990.

TRD-9003473 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: April 1, 1990

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

## Welfare Reform Waiver Project

### • 40 TAC §§10.7001, 10.7005, 10.7007

The Texas Department of Human Services (DHS) adopts amendments to §§10.7001, 10.7005, and 10.7007, concerning welfare reform waiver project, in its Family Self-support Services chapter. The purpose of the amendments is to comply with a federal mandate to remove the control group restriction from the welfare reform waiver pilot project. The clients who were placed in the control group will now be eligible to receive transitional Medicaid and child care benefits, if they meet the eligibility requirements.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The adopted amendments are effective April 1, 1990, to comply with federal requirements.

§10.7001. *Description.* The welfare reform waiver project operates in four of Texas Department of Human Services' 10 administrative regions: Region 9 (San Antonio); Region 10 (Beaumont); Region 11 (Houston); and Region 3/12 (El Paso). Within the project regions, clients assigned to the experimental group receive extended Medicaid coverage and transitional day care. The special transitional benefits are available to the experimental group members effective April 1, 1989, because of the project waivers. The same benefits, however, will be available to all clients statewide on April 1, 1990.

§10.7005. *Services Provided to Control Group.* Aid to families with dependent children (AFDC) clients placed into the control group for purposes of this project receive employment services according to §§10.2301-10.2309 of this title (relating to Employment Services). These clients are eligible to receive post-Medicaid services according to §§3.2201, 3.2203, and 3.2204 of this title (relating to Eligibility Requirement, Four Months Post Medicaid Eligibility, and Type Program 07 Medicaid). Effective April 1, 1990, these clients are eligible to receive statewide transitional benefits if they meet the eligibility requirements as stated in §10.3320 of this title (relating to Eligibility for Transitional Child Care Services).

§10.7007. *Restriction of Services to Control Group.* Aid to families with dependent children (AFDC) recipients in the control group are restricted to pre-1990 transitional benefits through March 31, 1990, regardless of whether their AFDC eligibility is continuous or interrupted.

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 April 4, 1990.

TRD-9003474 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: April 1, 1990

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 open meeting on April 3, 1990, permanently adopted the amendments to ownership rules in the Texas

**Experience Rating Plan, Texas Workers' Compensation Statistical Plan Manual and the Basic Texas Workers' Compensation Manual** in the same format as was adopted on an emergency basis by Board Order Number 55468 effective December 1, 1989, and amended by Board Order Number 55606 effective December 12, 1989.

The amended rules require that, if there is a change in control, management, name, operations, or ownership of an entity other than among related persons, incurred experience shall be used in future ratings unless both a material change in ownership and a substantial change of operations occurs. The amended rules adopted on a permanent basis are effective 12:01 a.m. May 1, 1990.

The board adopted the amended rules under the authority and jurisdiction of the Insurance

Code, Articles 5.55-5.68-1, 5.76, 5.77, 5.78, and 5.96.

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 April 3, 1990.

TRD-9003478 Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: May 1, 1990

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



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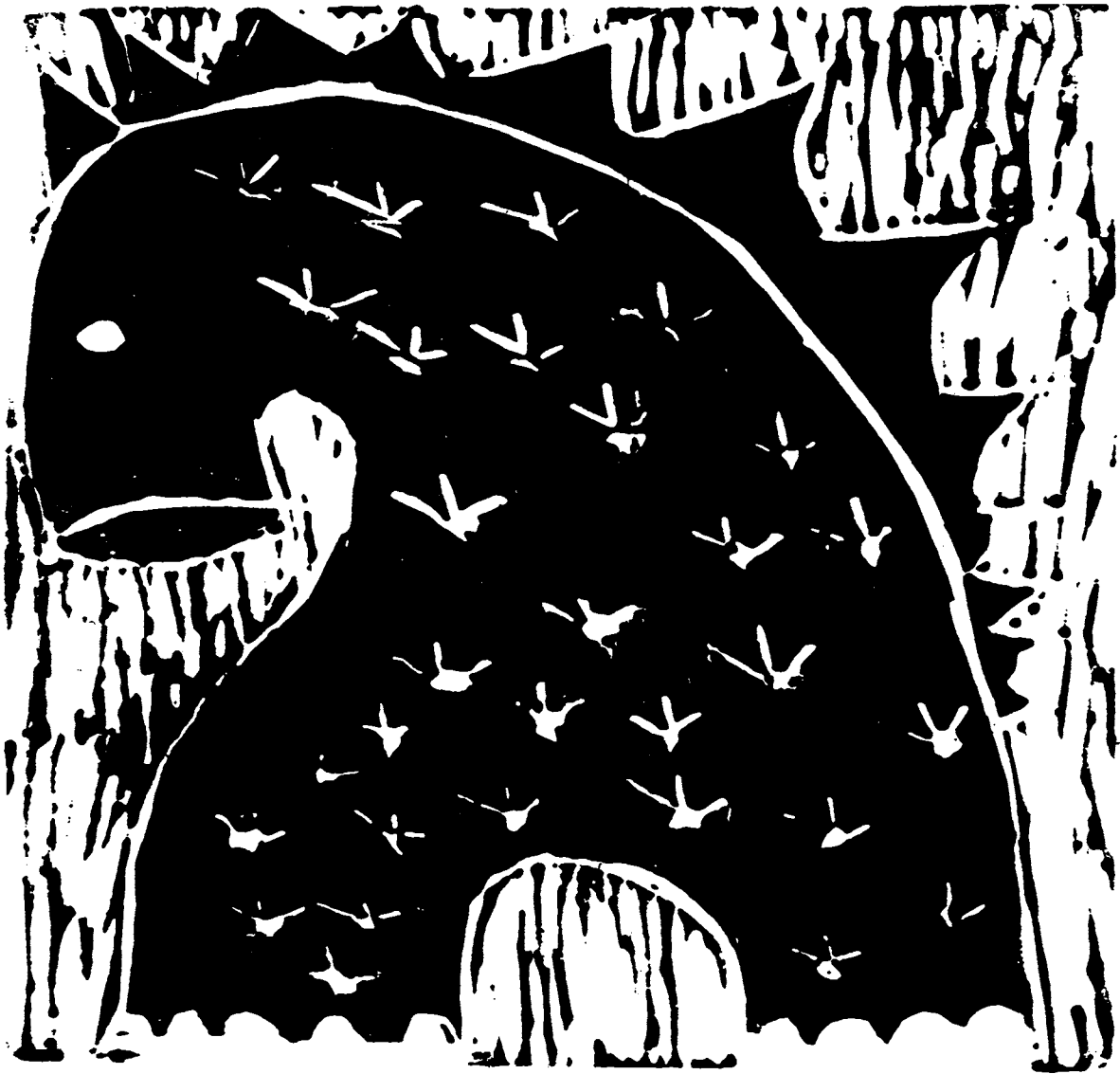
Britop

Shauna Zamarripa

Name: Shauna Zamarripa

Grade: 7

School: Coppell Middle School, Coppell



1/2 The Black Snout Dragon

Amy Devoe

Name: Amy Devoe

Grade: 7

School: Coppell Middle School, Coppell

# 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 Department of Aviation

**Wednesday, April 18, 1990, 2:30 p.m.** The Texas Board of Aviation of the Texas Department of Aviation will meet at the Radisson Hotel, 700 San Jacinto Street, Austin. According to the complete agenda, the board will hold an open panel discussion during the Texas Airport Operators Conference. No formal action is planned and any discussion of public business will be incidental to the functions of the conference, although the board may discuss policy items.

