

# Texas Register

Volume 15, Number 30, April 20, 1990

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Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

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1 indicates the title under which the agency appears in the *Texas Administrative Code*;

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

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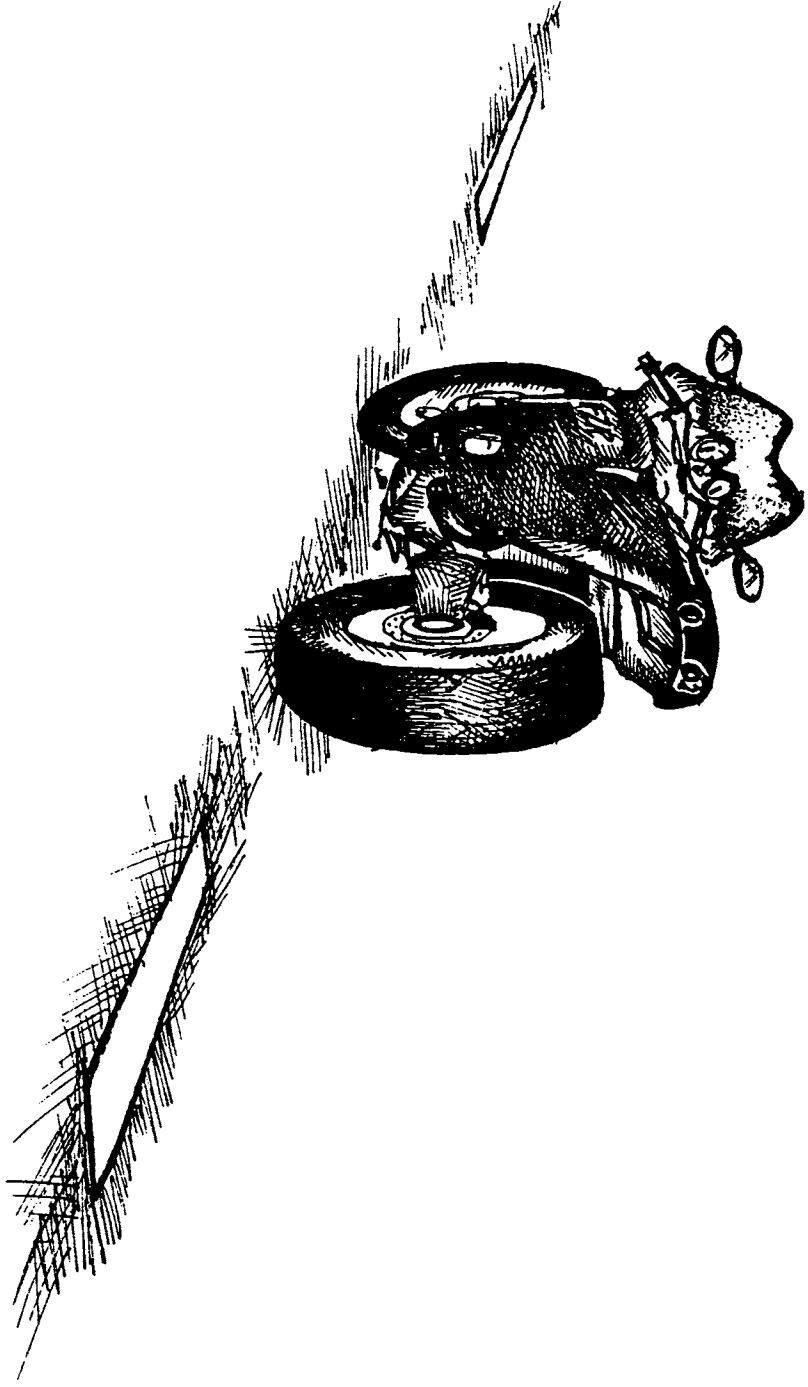
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◆ ◆ ◆



*Wilson*

Name: Rob Wilson  
School: Plano East High, Plano

# 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 16. ECONOMIC REGULATION

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

#### Chapter 62. Career Counseling Services

##### • 16 TAC §§62.71-62.73

The Texas Department of Licensing and Regulation adopts on an emergency basis new §§62.71-62.73, concerning career counseling services. The sections' language was changed and renumbered and was not included in the adoption of Chapter 62. The emergency adoption is needed for the enforcement of the Career Counseling Act, Article 5221a-8.

The new sections are adopted on an emergency basis under the Career Counseling Act, Texas Civil Statutes, Article 5221a-8, Texas Civil Statutes, Article 9100, and the Administrative Procedure and Texas Register Act, Article 6252-13a, which give the commissioner of the Texas Department of Licensing and Regulation rulemaking authority.

**§62.71. Responsibilities of the Certificate Holder-Prohibited Acts.** A person who acts as a career counseling service may not:

(1) imply or offer any guarantee that a consumer will obtain employment through the service, either during interviews or by any form of advertisement; or

(2) hold less than two interviews with a consumer before entering into a contract with consumer.

**§62.72. Responsibilities of the Certificate Holder-Consumer Complaints.**

(a) Each career counseling service must respond within 48 hours from its receipt in writing of any complaint and resolve the complaint not later than the 10th day after the date of receipt. If the career counseling service is unable to resolve the complaint within the specified 10 days, the complaint shall be referred to a qualified arbitration organization recognized by the department. The complaint must be resolved within 30 days after referral to the arbitration organization.

(b) Before a consumer complaint can be forwarded to an arbitration

organization, that organization must be recognized in writing by the department.

**§62.73. Responsibilities of the Certificate Holder-Advertising.**

(a) Career counseling services, in any advertisement, must state the following:

- (1) length of time in business;
- (2) business name; and
- (3) certificate of authority number.

(b) Each career counseling service shall be required to prove, upon request by the department, any claims made by the service during any interviews or stated by the service for advertising purposes, using any type of advertising medium.

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 13, 1990.

TRD-9003782

Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: May 4, 1990

Expiration date: September 1, 1990

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

## TITLE 22. EXAMINING BOARDS

### Part II. State Board of Barber Examiners

#### Chapter 51. Practice and Procedure

##### Examinations and Licensing

##### • 22 TAC §51.53

The State Board of Barber Examiners adopts on an emergency basis an amendment to §51.53, concerning out-of-state applicants. An imminent peril to the public welfare requires adoption of this section on an emergency basis in order to alleviate a potential economic hardship on barbers licensed in other states and countries who seek licensure as Class A registered barbers in Texas. The emergency amendment of subsection (b) eliminates the requirement that an out-of-state applicant wait to be inter-

viewed by the board at a regular bi-monthly board meeting, authorizes the staff to process applications daily and immediately issue a journeyman's work permit to the applicant to practice barbering until examined, and specified the documentation that must be submitted with an application. Emergency adoption of the amended section will be of immediate economic benefit to all out-of-state applicants by reducing the waiting period for approval of an application from as long as two months to one day.