**Contact:** Lydia Scarborough, 410 East 5th Street, Austin, Texas 78711, (512) 476-9262.

**Filed:** April 4, 1990, 10:06 a.m.

TRD-9003480

## Advisory Commission on State Emergency Communications

**Monday, April 9, 1990, 10 a.m.** The Policy Subcommittee of the Administration Committee of the Advisory Commission on State Emergency Communications held an emergency meeting at 1101 Capital of Texas Highway South, Suite B-100, Austin. According to the complete agenda, the subcommittee heard public comment; discussed mission of subcommittee; legislative issues related to Health and Safety Code, Chapter 771.001; long-term goals and objectives; and heard new business. The emergency status was necessary to discuss agenda items and present to commission for consideration at its next meeting in May.

**Contact:** Glenn Roach, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

**Filed:** April 4, 1990, 4:13 p.m.

TRD-9003495

## Court Reporters Certification Board

**Saturday, April 21, 1990, 9 a.m.** The Court Reporters Certification Board will meet in the Board Room, Texas Law Center, 14th Street at Colorado Street, Austin. According to the complete agenda, the board will conduct a disciplinary hearing in Cause Number 90092502; hold a regrade review; consider the minutes from the previous meeting; certification eligibility of File Number 4610; status of an applicant convicted of a criminal offense; standing authorization request; proposed exam and meeting dates for 1992; proposed appropriations request for upcoming biennium; review current expenditures to date; consider statistical information from previous exam; and any other business that may come before the board.

**Contact:** Peg Liedtke, 510 South Congress Avenue, Suite 310, Austin, Texas 78704, (512) 463-1630.

**Filed:** April 4, 1990, 1:51 p.m.

TRD-9003488

## Commission on Fire Protection Personnel Standards and Education

**Wednesday, April 11, 1990, 10 a.m.** The Subcommittee on Instructor Standards of the Commission on Fire Protection Personnel Standards and Education will meet at Howard Johnson North Hotel, 7800 North IH35, Austin. According to the complete agenda, the subcommittee will conduct a public hearing to receive input on who may be authorized to teach "methods of teaching for fire service instructors". Both written and oral testimony will be accepted.

**Contact:** Ray L. Goad, 510 South Congress Avenue, Suite 406, Austin, Texas 78704, (512) 474-8066.

**Filed:** April 3, 1990, 4:42 p.m.

TRD-9003466

**Wednesday, April 11, 1990, 1 p.m.** The

Subcommittee on Fire Fighter Standards of the Commission on Fire Protection Personnel Standards and Education will meet at Howard Johnson North Hotel, 7800 North IH35, Austin. According to the complete agenda, the subcommittee will conduct a public hearing to obtain testimony regarding types of training that should be used to attain intermediate and advanced fire fighter certification. Both written and oral testimony will be accepted.

**Contact:** Ray L. Goad, 510 South Congress Avenue, Suite 406, Austin, Texas 78704, (512) 474-8066.

**Filed:** April 3, 1990, 4:41 p.m.

TRD-9003467

**Wednesday, April 11, 1990, 3 p.m.** The Fire Protection Committee of the Commission on Fire Protection Personnel Standards and Education will meet at Howard Johnson North Hotel, 7800 North IH35, Austin. According to the complete agenda, the committee will consider new proposal regarding inspector certification. Public testimony will be accepted on this proposal.

**Contact:** Ray L. Goad, 510 South Congress Avenue, Suite 406, Austin, Texas 78704, (512) 474-8066.

**Filed:** April 3, 1990, 4:41 p.m.

TRD-9003468

**Thursday, April 12, 1990, 10 a.m.** The Commission on Fire Protection Personnel Standards and Education will meet at Howard Johnson Hotel, 7800 North IH35, Austin. According to the agenda summary, the commission will receive committee reports; address old business; new business and conduct general business for commission operation.

**Contact:** Ray L. Goad, 510 South Congress Avenue, Suite 406, Austin, Texas 78704, (512) 474-8066.

**Filed:** April 4, 1990, 4:32 p.m.

TRD-9003498

## Texas Department of Health

Friday, April 6, 1990, 10 a.m. The AIDS Services Advisory Committee Ad Hoc Subcommittee of the Texas Department of Health held an emergency meeting in Room T-407, 1100 West 49th Street, Austin. According to the complete agenda, the committee discussed the request for proposal and contract renewal process; and evaluation and reporting procedures. The emergency status was necessary because of unforeseeable circumstances.

Contact: Thomas Sanders, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7400.

Filed: April 3, 1990, 4:12 p.m.

TRD-9003458

Wednesday, April 11, 1990, 1:30 p.m. The On-Site Wastewater Treatment Research Council of the Texas Department of Health will meet at the Center for Environmental Research, Hornsby Bend Wastewater and Treatment Facility, 2210 South F.M. 973, Austin. According to the agenda summary, the council will approve minutes of previous meeting; hear reports of chair, vice-chair, members, rules committee, the department legal counsel; discuss proposals received on council's request for proposals to do research; and purchase of equipment for council's use.

Contact: Stephen J. Tencza, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7293.

Filed: April 3, 1990, 4:13 p.m.

TRD-9003456

Thursday, April 12, 1990, 10 a.m. The Maternal and Child Health Advisory Committee of the Texas Department of Health will meet in the Board Room, First Floor West, Texas Department of Human Services, Austin. According to the agenda summary, the committee will approve minutes of previous meeting; review and approve committee by-laws; establish appointment terms; consider fiscal year 1991 Maternal and Infant Health Improvement Act request for proposal; consider maternal and children's programs administered by the department.

Contact: Walter P. Peter, Jr., M.D., 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

Filed: April 4, 1990, 4:40 p.m.

TRD-9003436

Thursday, April 19, 1990, 10 a.m. The Advisory Committee on Nursing Home Affairs of the Texas Department of Health will meet in Room T-607, 1100 West 49th Street, Austin. According to the agenda summary, the committee will approve minutes of previous meeting; hear reports on universal precautions (proposed rules); requirement coordination; betterment of nursing home care; physiological mental

illness; and social service; consider amendments to licensing standards on disposal of special waste; amendments to procedures on long term care; training on new federal requirements; Senate Bill 63, 71st Legislature 1989, concerning nursing students and medication aide trainees administering medications; and next meeting date.

Contact: Richard Butler, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7706.

Filed: April 3, 1990, 4:12 p.m.

TRD-9003457

## Texas Health and Human Services Coordinating Council

Thursday, April 12, 1990, 9 a.m. The Policy Coordination Workgroup Commission on Children, Youth and Family Services of the Texas Health and Human Services Coordinating Council will meet in Room 206, 1414 Colorado, Austin. According to the complete agenda, the commission will review the public hearing; discussion of statewide philosophy statement; and determine workplan for established recommendations.

Contact: Lou Milstead, Texas Health and Human Services Coordinating Council, (214) 828-5194.

Filed: April 3, 1990, 4:18 p.m.

TRD-9003460

Thursday, April 12, 1990, 9:30 a.m. The Sliag Committee of the Texas Health and Human Services Coordinating Council will meet in Room M-418, 1100 West 49th Street, Austin. According to the complete agenda, the committee will review the minutes; federal activities update; report on charity care issues; report on anti-discrimination outreach proposal; report on development of outreach proposal; report on development of spending plan format; old and new business.

Contact: Patrice Thomas, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: April 3, 1990, 4:17 p.m.

TRD-9003465

Thursday, April 12, 1990, 10 a.m. The Data and Information Committee of the Texas Health and Human Services Coordinating Council will meet in Room M-652, 1100 West 49th Street, Austin. According to the complete agenda, the committee will charge to the committee; status of centralized computer node (CORE); presentation on "Cambridge" network system; update on status of the statewide needs appraisal project SNAP; establish interagency work group to identify methods to integrate cen-

tralized common program language to facilitate information exchange; update on status of information and referral project; and update on other related projects.

Contact: Patrice Thomas, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: April 3, 1990, 4:18 p.m.

TRD-9003462

Thursday, April 12, 1990, 1:15 p.m. The Client Services Committee of the Texas Health and Human Services Coordinating Council will meet in Room M-652, 1100 West 49th Street, Austin. According to the complete agenda, the committee will charge to committee; commission on children, youth, and family services; taskforce on statewide case management for long term care update; taskforce on disabilities update; interagency council for services for the homeless; and other advisory groups update.

Contact: Patrice Thomas, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: April 3, 1990, 4:18 p.m.

TRD-9003464

Thursday, April 12, 1990, 3 p.m. The Strategic Policy Committee of the Texas Health and Human Services Coordinating Council will meet in Room M-652, 1100 West 49th Street, Austin. According to the complete agenda, the committee will charge to the committee; advisory groups update; human services interagency committee update; information and referral project update; strategic planning project discussion and new business.

Contact: Patrice Thomas, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: April 3, 1990, 4:18 p.m.

TRD-9003461

## Texas Higher Education Coordinating Board

Wednesday, April 18, 1990, 10:30 a.m. The Administrative Council of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Board Room 255, 200 East Riverside Drive, Austin. According to the complete agenda, the council will consider proposed amendments to §25.33: basic coverage standards (waiver of hospital deductible for out-patient surgery); discussion of interpretation of language in Article 3.50-3(4)(b)(4)(D)(iv) concerning selection of HMOs in the higher education insurance program; receipt and consideration of subcommittee recommendation for council's pending report to 72nd Legislature; institutional program review and staff report.

Contact: Kathy Lewis, P.O. Box 12788, Austin, Texas 78711, (512) 462-6420.

Filed: April 3, 1990, 2:02 p.m.

TRD-9003446

**Thursday, April 19, 1990, 9:30 a.m.** The Universities Committee of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Board Room 255, 200 East Riverside Drive, Austin. According to the agenda summary, the committee will consider matters relating to universities.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: April 3, 1990, 2:10 p.m.

TRD-9003436

**Thursday, April 19, 1990, 11 a.m.** The Research Committee of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Board Room 255, 200 East Riverside Drive, Austin. According to the complete agenda, the committee will consider awards for additional grants under the advanced research program and advanced technology program; status report on the advanced research program and the advanced technology program; and will discuss status of indirect cost funding as related to select committee recommendations.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: April 3, 1990, 2:10 p.m.

TRD-9003435

**Thursday, April 19, 1990, 11:30 a.m.** The Administration and Financial Planning Committee of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Board Room 255, 200 East Riverside Drive, Austin. According to the agenda summary, the committee will consider matters relating to administration and financial planning.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: April 3, 1990, 2:15 p.m.

TRD-9003434

**Thursday, April 19, 1990, 12 noon.** The Committee of the Whole of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Conference Room 209, 200 East Riverside Drive, Austin. According to the complete agenda, the committee will meet in executive session to hear a report on the status of Southwest Texas lawsuit.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: April 3, 1990, 2:16 p.m.

TRD-9003429

**Thursday, April 19, 1990, 1 p.m.** The Educational Opportunity Planning Committee of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Board Room 255, 200 East Riverside Drive, Austin. According to the complete agenda, the committee will consider a proposal to establish a minority doctoral incentive/loan forgiveness program to be submitted to the legislature.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: April 3, 1990, 2:15 p.m.

TRD-9003433

**Thursday, April 19, 1990, 1:15 p.m.** The Student Services Committee of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Board Room 255, 200 East Riverside Drive, Austin. According to the agenda summary, the committee will consider matters relating to student services.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: April 3, 1990, 2:16 p.m.

TRD-9003432

**Thursday, April 19, 1990, 1:45 p.m.** The Committee of the Whole of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Board Room 255, 200 East Riverside Drive, Austin. According to the complete agenda, the committee will hear a report on Joint Liaison Coordinating board/State Board of Education.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78704, (512) 462-6400.

Filed: April 3, 1990, 2:16 p.m.

TRD-9003431

**Thursday, April 19, 1990, 2 p.m.** The Community Colleges and Technical Institutes Committee of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Board Room 255, 200 East Riverside Drive, Austin. According to the agenda summary, the committee will consider matters relating to community colleges and technical institutes.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: April 3, 1990, 2:10 p.m.

TRD-9003437

**Thursday, April 19, 1990, 2:30 p.m.** The Health Affairs Committee of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Board Room 255, 200 East Riverside Drive, Austin. According to the complete agenda,

the committee will consider requests for new degree programs and administrative changes for the University of Texas at Austin and the University of Texas HSC at San Antonio; and will consider final adoption of emergency rules relating to funding for optional rural rotations for family practice residents.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: April 3, 1990, 2:16 p.m.

TRD-9003430

**Thursday, April 19, 1990, 3 p.m.** The Facilities and Campus Planning Committee of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Board Room 255, 200 East Riverside Drive, Austin. According to the agenda summary, the committee will consider matters relating to facilities and campus planning.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: April 3, 1990, 2:10 p.m.

TRD-9003438

**Friday, April 20, 1990, 9 a.m.** The Coordinating Board of the Texas Higher Education Coordinating Board will meet at the Bevington A. Reed Building, Board Room 255, 200 East Riverside Drive, Austin. According to the agenda summary, the board will consider matters relating to the committee on universities; the committee on research; the committee on administration and financial planning; the committee on educational opportunity planning; the committee on student services; the committee on community colleges and technical institutes; the committee on health affairs; and the committee on facilities and campus planning; and a report of joint liaison committee of the coordinating board and the State Board of Education.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: April 3, 1990, 2:16 p.m.

TRD-9003428

## Texas Lay Midwifery Board

**Friday, May 4, 1990, 10 a.m.** The Texas Lay Midwifery Board will meet in Room M-653, 1100 West 49th Street, Austin. According to the agenda summary, the board will welcome new board members; approve minutes of previous meeting; consider board rules; logistics of board meetings; legislation and lay midwifery law amendments; courses and examinations; newborn screening report; birth center licensure report; statistics; manual cost and revision; report from association of Texas

lay midwives; and set next meeting date.

Contact: Joceline Alexander, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

Filed: April 3, 1990, 4:13 p.m.

TRD-9003455

### Texas Board of Licensure for Nursing Home Administrators

Wednesday, April 18, 1990, 11 a.m. The Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Suite 310, Austin. According to the complete agenda, the board will discuss approval of agenda; approval of minutes; personal appearances; education committee report—Donnie Hagan; MR/MI committee report—Edward McLendon; ex officio reports (TDH, DHS, TDoA); executive director's report; and chair's report.

Contact: Janet McNutt, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: April 3, 1990, 10:48 a.m.

TRD-9003426

### Texas Parks and Wildlife Department

Wednesday, April 11, 1990, 12 noon. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at FM Road 150E and IH-35, Kyle. According to the agenda summary, the members plan to have lunch at 12 noon. Although this function is primarily a social event and no formal action is planned, the commission may discuss items on the public hearing agenda scheduled for 9 a.m., April 12, 1990.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: April 3, 1990, 2:38 p.m.