The amendment is adopted on an emergency basis under the Texas Barber Law, Article 8407a, §28(a), which provides the State Board of Barber Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

**§51.53. Out-of-State Applicant.**

(a) Upon request, the board will mail an application for an examination to qualify as a Class A registered barber in Texas to any [a] barber who is licensed in another state or country which does not have a reciprocal licensing agreement with the Texas Board. [, for an examination to qualify as a Class A registered barber in Texas. The board will notify the applicant when to appear for a personal interview.]

(b) The [board will interview the] applicant must appear in person at the board office during regular business hours to present the completed application and the following required documents: [at a regular monthly meeting to determine that he or she fulfills all the qualifications required in the application and by the Texas Barber Law, Texas Civil Statutes, Article 8407a, §13.]

(1) a current original barber license, assistant barber license, or apprentice barber license from another state or country;

(2) proof of 1,500 hours of education in a licensed barber school. Work experience as a practicing barber may be substituted at the rate of 25 hours per month for each month worked after completing school. Education and work experience must be documented as follows.

(A) a certified transcript or letter from a barber board or licensed barber school must be submitted, stating the number of hours of education that the applicant has completed in a licensed barber school.

(B) creditable work experience as a practicing barber must be listed on the application form, and must be substantiated by a W-2 Form, and income tax return, or a reference letter from the former employer;

(3) official proof of at least a 7th grade education in a public or private school;

(4) a completed, notarized physician's certificate (the physician's certificate may be completed and notarized in another state not more than 90 days prior to the applicant's appearance at the board office;

(5) two recent, identical two-inch by two-inch process photographs and the applicant's signature on the front. Polaroid-type pictures are not acceptable; and

(6) a photostatic copy of the applicable court order or marriage license for each change of name reflected on the document submitted.

(c) If the applicant meets all requirements of the Texas Barber Law, Texas Civil Statutes, Article 8407a, §13, and pays the initial examination fee, the board will issue a 30-day journeyman's work permit. The permit is renewable for an additional 30 days upon payment of another examination fee, if the applicant fails to appear for or does not pass the first examination. The board will notify the applicant when to appear for the examination.

(d)-(e) (No change.)

(f) [Effective August 5, 1986,] The [the] examination fee for out-of-state applicants shall be \$90, payable by money order or cashier's check. An additional \$90 examination fee will be required each time to apply for examination after failure to pass an examination, or failure to appear for an examination. After passing the examination, the applicant shall pay a \$60 license fee for a two-year Class A barber certificate.

Issued in Austin, Texas, on April 5, 1990.

TRD-9003619 Jo King McCrorey  
Executive Director  
State Board of Barber  
Examiners

Effective date: April 9, 1990

Expiration date: August 7, 1990

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

◆ ◆ ◆  
**TITLE 31. NATURAL  
RESOURCES AND CON-  
SERVATION**  
Part IX. Texas Water  
Commission

## Chapter 291. Water Rates

### Subchapter A. General Provisions

#### • 31 TAC §§291.1-291.14

The Texas Water Commission is renewing the effectiveness of the emergency adoption of repealed §§291.1-291.14, for a 60-day period effective April 13, 1990. The text of repealed §§291.1-291.14 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6824).

Issued in Austin, Texas on April 13, 1990.

TRD-9003812 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 13, 1990

Expiration date: June 12, 1990

For further information, please call: (512) 463-8069

◆ ◆ ◆  
The Texas Water Commission is renewing the effectiveness of the emergency adoption of new §§291.1-291.16, for a 60-day period effective April 11, 1990. The text of new §§291.1-291.16 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6827).

Issued in Austin, Texas, on April 11, 1990.

TRD-9003702 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 11, 1990

Expiration date: June 10, 1990

For further information, please call: (512) 463-8069

### ◆ ◆ ◆ Subchapter B. Utility Rates, Rate Making, and Rate/Tar- iff Changes

#### • 31 TAC §§291.21-291.32

The Texas Water Commission is renewing the effectiveness of the emergency adoption of repealed §§291.21-291.32, for a 60-day period effective April 13, 1990. The text of repealed §§291.21-291.32 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6828).

Issued in Austin, Texas, on April 13, 1990.

TRD-9003811 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 13, 1990

Expiration date: June 12, 1990

For further information, please call: (512) 463-8069

◆ ◆ ◆  
The Texas Water Commission is renewing the effectiveness of the emergency adoption of new §§291.21-291.32, for a 60-day period effective April 11, 1990. The text of new §§291.21-291.32 was originally published in

the December 26, 1989, issue of the *Texas Register* (14 TexReg 6833).

Issued in Austin, Texas, on April 11, 1990.

TRD-9003703 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 11, 1990

Expiration date: June 10, 1990

For further information, please call: (512) 463-8069

### ◆ ◆ ◆ Subchapter C. Ratemaking Appeals

#### • 31 TAC §§291.41-291.44

The Texas Water Commission is renewing the effectiveness of the emergency adoption of repealed §§291.41-291.44, for a 60-day period effective April 13, 1990. The text of repealed §§291.41-291.44 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6833).

Issued in Austin, Texas, on April 13, 1990.

TRD-9003810 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 13, 1990

Expiration date: June 12, 1990

For further information, please call: (512) 463-8069

#### ◆ ◆ ◆ • 31 TAC §§291.41-291.45

The Texas Water Commission is renewing the effectiveness of the emergency adoption of new §§291.41-291.45, for a 60-day period effective April 11, 1990. The text of new §§291.41-291.45 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6834).

Issued in Austin, Texas, on April 11, 1990.

TRD-9003704 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 11, 1990

Expiration date: June 10, 1990

For further information, please call: (512) 463-8069

### ◆ ◆ ◆ Subchapter D. Records and Reports

#### • 31 TAC §§291.71-291.75

The Texas Water Commission is renewing the effectiveness of the emergency adoption of repealed §§291.71-291.75, for a 60-day period effective April 13, 1990. The text of repealed §§291.71-291.75 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6834).

Issued in Austin, Texas, on April 13, 1990.

TRD-9003809 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 13, 1990

Expiration date: June 12, 1990

For further information, please call: (512) 463-8069

◆ ◆ ◆  
• 31 TAC §§291.71-291.76

The Texas Water Commission is renewing the effectiveness of the emergency adoption of new §§291.71-291.76, for a 60-day period effective April 11, 1990. The text of new §§291.71-291.76 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6836).

Issued in Austin, Texas, on April 11, 1990.

TRD-9003705 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 11, 1990

Expiration date: June 10, 1990

For further information, please call: (512) 463-8069

◆ ◆ ◆  
Subchapter E. Customer Service and Protection

• 31 TAC §§291.81-291.89

The Texas Water Commission is renewing the effectiveness of the emergency adoption of repealed §§291.81-291.89, for a 60-day period effective April 13, 1990. The text of repealed §§291.81-291.89 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6836).

Issued in Austin, Texas, on April 13, 1990.

TRD-9003808 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 13, 1990

Expiration date: June 12, 1990

For further information, please call: (512) 463-8069

◆ ◆ ◆  
The Texas Water Commission is renewing the effectiveness of the emergency adoption of new §§291.81-291.89, for a 60-day period effective April 11, 1990. The text of new §§291.81-291.89 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6841).

Issued in Austin, Texas, on April 11, 1990.

TRD-9003706 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 11, 1990

Expiration date: June 10, 1990

For further information, please call: (512) 463-8069

Subchapter F. Quality of Service

• 31 TAC §§291.91-291.95

The Texas Water Commission is renewing the effectiveness of the emergency adoption of repealed §§291.91-291.95, for a 60-day period effective April 13, 1990. The text of repealed §§291.91-291.95 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6842).

Issued in Austin, Texas, on April 13, 1990.

TRD-9003807 Jim Haley  
Director, Legal Division  
agency

Effective date: April 13, 1990

Expiration date: June 12, 1990

For further information, please call: (512) 463-8069

◆ ◆ ◆  
The Texas Water Commission is renewing the effectiveness of the emergency adoption of new §§291.91-291.95, for a 60-day period effective April 11, 1990. The text of new §§291.91-291.95 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6843).

Issued in Austin, Texas, on April 11, 1990.

TRD-9003707 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 11, 1990

Expiration date: June 10, 1990

For further information, please call: (512) 463-8069

◆ ◆ ◆  
Subchapter G. Certificates of Convenience and Necessity

• 31 TAC §§291.101-291.117

The Texas Water Commission is renewing the effectiveness of the emergency adoption of repealed §§291.101-291.117, for a 60-day period effective April 13, 1990. The text of repealed §§291.101-291.117 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6843).

Issued in Austin, Texas, on April 13, 1990.

TRD-9003806 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 13, 1990

Expiration date: June 12, 1990

For further information, please call: (512) 463-8069

Subchapter G. Certificates of Convenience and Necessity

• 31 TAC §§291.102-291.118

The Texas Water Commission is renewing the effectiveness of the emergency adoption of new §§291.102-291.118, for a 60-day period effective April 11, 1990. The text of new §§291.102-291.118 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6847).

Issued in Austin, Texas, on April 11, 1990.

TRD-9003708 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 11, 1990

Expiration date: June 10, 1990

For further information, please call: (512) 463-8069

◆ ◆ ◆  
Subchapter H. Utility Submetering

• 31 TAC §§291.121-291.126

The Texas Water Commission is renewing the effectiveness of the emergency adoption of repealed §§291.121-291.126, for a 60-day period effective April 13, 1990. The text of repealed §§291.121-291.126 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6847).

Issued in Austin, Texas, on April 13, 1990.

TRD-9003805 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 13, 1990

Expiration date: June 12, 1990

For further information, please call: (512) 463-8069

◆ ◆ ◆  
• 31 TAC §§291.121-291.127

The Texas Water Commission is renewing the effectiveness of the emergency adoption of new §§291.121-291.127, for a 60-day period effective April 11, 1990. The text of new §§291.121-291.127 was originally published in the December 26, 1989, issue of the *Texas Register* (14 TexReg 6850).

Issued in Austin, Texas, on April 11, 1990.

TRD-9003709 Jim Haley  
Director, Legal Division  
Texas Water Commission

Effective date: April 11, 1990

Expiration date: June 10, 1990

For further information, please call: (512) 463-8069



Name: John Bilho II  
School: Plano East High, Plano

# 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 XII. Advisory Commission on State Emergency Communications

##### Chapter 252. Administration

###### • 1 TAC §252.2

The Advisory Commission on State Emergency Communications proposes new §252.2, concerning the reporting mechanism for 9-1-1 planning and implementation. The new section is proposed in order for the commission to collect financial performance information regarding the implementation of 9-1-1 regional plans throughout Texas. This information will be used to monitor the progress of the 9-1-1 plans; and the financial impact on the 9-1-1 equalization surcharge and the 9-1-1 service fee funds.

Mary A. Boyd, 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.

Ms. Boyd, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased assurance of compliance with the 9-1-1 regional plans for their scheduled local 9-1-1 emergency telephone service, and will better assure that the policies and goals of the Health and Safety Code, Chapter 771, are met. 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 Mary A. Boyd, Executive Director, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78746.

The new section is proposed under the Health and Safety Code, Chapter 771, which provides the Advisory Commission on State Emergency Communications with the authority to administer the implementation of statewide 9-1-1 and establish agency cooperation with each public agency and regional planning commissions. The authority to promulgate this section is contained in the Health and Safety Code, §§771.051(5), 771.052, 771.055(c), 771.056(4), and 771.075.

###### §252.2. Reporting Mechanism for 9-1-1 Planning and Implementation.

(a) The commission will use information provided by the Councils of Governments (COGs) to monitor the progress of the 9-1-1 regional plans and the financial impact on the 9-1-1 equalization surcharge and the 9-1-1 service fee funds.

(b) The Councils of Governments will provide financial and performance information as requested in the Financial Status Report (Form 911-269a) and the Project Performance Report (Form 911-269a1) forms.

(c) The Financial Status Report (Form 911-269a) and the Project Performance Report (Form 911-269a1) forms are adopted by reference. Copies of the forms can be obtained from the Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

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 13, 1990.