TRD-9003442

Thursday, April 12, 1990, 9 a.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at Headquarters Complex Building B, 4200 Smith School Road, Austin. According to the agenda summary, the commission will discuss shrimp regulations.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: April 3, 1990, 2:39 p.m.

TRD-9003441

Wednesday, April 18, 1990, 10 a.m. The Operation Game Thief Committee of the Texas Parks and Wildlife Department will meet at the Department Headquarters, 4200 Smith School Road, Austin. According to the agenda summary, the committee will discuss financial report; consideration of payment of rewards; and date of next meeting.

Contact: Captain Wayne Chappell, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4626.

Filed: April 3, 1990, 2:38 p.m.

TRD-9003443

### State Pension Review Board

Tuesday, May 1, 1990, 9:30 a.m. The Investment Review Committee of the State Pension Review Board will meet at the Teacher Retirement System Building—East, 1000 Red River Street, Fifth Floor, Board Room, Austin. According to the complete agenda, the committee will present recommendations of the working committees to the full investment review committee.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: April 4, 1990, 10:44 a.m.

TRD-9003482

### Public Utility Commission of Texas

Friday, April 13, 1990, 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 summary, the division will conduct a prehearing conference in Docket Number 9456: application of Pedernales Electric Cooperative, Inc. for authority to implement an economic incentive rate.

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

Filed: April 4, 1990, 3:19 p.m.

TRD-9003491

Wednesday, August 15, 1990, 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 complete agenda, the division will conduct a hearing on the merits in Docket Number 9119: appeal of the Office of Public Utility Counsel of the City of Kerrville Municipal Utility Rate Action.

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

Filed: April 4, 1990, 3:20 p.m.

TRD-9003492

### Texas Racing Commission

Monday, April 9, 1990, 9 a.m. The Texas Racing Commission met at the Stephen F. Austin Building, 1700 Congress Avenue, Room 118, Austin. According to the emergency revised agenda summary, the commission added executive session: consideration of the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public employee. The emergency status was necessary to expedite the hiring of an executive secretary for the commission.

Contact: Paula Cochran Carter, 400 West 15th Street, Austin, Texas 78701, (512) 476-7223.

Filed: April 5, 1990, 9:40 a.m.

TRD-9003503

### State Committee of Examiners for Speech- Language Pathology and Audiology

Thursday, April 19, 1990, 8:30 p.m. The Subcommittee of the State Committee of Examiners for Speech-Language Pathology and Audiology will meet on the First Floor, Healthcare International Corporate Office, 9737 Great Hills Trail, Austin. According to the agenda summary, the audiology subcommittee will meet in smaller subcommittees to discuss and prepare amendments to committee rules.

Contact: June Robertson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7502.

Filed: April 3, 1990, 4:13 p.m.

TRD-9003453

Friday, April 20, 1990, 9 a.m. The State Committee of Examiners for Speech-Language Pathology and Audiology will meet in the Southwestern Room, Hawthorn Suites Hotel Central/Airport, 935 La Posada, Austin. According to the agenda summary, the audiology committee will approve minutes of previous meeting; hear and respond to presentation on code of ethics; consider and act on subcommittee reports on status of complaints and complaint investigations; summary of complaints manual; budget proposals, expenditure approval, additional staff, and data processing support; forms (application; supervisory responsibility; internship status); responsibility and supervision of interns; exemptions to statute (Article 4512j, Texas Civil Statutes); correspondence received; annual meeting of national council of state boards of examiners in



speech-language pathology and audiology; executive secretary attending annual Texas State Agency Business Administrators Association meeting; subcommittee reports to amend committee rules; hear executive secretary's report; consider other matters not requiring committee action.

Contact: June Robertson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7502.

Filed: April 3, 1990, 4:13 p.m.

TRD-9003454

## Texas Water Commission

Thursday, April 19, 1990, 1:30 p.m. The Texas Groundwater Protection Commission of the Texas Water Commission will meet at 1700 North Congress Avenue, Room 1149, Austin. According to the agenda summary, the committee will discuss groundwater protection strategy and exchange information on other groundwater-related activities. In addition, there will be a discussion on nonpoint source (NPS) management program activities and the annual NPS program report to the EPA, as well as the commission's Edwards Aquifer protection program, groundwater classification, and the committee's public education goals.

Contact: Bruce Fink, P.O. Box 13087, Austin, Texas 78711-3087, (512) 371-6318.

Filed: April 5, 1990, 9:38 a.m.

TRD-9003502

## Regional Meetings

### Meetings Filed April 3, 1990

The Atascosa County Appraisal District Agricultural Advisory Board will meet at 1010 Zanderson, Jourdanton, April 10, 1990, at 9 a.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson, Jourdanton, Texas 78026, (512) 769-2730.

The Bexar-Medina-Atascosa Counties Water Control 7 Board of Directors Improvement District No 1 met at the district office, Highway 81, Natalia, April 9, 1990, at 8 a.m. Information may be obtained from

C.A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132.

The Central Appraisal District of Taylor County Board of Directors will meet at 1534 S. Treadaway, Abilene, April 11, 1990, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.

The Hansford Appraisal District Regular Board will meet at 709 West Seventh Street, Spearman, April 11, 1990, at 9 a.m. Information may be obtained from Alice Peddy, Box 567, Spearman, Texas 79081, (806) 659-5575.

The Region One Education Service Center Board of Directors will meet at 1900 West Schunior, Edinburg, April 10, 1990, at 6 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas, (512) 383-5611.

The San Patricio County Appraisal District Board of Directors will meet at 1146 East Market, Sinton, April 12, 1990, at 1:30 p.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

TRD-9003425

### Meetings Filed April 4, 1990

The Blanco County Appraisal District Board of Directors will meet at the Blanco County Courthouse Annex, Johnson City, April 10, 1990, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas, (512) 868-4624.

The Education Service Center, Region VI, Board of Directors and Executive Committee will meet at the Briarcrest Country Club, Bryan, April 19, 1990, at 5 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161.

The Education Service Center Region 10 Board of Directors will meet at the Region 10 Board Room, 400 East Spring Valley, Richardson, April 11, 1990, at 12:30 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley, Richardson, Texas 75083-1300, (214) 231-6301.

The Gregg Appraisal District Board of Directors will meet at 2010 Gilmer Road,

Longview, April 12, 1990, at 10 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75604, (214) 759-0015.

The Gregg Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, April 12, 1990, at 11 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75604, (214) 759-0015.

The Lee County Appraisal District Appraisal Review Board will meet at 218 East Richmond Street, Giddings, April 12, 1990, at 9 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Permian Basin Regional Planning Commission Board of Directors will meet at the Permian Basin Regional Planning Commission, Midland, April 11, 1990, at 1:30 p.m. Information may be obtained from Terri Moore, Midland, Texas.

The South Texas Private Industry Council, Inc. will meet at Highway 83 and 10th Street, Zapata, April 11, 1990, at 4 p.m. Information may be obtained from Ruben M. Garcia, P.O. Box 1757, Laredo, Texas 78044.