TRD-9003802

Mary A. Boyd  
Executive Director  
Advisory Commission on  
State Emergency  
Communications

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 327-1911

##### Chapter 255. Finance

###### • 1 TAC §255.5

The Advisory Commission on State Emergency Communications proposes new §255.5, concerning the optional use of an uncollectible factor in the remittance of 9-1-1 revenues. The commission has not necessarily decided the legality of the use of an uncollectible factor under the statute. If it is determined legal, the commission proposes a new section concerning, if applicable, the method of calculating the uncollectible factor in the remittance of the 9-1-1 revenues. The new section applies only to telecommunications companies utilizing an uncollectible factor in the calculating and remitting of 9-1-1 billed revenues. The new section is proposed in order to clarify and

provide uniformity in the calculation methodology.

Mary A. Boyd, 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.

Ms. Boyd, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the clarification of the commission's position and policy as it relates to companies utilizing uncollectible factors and ensures proper remittances of revenues. 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 Mary A. Boyd, Executive Director, 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746.

The new section is proposed under the Health and Safety Code, Chapter 771, which provides the Advisory Commission on State Emergency Communications with the authority to establish the billing, remitting, and collecting of 9-1-1 service fees and 9-1-1 equalization surcharges.

###### §255.5. Optional Use of an Uncollectible Factor.

(a) The procedure for telephone companies or interexchange carriers who wish to utilize an uncollectible factor in the remittance of 9-1-1 revenues follows. This policy should apply only in situations where a company is remitting 9-1-1 revenues based on total billed service fees or surcharges, less an uncollectible factor. The following should be used to compute the remittance of the 9-1-1 revenues:

(1) the amount of the customer's 9-1-1 emergency service fees actually billed by the company for the month;

(2) if applicable, less the amount of 9-1-1 emergency service fees adjusted due to error(s) in billing; if any, and/or specific refusals by telephone subscribers to pay customer's 9-1-1 emergency service fees, if any;

(3) less an uncollectible factor, if any, as set forth in subsection (b) (1) and (2) of the section; and

(4) less the 2.0% administrative fee the company is entitled to retain by statute.

(b) The uncollectible factor referred to in subsection (a)(3) of this section, shall be computed by the company using the following method.

(1) For a specified period each year (e.g., quarterly, semi-annually), the company will examine its local exchange access or interexchange billing uncollectible for the preceding months and determine the mean average percentage uncollectible for that period. The uncollectible amount used in this calculation is the current period's uncollectibles less amounts recovered from the previous period's uncollectibles.

(2) The company will begin using said mean average percentage uncollectible as the uncollectible factor to be applied in subsection (a)(3) of this section, as of the first month in the next succeeding specified time frame (e.g., quarterly, semi-annually).

(3) The company will provide, within 60 days after the end of the calendar year, a listing of all subscribers who have refused to pay 9-1-1 service fees or surcharges 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 11, 1990.

TRD-9003729

Mary A. Boyd  
Executive Director  
Advisory Commission on  
State Emergency  
Communications

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 327-1911

◆ ◆ ◆

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 17. Marketing Division

#### Livestock Export Facilities

##### • 4 TAC §17.31

The Texas Department of Agriculture (the department) proposes an amendment to §17.31, concerning the operation of livestock export facilities. The department previously adopted an amendment to §17.31 on an emergency basis as published in the January 26, 1990, issue of the *Texas Register* (15 TexReg 401). The department now proposes an amendment for permanent adoption. The proposed amendment includes changes not previously adopted on an emergency basis.

The amendment increases the per head fees for breeding cattle, calves, horses, mules, and hogs held more than 24 hours; decreases the per head fee for slaughter sheep and goats; adds new categories for slaughter hogs and slaughter cattle; and eliminates the unloading and documentation verification charge.

The changes in fees are proposed to bring the amounts collected closer to a level that will equal actual costs to the department of operating facilities, in accordance with the intent of the 71st Legislature, 1989. The establishment of new categories for slaughter hogs and cattle and the fees established for those categories, reflect the lower costs of handling those categories as compared to handling breeding cattle and hogs. The reduction of the per head fee for slaughter sheep and goats is made to meet the requirements of the Mexican government for handling of slaughter sheep and goats.

Paul Lewis, director, international marketing, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state or local government 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 increase in revenue of \$15,000 in 1990 and \$45,000 in each year thereafter. The effect on local government for the first five-year period the section will be in effect will be an estimated increase in revenue of \$6,000 in 1990 and \$9,100 each year thereafter. Local governments receive 25% of collections, bringing an increase to local revenue. Cost to United States exporters will decrease by \$10 per trailer or truckload due to the elimination

of the loading charge. This decrease will be the same for small and large businesses. Costs to foreign buyers will be dependent upon number of head of livestock, type of livestock held at the facilities, and length of time held.

Mr. Lewis also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be more efficient use of facilities, and a bringing of the revenues generated from the use of the facilities closer to the actual costs of operation, in accordance with the intent of the 71st Legislature, 1989. The anticipated economic cost to persons who are required to comply with the proposed section will be dependent upon number of head of livestock, type of livestock, and length of time held at facilities. Cost of compliance will be an additional \$.50 per head of breeding cattle, calves, horses or mules held in large pens, an additional \$.75 per head of breeding sheep and goats held longer than 24 hours in large pens, an additional \$.75 per head of breeding hogs held in large pens; a per head fee of \$1.00 for slaughter hogs held for 24 hours or less and a per head fee of \$1.00 for slaughter hogs held over 24 hours; a per head fee of \$1.50 for slaughter cattle held for 24 hours or less and a per head fee of \$1.50 for slaughter cattle held for over 24 hours.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Director of Hearings, P.O. Box 12847, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code §146.021, which provides the Texas Department of Agriculture with the authority to receive and hold for processing animals transported in international trade, and establish and collect reasonable fees for such holding and other expenses; and the Appropriations Act, Senate Bill 1, 71st 1989, which provides the Texas Department of Agriculture with the authority to set fees to cover costs of operation of the facilities.

#### §17.31. Operation of Livestock Facilities.

(a) (No change.)

(b) Procedures.

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

(5) The following schedule of fees includes necessary water, pen space, dip or spray for external parasites when required, and necessary labor for helping in conducting and carrying out any tests requested, and feeding of livestock. Bedding, hay and feed are not included in the fee schedule as follows:



For cattle, calves, horses and mules

	First 24 hrs. or fraction thereof.	Each 24 hrs. thereafter.
Size of pens	per head	per head
Large pens	\$ <u>2.50</u> [2.00]	\$4.00
Stalls	\$10.00	\$10.00

For sheep and goats

	First 24 hrs. or fraction thereof.	Each 24 hrs. thereafter.
Size or pens	per head	per head
Large pens	\$ 1.00	\$ <u>1.75</u> [1.00]
Stalls	\$10.00	\$10.00

For hogs

	First 24 hrs. or fraction thereof.	Each 24 hrs. thereafter.
Size of pens	per head	per head
Large pens	\$ 1.50	\$ <u>2.25</u> [1.50]
Stalls	\$10.00	\$10.00

For slaughter sheep and goats

	First 24 hrs. or fraction thereof.	Each 24 hrs. thereafter.
Size of pens	per head	per head

Large pens	\$ .25 [.30]	\$ .25 [.30]
<u>For slaughter hogs</u>		
	<u>First 24 hrs or</u>	<u>Each 24 hours</u>
	<u>fraction thereof.</u>	<u>thereafter.</u>
<u>Size of pens</u>	<u>per head</u>	<u>per head</u>
<u>Large pens</u>	<u>\$1.00</u>	<u>\$1.00</u>

<u>For slaughter cattle</u>		
	<u>First 24 hrs. or</u>	<u>Each 24 hours</u>
	<u>fraction thereof.</u>	<u>thereafter.</u>
<u>Size of pens</u>	<u>per head</u>	<u>per head</u>
<u>Large pens</u>	<u>\$1.50</u>	<u>\$1.50</u>

Air Shipments  
(Houston)

Type of Animal	First 24 hrs. or fraction thereof head	Each additional 24 hrs. per head
Cattle, horses and mules	\$5.00	\$5.00
Sheep, hogs and goats	\$2.50	\$2.50

Stalls are available for animals if required. The cost of stalls is \$20.00 per head for the first 24 hours or fraction thereof and \$20.00 per head for each additional 24 hours. Stall prices apply to any type of animal.

[\* Unloading and documentation verification charge - \$10.00 per trailer load, to be paid by party delivering animals.]

\* No charges for suckling calves when accompanied by their dams.

\*\* Senate Bill 1009, section 3 of the General Special Laws passed by the 62nd Legislature, 1971, states that livestock or other

animals left by their owners in such facilities for longer than 30 calendar days may be sold at public auction to satisfy any unpaid fees or other indebtedness to the State of Texas and private suppliers.

(6)-(9) (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 10, 1990.

TRD-9003679

Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of  
Agriculture

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 463-7583

◆ ◆ ◆  
**TITLE 7. BANKING AND  
SECURITIES**

**Part VII. State Securities  
Board**

**Chapter 115. Dealers and  
Salesmen**

• **7 TAC §115.1**

The State Securities Board proposes an amendment to §115.1, concerning registration of dealers, to clarify that a branch office of a financial institution is included within the definition of branch office.

Peggy Peters, director, Dealer Registration Division, has determined that for the first five-year period the proposed section is in effect

there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Peters 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 section will be clarification that a branch office of a financial institution is included within the definition of branch office. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

**§115.1. General.**

(a) Registration.

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

(5) Each **branch office of a dealer** [in Texas] **must be registered.** [in which either records are maintained or control over and review of the activities of registered persons exists is a] **A branch office is an office in this state, other than the main office, regularly maintained and**

**used by the dealer or its supervised registered agents to engage in securities-related business with clients or customers, or which is held out as a place where clients or customers may engage in securities-related business with the dealer or its registered agents** [and must be registered as such]. **An office is held out to the public as a branch office of a dealer if the wording on the door, the form of the stationery, advertisements, sales literature, correspondence, business cards, telephone listings, and/or similar representations made to the public indicate that either the dealer or its registered agents is available at that location to engage in securities-related business with clients or customers. An office may also be held out as a branch office through direct representations made to individual members of the public by the dealer or its registered agents. A registered officer, partner, salesman, or investment adviser must be named as branch office manager.**

(b)-(h) (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 10, 1990.

TRD-9003669

Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 474-2233

The State Securities Board proposes an amendment to §115.1, concerning restricted dealer registration, to allow assistants for (unsolicited) order processing to become registered in a restricted capacity.

Peggy Peters, director, Dealer Registration Division, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Peters 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 section will be the creation of a new category of restricted dealer registration for assistants for (unsolicited) order processing to become registered in a restricted capacity. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§115.1. General.

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

(1) Any person or company may apply for, and the commissioner may grant, restricted registration for the purpose of effecting transactions in a particular type or category of securities, or securities representing interests in one or more types or categories of businesses. The restricted registrations are as follows.

- (A)-(J) (No change.)

**(K) Registration to accept unsolicited orders from existing customers of the dealer.**

- (2) (No change.)
- (c)-(h) (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 10, 1990.

TRD-9003670 Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 474-2233

• 7 TAC §115.3

The State Securities Board proposes an amendment to §115.3, concerning examination of certain applicants seeking registration as investment advisers. The amendment creates a waiver of the requirement that applicants seeking registration as investment advisers take an examination on state securities law if such applicants are designated by the American Institute of Certified Public Accountants as accredited personal financial specialists.

Peggy Peters, director, Dealer Registration Division, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Peters 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 section will be elimination of the requirement that applicants for registration as investment advisers take an examination on state securities law if such applicants are designated by the American Institute of Certified Public Accountants as accredited personal financial specialists. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§115.3. Examination.

- (a)-(b) (No change.)
- (c) Exemptions.
- (1)-(2) (No change.)

(3) A partial waiver of the examination requirements of the Securities Act, §13.D, is granted by the board for the following classes of persons:

- (A)-(J) (No change.)

**(K) applicants seeking registration as investment advisers who are designated by the American Institute of Certified Public Accountants as accredited personal financial specialists. Such persons are not required to take the general securities portion of the examination prescribed in §13.D, but are required to pass an examination on state securities law as required by subsection (b)(2) of this section.**

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

Issued in Austin, Texas, on April 10, 1990.

TRD-9003671 Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 474-2233

Chapter 117. Administrative Guidelines for Registration of Real Estate Programs

• 7 TAC §§117.1, 117.2, 117.4-117.9

The State Securities Board proposes amendments to §§117.1, 117.2, 117.4-117.9, concerning administrative guidelines for registration of real estate programs. The amendments reflect provisions that were included in the most recent amendments to the North American Securities Administrators' Association's real estate guidelines.

Micheal Northcutt, director, Securities Registration Division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Northcutt also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections will be continued uniformity with other states in applying standards for registration of real estate program offerings. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendments are proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§117.1. Introduction.