TRD-9003469

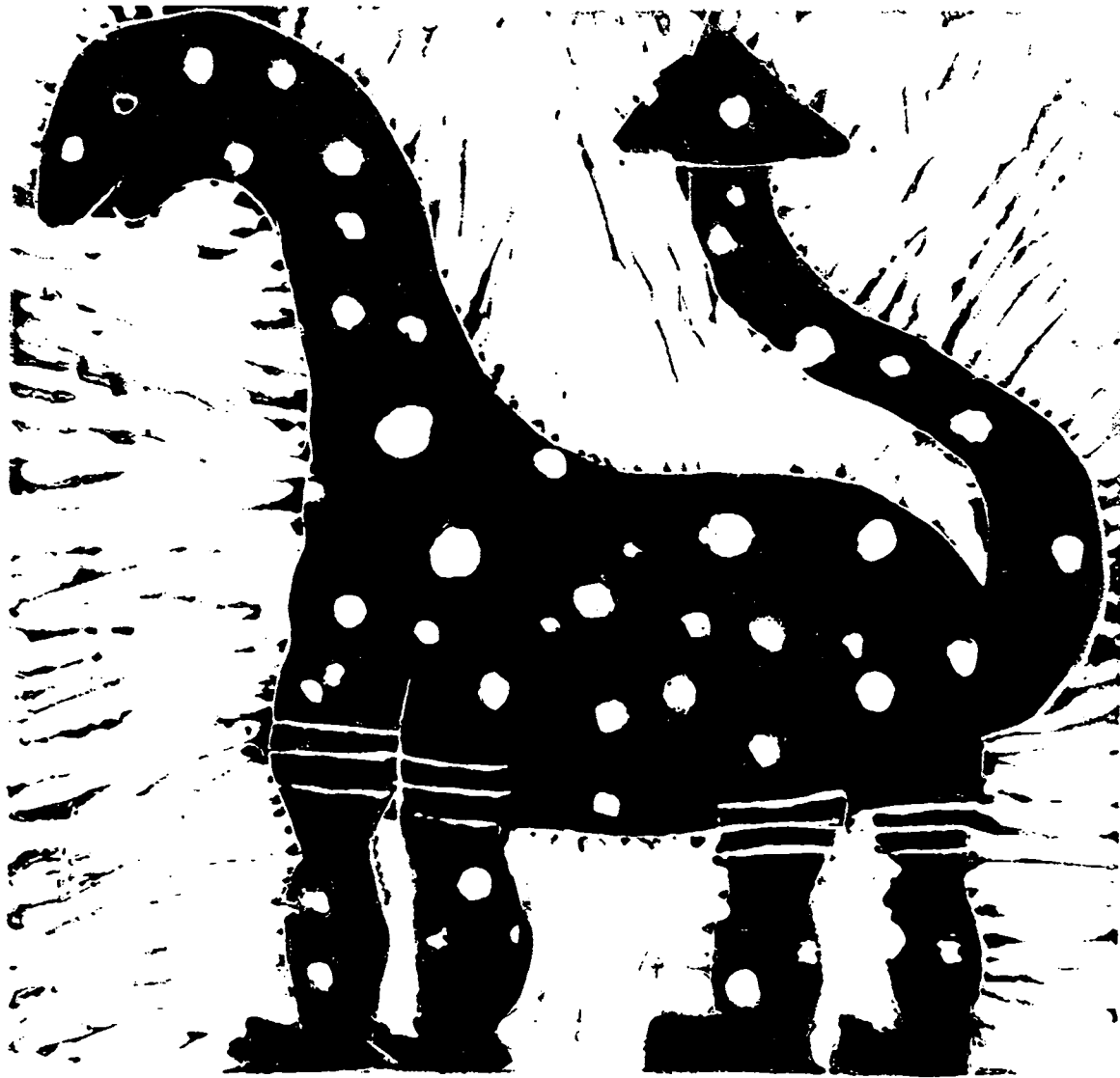
### Meetings Filed April 5, 1990

The Brazos Valley Development Council Executive Committee will meet at 3006 East 29th Street, Bryan, April 12, 1990, at 1:30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805, (409) 776-2277.

The Region One Education Service Center Board of Directors will meet at 1900 West Schunior, Edinburg, April 10, 1990, at 6 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (512) 383-5611.

The Trinity River Authority of Texas Joint Meeting of Executive Committee and Administration Committee will meet at 5300 South Collins, Arlington, April 11, 1990, at 10 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343.

TRD-9003500



6/5

The Loch Ness Monster

Alex Long

Name: Alex Long

Grade: 8

School: Coppell Middle School, Coppell

# 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.

## State Banking Board

### Notice of Hearing

The Hearing Officer of the State Banking Board will conduct a hearing on May 10, 1990, at 9 a.m., at 2601 North Lamar Boulevard, Austin, on the change of domicile application for Home Trust Company, Houston. Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on March 29, 1990.

TRD-9003401 William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

Filed: April 2, 1990

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



## Texas Department of Banking

### Notice of Hearing

The hearing officer of the Texas Department of Banking will conduct a hearing on an application to withdraw excess earnings from trust deposits filed by White Funeral

Home, Inc., Weatherford. The hearing will be held on Thursday, April 19, 1990, at 9 a.m. at the State Finance Building, 2601 North Lamar Boulevard, Austin.

Additional information may be obtained from: Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on April 3, 1990.

TRD-9003374 Ann Graham  
General Counsel -  
Texas Department of Banking

Filed: April 2, 1990

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



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer <sup>(3)</sup> /Agri- cultural/Commercial <sup>(4)</sup> thru \$250,000	Commercial <sup>(4)</sup> over \$250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	04/09/90-04/15/90	18.00%	18.00%
Monthly Rate <sup>(1)</sup> Art. 1.04(c)	04/01/90-04/30/90	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	04/01/90-06/30/90	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 <sup>(3)</sup>	04/01/90-06/30/90	18.00%	N.A.
Lender Credit Card Quar- terly Rate - Art. 15.02(d) <sup>(3)</sup>	04/01/90-06/30/90	15.13%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) <sup>(2)</sup>	04/01/90-06/30/90	18.00%	18.00%

Retail Credit Card Annual Rate - Art. 1.11 <sup>(3)</sup>	04/01/90-06/30/90	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	04/01/90-06/30/90	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	04/01/90-04/30/90	10.00%	10.00%

- (1) For variable rate commercial transactions only.
- (2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.
- (3) Credit for personal, family or household use.
- (4) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on April 2, 1990.

TRD-9003440 Al Endsley  
Consumer Credit Commissioner

Filed: April 3, 1990

For further information, please call: (512) 479-1280



**Texas Education Agency**  
Request for Applications-Staff  
Development Program for the  
Improvement of Geographic Education

**RFA# 701-90-030.** This request for applications is filed in accordance with Senate Bill 222, 71st Texas State Legislature, 1989, First Called Session.

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications (RFA #701-90-030) from school districts, regional education service centers, institutions of higher education or consortia of the foregoing for the development of a model staff development program for

elementary and secondary teachers of social studies and geography.

**Description.** The goal of the program is to increase the level of geographic literacy of students by improving teachers' knowledge of and abilities to teach geography. The primary objectives of the project are to provide professional staff development for a minimum of 40 elementary and secondary social studies and geography teachers per project year to improve their knowledge of and abilities to teach students and other teachers the essential elements of geography; and create a model staff development program and a teacher training kit of interrelated resources on geography to be used by teacher facilitators to train other teachers.

The first year will address the planning, developing, and testing of the model and training kit. The second year is for revising and completing the model and kit. First year participants will train other teachers during the 1990-91 school year and evaluate the model and teacher training kit. First and second year participants will continue staff development programs using the final staff development program and materials.

**Date of Project.** The Staff Development Program for Improvement of Geographic Education will be implemented during the 1989-1990 and 1990-1991 school years.

Applicants shall plan for a starting date of May 21, 1990, and ending date of August 31, 1990.