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

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

- (1) (No change.)
- (2) Acquisition fee—The total of all fees and commissions paid by any party

in connection with [the] making or investing in mortgage loans or the purchase, [or] development, or construction of property by a program[, except a development fee paid to a person not affiliated with a sponsor, in connection with the actual development of a project after acquisition of the land by the program]. Included in the computation of such fees or commissions shall be any real estate commission, selection fee, development fee, construction fee, nonrecurring management fee, loan fees, or points paid by borrowers to the sponsor in programs which make or invest in mortgage loans, or any fee of a similar nature, however designated. Excluded shall be development fees and construction fees paid to persons not affiliated with the sponsor in connection with the actual development and construction of a project.

(3) Administrator—Referred to as "securities commissioner" throughout these guidelines.

(4)[(3)] Affiliate—

(A)-(D) (No change.)

(5)[(4)] Assessments—Additional amounts of capital which may be mandatorily required of or paid at the option of a participant beyond his subscription commitment, excluding mandatory deferred payments.

(6)[(5)] Audited financial statements—Financial statements (balance sheet, statement of income, statement of partners' equity, and statement of cash flows [changes in financial position]) prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report containing:

(A) an unqualified opinion; [or]

(B) an opinion containing no material qualification; or [of an independent certified public accountant or independent public accountant.]

(C) no explanatory paragraph disclosing information relating to material uncertainties (except as to litigation) or going concern issues.

(7)[(6)] Capital contribution—The gross amount of investment in a program by a participant, or all participants, as the case may be. Unless otherwise specified, capital contribution shall be deemed to include principal amounts to be received on account of mandatory deferred payments.

(8) [(7)] Carried interest—An equity interest in a program which participates in all allocations and distributions other than the promotional interest provided for in §117.4(c)(3)(A), (e)(1), and (e)(2) of

this title (relating to Fees—Compensation—Expenses), for which full consideration is not paid or to be paid.

(9)[(8)] Cash available for distribution—Cash flow less amount set aside for restoration or creation of reserves.

(10)[(9)] Cash flow—Program cash funds provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments capital improvements, and replacements.

(11)[(10)] Competitive real estate commission—That real estate or brokerage commission paid for the purchase or sale of property which is reasonable, customary, and competitive in light of the size, type, and location of the property.

(12)[(11)] Construction fee—A fee or other remuneration for acting as general contractor and/or construction manager to construct improvements, supervise, and coordinate projects or provide major repairs or rehabilitation on a program's property [either initially or at a later date].

(13)[(12)] Cross-reference sheet—A compilation of the guideline sections, referenced to the page of the prospectus, partnership agreement, or other exhibits, and justification of any deviation from the guidelines.

(14)[(13)] Development fee—A fee for the packaging of a program's property, including negotiating and approving plans, and undertaking to assist in obtaining zoning and necessary variances and necessary financing for the specific property, either initially or at a later date.

(15)[(14)] Financing—All indebtedness encumbering program properties or incurred by the program, the principal amount of which is scheduled to be paid over a period of not less than 48 months, and not more than 50% of the principal amount of which is scheduled to be paid during the first 24 months. Nothing in this definition shall be construed as prohibiting a bona fide prepayment provision in the financing agreement.

(16)[(15)] Front-end fees—Fees and expenses paid by any party for any services rendered to organize the program and to acquire assets for the program, [during the program's organizational or acquisition phase] including organization and offering expenses, acquisition fees, acquisition expenses, interest on deferred fees and expenses, and any other similar fees, however designated by the sponsor.

(17)[(16)] Investment in properties—The amount of capital contributions used to make or invest in mortgage loans or the amount actually paid or allocated to the purchase, development, construction, or im-

provement of properties acquired by the program, including the purchase of properties, working capital reserves allocable thereto (except that working capital reserves in excess of 5.0% shall not be included), and other cash payments such as interest and taxes but excluding front-end fees.

(18) Major repairs and rehabilitation—The repair, rehabilitation, or reconstruction of a property where the appropriate costs exceed 10% of the fair market value of the property at the time of such services.

(19)[(17)] Mandatory deferred payments—Payments on account of the purchase price of program interests offered in accordance with 17 Code of Federal Regulations 240.3a12-9.

(20)[(18)] Net worth—The excess of total assets over total liabilities as determined by generally accepted accounting principles, except that if any of such assets have been depreciated, then the amount of depreciation relative to an particular asset may be added to the depreciated cost of such asset to compute total assets, provided that the amount of depreciation may be added only to the extent that the amount resulting after adding such depreciation does not exceed the fair market value of such asset.

(21)[(19)] Non-specified property programs—Programs other than specified property programs.

(22)[(20)] Organization and offering expenses—Those expenses, incurred in connection with and in preparing a program for registration and subsequently offering and distributing it to the public, including sales commissions paid to broker-dealers in connection with the distribution of the program and all advertising expenses.

(23)[(21)] Participant—The holder of a program interest.

(24)[(22)] Person—Any natural person, partnership, corporation, association, or other legal entity.

(25)[(23)] Program—A limited or general partnership, joint venture, unincorporated association, or similar organization other than a corporation formed and operated for the primary purpose of investment in and the operation of or gain from an interest in real property, including such entities formed to make or invest in mortgage loans.

(26)[(24)] Program interest—The limited partnership unit or other indicia of ownership in a program.

(27)[(25)] Program management fee—A fee paid to the sponsor or other persons for management and administration of the program.

(28)[(26)] Property management fee—The fee paid for day-to-day professional property management services

in connection with a program's real property projects.

(29)[(27)] Prospectus—Shall have the meaning given to that term by the Securities Act of 1933, §2(10), including a preliminary prospectus; provided, however, that such term as used herein shall also include an offering circular as described in the Securities Act of 1933, Rule 256, or, in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.

(30)[(28)] Purchase price—The price paid upon the purchase or sale of a particular property, including the amount of acquisition fees and all liens and mortgages on the property, but excluding points and prepaid interest.

(31)[(30)] Specified property program—A program where, at the time a securities registration is ordered effective, more than 75% of the net proceeds from the sale of program interests is allocable to the purchase, construction, or improvement of specific properties. Reserves shall be included in the nonspecified portion. Net proceeds shall include principal amounts to be received on account of mandatory deferred payments.

(32)[(29)] Sponsor—Any person directly or indirectly instrumental in organizing, wholly or in part, a program or any person who will manage or participate in the management of a program, and any affiliate of any such person, but does not include a person whose only relation with the program is as that of an independent property manager, whose only compensation is as such. Sponsor does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of syndicate interests. A person may also be a sponsor of the program by:

(A) taking the initiative, directly or indirectly, in founding or organizing the business or enterprise of the program, either alone or in conjunction with one or more other persons;

(B) receiving a material participation in the program in connection with the founding or organizing of the business of the program, in consideration of services or property, or both services and property;

(C) having a substantial number of relationships and contacts with the program;

(D) possessing significant rights to control program properties;

(E) receiving fees for providing services to the program which are paid on a basis that is not customary in the industry; or

(F) providing goods or services to the program on a basis which was not negotiated at arms-length with the program.