**Project Amount.** One project will be selected and funded at a level not to exceed \$50,000 for the 1989-1990 school year with \$50,000 possibly available in 1990-1991. Funding for 1989-1990 will be based on application approval and the ability to match the state grant of \$50,000 with an equal amount from local and/or other sources for a project totaling \$100,000. The matching requirement of \$50,000 must come from unencumbered/unobligated state and/or local funds. Funding for 1990-1991 will be contingent upon satisfactory progress of the 1989-1990 project, the general budget authority of the State Board of Education, and the financial ability of the applicant to match the grant of \$50,000 with an equal or greater amount from local or state sources for a project totaling \$100,000.

**Selection Criteria.** An application will be approved based upon the ability of an applicant to carry out all requirements contained in the request for application. Special consideration will be given to an applicant who can provide evidence of the ability to provide matching funds of at least \$50,000 from local and/or other sources.

**Further Information.** A copy of the complete request for application may be obtained by writing or calling the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9304.

For clarifying information about this request contact Louis Grigar, Division of General Education, Texas Education Agency, (512) 463-9556.

**Deadline for Receipt of Application.** The deadline for submitting an application is 5 p.m., Wednesday, May 9, 1990.

Issued in Austin, Texas, on April 2, 1990.

TRD-9003427 W. N. Kirby  
Commissioner of Education

Filed: April 3, 1990

For further information, please call: (512) 463-9701

## Governor's Office of Budget and Planning

### Contract Award Notice

In compliance with the provisions of Texas Civil Statutes, Article 6252-11c, the Governor's Office of Budget and Planning furnishes this notice of consultant contract awards.

**Publication Date.** The consultant proposal request was published in the November 24, 1989, issue of the *Texas Register*, (14 TexReg 6193).

**Description of Services.** The request was for a consultant to provide on-site energy evaluation services for smaller Texas school districts (10 schools or less).

**Names and Addresses.** The consultant contracts have been awarded to: Estes, McClure & Associates, 3608 West Way, Tyler, Texas 75703; Kinsman and Associates, 1701 North Greenville Avenue, Suite 600, Richardson, Texas 75081; Texas Energy Engineering Services, Inc., B-127 Capital View Center, 1301 Capital of Texas Highway, Austin, Texas 78746; and Caffey/Sayers-R. E. Cooper Consulting Engineers, 1140 Empire Central, Suite 550, Dallas, Texas 75247.

**Value and Date of Contracts.** The total dollar value of the contracts is \$401,050. The contract periods extend from February 23, 1990-December 31, 1990, by which date all work associated with these contracts must be completed.

Issued in Austin, Texas, on March 28, 1990.

TRD-9003422 Sheila W. Beckett  
Director  
Governor's Office of Budget and Planning

Filed: April 3, 1990

For further information, please call: (512) 463-1931

## Texas Department of Health Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

### NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Elvin	GAMX	L04375	Friendswood	0	03/16/90
Houston	Lark Sequencing Technologies, Ltd.	L04387	Houston	0	03/12/90
Throughout Texas	Texas Radiation Physics Associates, Inc.	L04152	Dallas	0	03/12/90
Throughout Texas	Larry McVay Operating Company, Inc.	L04391	Powell	0	03/20/90

### CHANGES TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Baytown	Chevron Chemical Company	L00962	Baytown	22	03/12/90
Beaumont	Beaumont Medical Surgical Hospital	L02102	Beaumont	28	03/22/90
Brownwood	Minnesota Mining and Manufacturing Co.	L00918	St. Paul, MN	20	03/07/90
Bryan	St. Joseph Hospital and Health Center	L00573	Bryan	30	03/22/90
Chillicothe	Chillicothe Hospital District	L03933	Chillicothe	2	03/22/90
Corpus Christi	Coastal Refining and Marketing, Inc.	L01268	Corpus Christi	11	03/26/90
Corpus Christi	Memorial Medical Center	L00265	Corpus Christi	44	03/26/90
Corsicana	Navarro Regional Hospital	L02458	Corsicana	14	03/16/90
Dallas	Humana Hospital Medical City Dallas	L01976	Dallas	59	03/20/90
Dallas	Texas Instruments, Inc.	L00946	Dallas	52	03/14/90
Dallas	Dallas Rehabilitation Institute	L03929	Dallas	1	03/22/90
Deer Park	Quantum Chemical Corporation	L00204	Deer Park	22	03/20/90
Deer Park	Quantum Chemical Corporation	L00022	Deer Park	10	03/20/90
Edinburgh	Edinburgh Hospital	L04262	Edinburgh	1	03/20/90
El Paso	R. E. Thomason General Hospital	L00502	El Paso	36	03/26/90
Eules	I-CON Industries, Inc.	L04066	Eules	2	03/19/90
Fort Worth	Moncrief Radiation Center	L00047	Fort Worth	25	03/22/90
Galveston	The University of Texas Medical Branch	L01299	Galveston	30	03/23/90
Graham	Graham General Hospital	L03271	Graham	7	03/26/90
Grand Prairie	Dallas Fort Worth Medical Center - Grand Prairie	L02612	Grand Prairie	17	03/19/90
Houston	Exxon Production Research Company	L00205	Houston	32	03/14/90
Houston	St. Joseph Hospital	L02279	Houston	28	03/19/90
Houston	River Oaks Imaging and Diagnostic	L04342	Houston	1	03/23/90
Houston	The U.T. Health Science Center at Houston	L03685	Houston	4	03/22/90

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Humble	Northeast Medical Center Hospital	L02412	Humble	25	03/22/90
Liberty	Baptist Hospital Liberty	L03539	Liberty	5	03/26/90
Longview	Longview Oncology Facilities, Inc.	L03936	Longview	3	03/20/90
Lufkin	Champion International Corporation	L03870	Lufkin	5	03/22/90
McAllen	Upper Valley Radiology Clinic	L04335	McAllen	2	03/22/90
McAllen	McAllen Medical Center	L01713	McAllen	43	03/26/90
Mineral Wells	Perry Equipment Corporation	L00330	Mineral Wells	28	03/16/90
Nacogdoches	Terry A. Boulware, M.D., P.A.	L04326	Nacogdoches	3	03/26/90
Orange	Chevron Chemical Company	L00031	Orange	27	03/14/90
Orange	Inland-Orange, Inc.	L01029	Orange	35	03/12/90
Pampa	Hoechst Celanese	L04210	Pampa	3	03/13/90
Paris	Radiology Incorporated	L00458	Paris	42	03/22/90
Richmond	Polly Ryon Memorial Hospital	L02406	Richmond	12	03/22/90
San Antonio	Southwest Foundation for Biomedical Research	L00468	San Antonio	34	03/13/90
San Antonio	Baptist Hospital System	L00455	San Antonio	45	03/16/90
San Antonio	Southwest Research Institute	L00775	San Antonio	34	03/12/90
San Antonio	Santa Rosa Health Care Corporation	L02237	San Antonio	25	03/26/90
Seadrift	Union Carbide Corporation	L03105	Port Lavaca	2	03/15/90
Seminole	Seminole Memorial Hospital	L03118	Seminole	10	03/20/90
Sweeny	Phillips 66 Company	L00337	Sweeny	28	03/13/90
Throughout Texas	Tuboscope, Inc.	L00287	Houston	83	03/12/90
Throughout Texas	Team Consultants, Inc.	L04012	Dallas	3	03/12/90
Throughout Texas	Superior Production Logging, Inc.	L01983	Bangs	30	03/09/90
Throughout Texas	Houston Lighting and Power	L02063	Houston	42	03/09/90
Throughout Texas	DHTI Inc.	L04337	Corpus Christi	1	03/12/90
Throughout Texas	Pro Wireline Services, Inc.	L03708	Pearland	3	03/09/90
Throughout Texas	Non-Destructive Inspection Corporation	L02712	Lake Jackson	12	03/15/90
Throughout Texas	G & G X-Ray, Inc.	L03326	Corpus Christi	20	03/15/90
Throughout Texas	H & G Inspection Company, Inc.	L02181	Houston	45	03/15/90
Throughout Texas	MQS Inspection Incorporated	L00087	Elk Grove Vill. IL	49	03/15/90
Throughout Texas	Western Atlas International, Inc.	L00446	Houston	97	03/14/90
Throughout Texas	Memphis Testing Services	L04338	Humble	2	03/16/90

Throughout Texas	Reinhart and Associates, Inc.	L03189	Austin	10	03/19/90
Throughout Texas	Kay-Ray, Inc.	L04091	Stafford	2	03/21/90
Throughout Texas	NaTec Resources, Inc.	L04132	Houston	3	03/21/90
Throughout Texas	Terra-Mar, Inc.	L03157	Houston	10	03/20/90
Throughout Texas	BJ Services Company, U.S.A.	L02684	Houston	21	03/20/90
Throughout Texas	Ashok H. Gajria & Associates	L04295	Dallas	1	03/16/90
Throughout Texas	T U Electric	L04357	Dallas	1	03/15/90
Throughout Texas	Harding-Lawson Associates	L01970	Houston	19	03/16/90
Throughout Texas	Southwestern Laboratories	L01934	Dallas	28	03/19/90
Throughout Texas	Digital Surveys, Inc.	L01611	Fresno	17	03/15/90
Throughout Texas	Computalog Wireline Products, Inc.	L00747	Fort Worth	46	03/08/90
Throughout Texas	Warrington, Inc.	L03074	Austin	15	03/12/90
Throughout Texas	Monsanto Company	L00219	Alvin	48	03/21/90

RENEWALS OF EXISTING LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Austin	Doyle Leslie, M.D.	L01320	Austin	9	03/26/90
Houston	Osteoporosis Diagnostic Center of Houston	L03728	Houston	7	03/16/90
Houston	Jeffrey N. Bowman, D.P.M. and Harry R. Pattinian, DPM	L03565	Houston	6	03/19/90
Texarkana	Jarrell Myrick, M.D.	L03773	Texarkana	4	03/22/90

TERMINATIONS OF LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
College Station	Biophor Corporation	L04233	College Station	4	03/22/90
Freeport	J. S. McKinney, Inc.	L02220	Freeport	7	03/15/90
Houston	Roche Professional Service Centers, Inc.	L04024	Houston	4	03/16/90
Lubbock	Jose R. Beceiro, M.D.	L04039	Lubbock	1	03/23/90
San Antonio	Longhorn Cement Company	L02654	San Antonio	7	03/12/90
Throughout Texas	Odessa College	L03514	Odessa	2	03/16/90
Throughout Texas	Apache Inspection Service, Inc.	L03373	Elk City, Oklahoma	3	03/21/90

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the

material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures

are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on April 2, 1990.

TRD-9003445 Robert A. MacLean, M.D.  
Deputy Commissioner for Professional  
Services  
Texas Department of Health

Filed: April 3, 1990

For further information, please call: (512) 835-7000.

◆ ◆ ◆  
**Community Justice Assistance Division**  
**Forms for Grant-in-aid Programs**

Application forms for grant-in-aid programs funded by the Community Justice Assistance Division (CJAD) are now available for disbursement. Grant application manuals to assist in the completion of applications are also available. To request either the forms and/or manual, contact Mary Jane Bowen at (512) 834-8188. As a reminder, applications for fiscal year 1991 grant-in-aid programs are due May 1, 1990.

Issued in Austin, Texas on March 29, 1990.

TRD-9003439 Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice

Filed: April 3, 1990

For further information, please call: (512) 834-8188

◆ ◆ ◆  
**North Central Texas Council of**  
**Governments**  
**Consultant Contract Award**

In accordance with Texas Civil Statutes, Article 6252-11c, the North Central Texas Council of

Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6902). The consultant is to conduct an operational audit of the Fort Worth Transportation Authority.

The consultant selected to perform this audit is Communication Strategies, Incorporated, 4099 McEwen, Suite 315, Dallas, Texas 75244. The maximum amount of the contract is \$54,988. The contract will begin April 2, 1990, and will terminate in approximately four months.

At the conclusion of the study, the consultant will present FWTA with detailed policies and procedures for all areas of customer service function, including training/orientation, retail sales, complaint/compliment handling, lost and found operations, and bus schedule and trip planning information.

Issued in Arlington, Texas, on April 2, 1990.

TRD-9003476 William J. Pitstick  
Executive Director  
North Central Texas Council of  
Governments

Filed: April 4, 1990

For further information, please call: (817) 640-3300

◆ ◆ ◆  
**Public Utility Commission of Texas**  
**Notices of Application to Amend**  
**Certificate of Convenience and**  
**Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 28, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

**Docket Title and Number.** Application of Brazos Electric Power Cooperative, Inc. for a certificate of convenience and necessity for proposed transmission line within Dallas and Denton Counties, Docket Number 9469 before the Public Utility Commission of Texas.

**The Application.** In Docket Number 9469, Brazos Electric Power Cooperative requests approval of its application to construct approximately 5.9 miles of 138kV transmission line in Dallas and Denton Counties.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223 or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on March 30, 1990.

TRD-9003414 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 2, 1990

For further information, please call: (512) 458-0100

◆ ◆ ◆  
Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 28, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act,



§§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company to amend the boundary between Southwestern Bell's Marshall exchange and Contel of Texas, Inc.'s Karnack exchange, Docket Number 9470 before the Public Utility Commission of Texas.

**The Application.** In Docket Number 9470, Southwestern Bell Telephone Company requests approval of its application to amend service area boundaries in Harrison County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223 or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on March 30, 1990.

TRD-9003415 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 2, 1990

For further information, please call: (512) 458-0100

◆ ◆ ◆  
Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 26, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

**Docket Title and Number.** Application of Dell Telephone Cooperative to amend certificate of convenience and necessity within Culberson County, Docket Number 9464 before the Public Utility Commission of Texas.

**The Application.** In Docket Number 9464, Dell Telephone Cooperative requests approval of its application to include a small portion of an area located in Contel of Texas' Van Horn Exchange.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223 or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on March 30, 1990.

TRD-9003416 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 2, 1990

For further information, please call: (512) 458-0100

◆ ◆ ◆  
**Notice of Application to Revise a Telephone Service Base Rate Area**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 23, 1990, to revise a base rate area pursuant to the Public Utility Regulatory Act, §§16(a), 18(b), and 37. A summary of the application follows.

**Docket Title and Number.** Application of GTE Southwest, Inc. to revise tariff to reflect proposed expansion of

the pilot point base rate area, Docket Number 9462 before the Public Utility Commission of Texas.

**The Application.** In Docket Number 9462, GTE Southwest, Inc. filed an application expand a base rate area in Denton County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223 or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on March 30, 1990.

TRD-9003418 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 2, 1990

For further information, please call: (512) 458-0100

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**Texas Water Commission  
Notice of Application For Waste Disposal Permit**

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of March 26-30, 1990.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

Beaumont Farms, Inc.; Monroe; Treasure Cove Wastewater Treatment Facility; approximately 2,200 feet southwest of the intersection of Smith Road and Kidd Road in Jefferson County; 13017-01; renewal.