#### §117.2. Requirements of Sponsors.

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

(d) Liability and indemnification.

(1) The program [partnership agreement] shall not provide for indemnification of the sponsor for any liability or loss suffered by the sponsor, nor shall it provide that the sponsor be held harmless for any loss or liability suffered by the program [partnership], unless all of the following conditions are met:

(A)-(D) (No change.)

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

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

#### §117.4. Fees—Compensation—Expenses.

(a) (No change.)

(b) Organization and offering expenses. All organization and offering expenses incurred in order to sell program interests shall be reasonable and shall comply with all statutes, rules, and regulations imposed in connection with the offering of other securities in the state [ , and the total expenses for marketing securities paid by the program shall in no event in the aggregate exceed the percentages specified in §113.4(g) of this title (relating to Application for Registration)].

(c) Investment in properties.

(1) Front-end fees paid to the sponsor shall be in accordance with this subsection.

(A) The sponsor shall be required to commit a substantial portion of the program's capital contributions toward investment in properties. The remaining capital contributions may be used to pay front-end fees. The total amount of front-end fees, whenever paid and from whatever source, shall be limited to an amount equal to the initial amount of capital contributions not applied to investment in properties. When front-end [acquisition] fees are paid by the seller of properties, such fees shall not be included in satisfying the required minimum investment in properties. [Additionally, in determining the amount committed to investment in properties, such calculation shall not take into account any front-end fees.]

(B) If capital contributions are paid on an installment basis, the front-end fee shall be paid to the sponsor pro rata as installments are paid.

(C) Notwithstanding paragraphs (1)(A) and (2) of this subsection, front-end fees may be limited as required by §117.5(j) of this title (relating to Conflicts of Interest and Investment Restrictions). If so, the proportion of capital contributions subject to the limitations of §117.5(j) of this title (relating to Conflicts of Interest and Investment Restrictions) shall be the same proportion as the amount of invested assets subject to §117.5(j) of this title (relating to Conflicts of Interest and Investment Restrictions) to the aggregate amount of all investments of the program. Borrowed amounts shall not be included in determining the amount of investment.

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

(d) (No change.)

(e) Promotional interest. An interest in the program will be allowed as a promotional interest and program management fee, provided the amount or percentage of such interest is reasonable. Such an interest will be considered presumptively reasonable if it is within the limitations expressed in paragraphs (1)-(5)[(4)] of this subsection.

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

(f)-(i) (No change.)

#### §117.5. Conflicts of Interest and Investment Restrictions.

(a) Sales, leases, and related program transactions.

(1) Sales and leases to program. A program shall not purchase or lease property in which a sponsor has an interest unless:

(A)-(B) (No change.)

(C) the cost of the property and any improvements thereon to the sponsor is clearly established. If the sponsor's cost was less than the price to be paid by the program, the price to be paid by the program will not be deemed fair, regardless of the appraised value, unless some material change has occurred to the property which would increase the value since the sponsor acquired the property. Material factors may include the passage of a significant amount of time (but in no event less than two years prior to the offering of program interests), the assumption by the promoter of the risk of obtaining a rezoning of the property and its subsequent rezoning, or some other extraordinary event which in fact increases the value of the property. If the material

factor includes development, construction, or major repairs or rehabilitation of the property by the sponsor less than two years prior to the offering of program interests, the costs shall be limited as required by subsection (j) of this section;

(D) the provisions of this subsection notwithstanding, the sponsor may purchase property in its own name (and assume loans in connection therewith) and temporarily hold title thereto for the purpose of facilitating the acquisition of such property, or the borrowing of money or obtaining of financing for the program, or completion of construction of the property, or any other purpose related to the business of the program, provided that such property is purchased by the program for a price no greater than the cost of such property to the sponsor, except compensation in accordance with §117.4 of this title (relating to Fees-Compensation-Expenses), and subsection (j) of this section, and provided there is no difference in interest rates of the loans secured by the property at the time acquired by the sponsor and the time acquired by the program, nor any other benefit arising out of such transaction to the sponsor apart from compensation otherwise permitted by these sections. Accordingly, all income generated and expenses associated with property so acquired shall be treated as belonging to the program. In no event shall the program purchase property from the sponsor pursuant to this subparagraph if the sponsor has held the property for a period in excess of 12 months prior to commencement of the offering. The sponsor shall not sell property to the program pursuant to this subparagraph if the cost of the property exceeds the funds reasonably anticipated to be available to the program to purchase the property. The prospectus and the program agreement shall set forth in a manner satisfactory to the securities commissioner the methodology to be utilized for determining which properties will ultimately be transferred to the program when the cost of the property acquired by the sponsor on behalf of the program exceeds program funds available to purchase the property;

(E) (No change.)

(2) Sales and leases to sponsor. A [The] program shall [will] not [ordinarily be permitted to] sell or lease property to the sponsor except as provided herein. [that]

(A) The program may lease property to the sponsor pursuant to [under] a lease-back arrangement made at the outset, the [and on] terms of which are fully disclosed in the prospectus and no less [more] favorable to the program [sponsor]

than those offered to and accepted by [other] persons who are not affiliates of the sponsor [and fully described in the prospectus].

(B) Not more than 10% of aggregate leasable space owned by the program may be under lease to the sponsor pursuant to terms not less favorable to the program than those offered to and accepted by persons who are not affiliates of the sponsor; provided that the sponsor may not sublet such properties unless all profits derived from such subleases in excess of rentals due on the master lease are paid to the program.

(C) A sponsor may purchase property (or contract rights related thereto) from the program only if all of the following criteria are met:

(i) the program does not have sufficient offering proceeds available to retain the property (or contract rights related thereto);

(ii) the prospectus discloses that the sponsor will purchase all properties (or contract rights) that the program does not have sufficient proceeds to retain;

(iii) the sponsor pays the program an amount in cash equal to the cost of the property (or contract rights) to the program (including all cash payments and carrying costs related thereto);

(iv) the sponsor assumes all of the program's obligations and liabilities incurred in connection with the holding of the property (or contract rights) by the program;

(v) the sale to the sponsor occurs not later than 90 days following the termination date of the offering;

(vi) the methodology to be used by the sponsor in determining which properties it will purchase in the event that the program's offering proceeds are insufficient to retain all properties must be fully disclosed in the prospectus.