Fina Oil and Chemical Company; Port Arthur; natural gas liquids plant; 3828 Grandview Avenue, adjacent to the Fina Port Arthur Refinery northeast of the City of Groves, Jefferson County; 02688; renewal.

Garland Creosoting Company; Longview; Class I hazardous industrial solid waste facility; on 12-acre parcel of land on east side of State Highway 149 (aka Eastman Road) at intersection with FM Road 1845 (aka Estes Parkway) within City of Longview, Gregg County; HW-50297 and CP-50297 (EPA ID Number TXD-007330053);

new Post-Closure Care Permit and Compliance Plan; 45-day notice period.

Guadalupe-Blanco River Authority; Seguin; Dunlap Wastewater Treatment Facility; approximately one mile northeast of FM Road 725, approximately 5.5 miles northwest of the intersection of FM Road 725 and FM Road 78 in Guadalupe County; 11378-01; renewal.

Houston Fuel Oil Terminal, Inc. and Chartco Terminal, L.P. doing business as Houston Fuel Oil Terminal Company; Channelview; fuel oil terminal; 16642 Jacintoport Boulevard in the Community of Channelview, Harris County; 02277; renewal.

Kerr-McGee Chemical Corporation, Forest Products Division; Texarkana; hazardous waste treatment, storage, and disposal facility; 155 Buchanan Road on a 500-acre tract of land, one-half mile south of the intersection of U.S. Highway 59 and FM Road 558 and within the corporate city limits of Texarkana, Bowie County; CP-50076 (EPA I.D. Number TXD057111403); amend Compliance Plan; 45-day notice period.

Medina County Water Control and Improvement District Number 2; D'Hanis; wastewater treatment facility; west side of Nester Lane, approximately 2,000 feet south of the

intersection of Nester Lane and South Street in D'Hanis in Medina County; 11144-01; renewal.

Robert Newkirk Company, Inc.; Houston; Greens Road Service Center Wastewater Treatment Facility; 2421 Greens Road in the City of Houston, Harris County; 13066-01; renewal.

North Texas Municipal Water District; Wylie; Rush Creek Wastewater Treatment Facility; south of the intersection of Yankee Creek Road and Yacht Club Road, approximately 1 1/2 miles southwest of the City of Health, Rockwall County; 11259-01; renewal.

North Texas Municipal Water District; Wylie; Murphy Wastewater Treatment Facility; in the City of Murphy, adjacent to the Skyline Subdivision, approximately 4,000 feet east and 6,000 feet south of the intersection of FM Road 544 and FM Road 2551 (Murphy Road) in Collin County; 11783-01; renewal.

Issued in Austin, Texas, on March 30, 1990

TRD-9003417

Brenda W. Foster  
Chief Clerk  
Texas Water Commission

Filed: April 2, 1990

For further information, please call: (512) 463-7906



## General Land Office

When Texas declared independence from Mexico in 1836, one of the first acts of the Congress of the Republic was to create the General Land Office. The new agency was charged with verifying Spanish and Mexican land titles to determine which land was in the public domain and which land was privately owned. The Land Office collected records from Spain and Mexico to establish the legality of early land grants, ensured that surveys in the public domain did not conflict, and issued titles to land granted by the Republic and State.

Upon entering the Union in 1845, the young Republic offered almost 200 million acres of public land to the federal government if it would assume Texas' \$10 million debt. The U.S. Congress refused and Texas became the only state to retain title to its public land. The public domain was used thereafter to settle and develop Texas. Grants were made to colonists, veterans of the War for Independence and the Civil War, and to railroad companies, among others.

In 1873, one-half of the remaining public domain, approximately 28 million acres, was dedicated to public education. The Board for Mineral Development (now the School Land Board) was created in 1931 to assist the General Land Office with the management, sale and lease of this land, later called the Permanent School Fund (PSF).

In 1985, the Legislature established the Asset Management Division of the General Land Office to inventory all state owned lands and devise a comprehensive plan to develop it in the most economically and ecologically profitable manner.

Today, the Land Office is responsible for managing more than 12 million acres dedicated to the PSF. Hundreds of millions of dollars are collected each year from PSF land, primarily by leasing it for oil, gas and other mineral exploration and development. Additionally, the Land Office conducts all accounting and auditing of those leases to guarantee that the state receives its full share of oil and gas revenue. Since 1983, the agency has deposited more than \$1.5 billion to the PSF, which now totals more than \$7 billion.

The Land Office has established programs to enhance revenues to the PSF. For example, where the right market and transportation exist, the General Land Office takes royalties in natural gas rather than cash and then sells this gas to state agencies at a higher rate than the wellhead price,

but at a lower rate than the agency previously paid. Called the In-Kind Gas Program, this arrangement has increased revenues to the PSF, while reducing the state's spending on utilities. Another new program, the pre-lease evaluation, has been established to identify state tracts with significant potential for oil and gas recovery. This program has increased the average fees paid per acre on state tracts.

The General Land Office also leases surface acreage of PSF land, particularly tracts with commercial potential. Leases for hunting, grazing, agricultural and recreation purposes generate income for both the Permanent and Available School Funds.

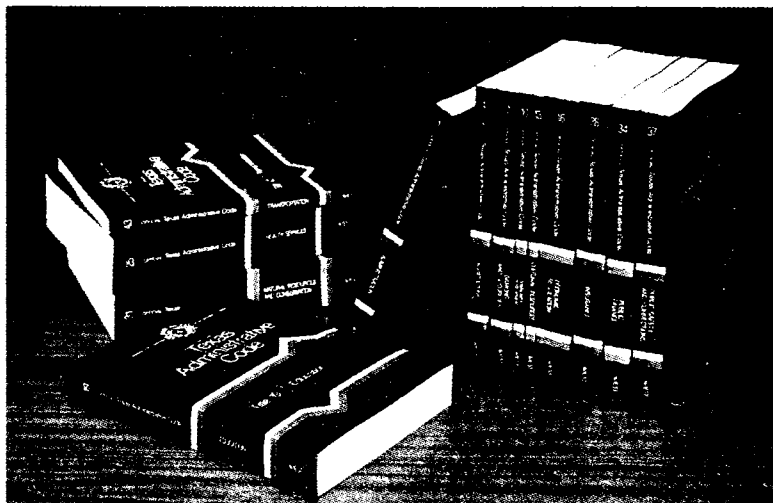
In addition to developing the mineral assets of PSF land, the General Land Office is responsible for protecting the state's natural resources for future generations. Environmentally sensitive tracts of PSF land have been identified by the agency for special care. Some are being added to the state park system; others allow public hunting and recreational use; still others, particularly in wetland and coastal areas, have been set aside to protect unique natural areas and sensitive habitats. The Resource Management Code System maintained at the Land Office provides a listing of environmental guidelines for the development of submerged state tracts in Texas bays and the Gulf of Mexico.

The General Land Office also has some jurisdiction over other state property. The Asset Management Division of the Land Office inventories and evaluates real property owned by state agencies and reports to the Legislature every four years its recommendations for use of each tract. Revenue from the sale of any tracts is deposited in the Capital Trust Fund to acquire, build, repair, improve and equip state buildings.

Finally, the General Land Office houses the early land records it was originally charged to collect and verify. The Archives and Records Division maintains documents that trace the land settlement of Texas. Patents, certificates attesting to the moral character of prospective Texas settlers, and surveyors' field notes are preserved in the archives, along with 19th century and current county maps. The current legal records of leasing state land are also on file.

The General Land Office is located in Austin and may be contacted at (512) 463-5001.

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