(3) (No change.)

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

(e) Services rendered to the program by the sponsor.

(1) (No change.)

(2) Other goods and services. Except as provided in §117.4 of this title (relating to Fees-Compensation-Expenses), paragraph (1) of this subsection, and subsection (j) of this section, other goods and services may be provided by the sponsor for the program only if all of the following criteria are met.

(A)-(F) (No change.)

(G) Except as provided in §117.4 of this title (relating to Fees-Compensation-Expenses), paragraph (1) of this subsection, and subsection (j) of this section, and other than as provided in subparagraphs (B), (D), (E), and (F) of this paragraph, the sponsor may provide additional [other] goods and services to the program if all of the following criteria are met:

(i)-(v) (No change.)

(f)-(h) (No change.)

(i) Lending practices.

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

(5) An "all-inclusive" or "wrap-around" note and deed of trust (the "all-inclusive note" herein) may be used to finance the purchase of property by the program only if the following conditions are complied with:

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

(j) Development [or] construction, or major repairs or rehabilitation of properties [contract].

(1) Provision of services by the sponsor. The sponsor will [not] be permitted to develop, construct, or provide major repairs and rehabilitation for [development] properties, or render any services in connection with such activities only if [development or construction unless] all of the following conditions are satisfied:

(A)[(1)] the transactions occur upon [at] the formation of the program and are for properties specified in the final prospectus;

(B) [(2)] the specific terms of the contracts [development and construction of identifiable properties] are ascertainable and fully disclosed in the final prospectus;

(C)[(3)] the purchase price to be paid by the program is based upon a [firm] contract price fully disclosed in the final prospectus which in no event can exceed the lesser of appraised value as completed (assuming a market rate of occupancy) or the sum of the cost of the land and the [sponsor's] cost of development, construction, or repairs and rehabilitation. For the purposes of this paragraph, the cost of development, construction, or repairs and rehabilitation includes the development fee, the [contractor or] construction fee, direct costs, the cost of construction site personnel, construction administration, legal fees, design costs, engineering costs,

and construction site utilities. The costs of construction site personnel, and construction administration shall be limited as required by subsection (e)(1)(A) of this section and shall not include reimbursement of costs of controlling persons as set forth in that subsection. In no event may any other overhead of the sponsor be [customarily paid for services as a general contractor, provided, however, that any overhead of the general contractor is not] charged to the program or included in the total costs paid [cost of construction]. The appraisal shall be prepared in accordance with subsection (1) of this section.

(D) the securities commissioner may require demonstration that the fees and costs payable under subparagraph (C) of this paragraph are comparable to and competitive with amounts charged by third parties in the same geographic area. The total of the development fee and the construction fee paid in connection with such project shall not exceed 15% of the direct costs of the project. For the purposes of this limitation, direct costs shall not include construction site personnel or construction site utilities;

(E) notwithstanding §117.4(c) of this title (relating to Fees-Compensation-Expenses), the only front-end fees paid to the sponsor in connection with such project shall consist of organization and offering expenses, a development fee (if applicable), a construction fee, and a real estate commission in connection with the acquisition of the land from persons who are not affiliates of the general partner. The sponsor may not receive any other front-end fees. The foregoing fees and commissions plus any additional acquisition fees and acquisition expenses to unaffiliated persons (and any development fee and construction fee individually) must be comparable to and competitive with the fees paid to unaffiliated persons rendering comparable services in the same geographic location. The securities commissioner may require demonstration that such fees, commissions, and expenses are comparable and competitive.

(F) the sponsor must comply with subsection (k) of this section;

(G) subcontractors who are affiliates of the general partner must meet the requirements of subsection (e)(2)(B)-(F) of this section;

(H) If the contract price equals the appraised value set forth in

subparagraph (C) of this paragraph, the sponsor shall be responsible for the direct costs incurred to achieve the appraisal assumptions;

(I) the sponsor complies with (e)(2)(C)-(F) of the section;

(J) development fees and construction fees paid to persons not affiliated with the general partner may be included in investment in properties.

[(4) in the case of construction, the only fees paid to the sponsor in connection with such project shall consist of a construction fee for action as a general contractor, which fees must be comparable an competitive with the fee of disinterested persons rendering comparable services (excluding, however, any overhead of the contractor) and a real estate commission in connection with the acquisition of the land, if appropriate under the circumstances. Any such real estate commission shall be subject to the provisions of §117.4(c) of this title (relating to Fees-Compensation-Expenses);

[(5) the sponsor demonstrates the presence of extraordinary circumstances as required by subsection (e)(2) of this section and otherwise complies with subparagraphs (B)-(D) of that paragraph.]

(k) Completion bond requirements.

(1) (No change.)

(2) For purposes of this subsection, satisfactory arrangements include, but are not limited to, the following:

(A) (No change.)

(B) a retention of a reasonable portion of the purchase consideration as a potential offset to such purchase consideration in the event the seller does not perform in accordance with the purchase and sale agreement[; and]

(3)[(C)] Other satisfactory arrangements to guarantee completion may be made, provided they are disclosed in the prospectus and the prior written approval of the securities commissioner has been obtained.

(l) (No change.)

(m) Mortgage loan programs. A program will not be permitted to invest in or make mortgage loans unless a real property appraisal is obtained as provided for in [paragraph] subsection (1) of this section for each mortgage loan, and a mortgagee's or owner's title insurance policy or commitment as to the priority of a mortgage or the condition of title is obtained. Further, the sponsor of mortgage loan programs shall observe the following policies in connection with investing in or making mortgage loans.

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

(5) The program shall not make or invest in mortgage loans on any one property if the aggregate amount of all mortgage loans outstanding on the property, including the loans of the program would exceed an amount equal to 85% of the appraised value of the property as determined by an independent appraisal, unless substantial justification exists because of the presence of other underwriting criteria. For purposes of this paragraph the "aggregate amount of all mortgage loans outstanding on the property, including the loans of the program," shall include all interest (excluding contingent participations in income and/or appreciation in value of the mortgaged property), the current payment of which may be deferred pursuant to the terms of such loans, to the extent that deferred interest on each loan exceeds 5.0% per annum of the principal balance of the loan.

(6) (No change.)

(n) Program indebtedness.

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

(4) For purposes of this subsection only, the term "indebtedness" shall include the principal of any loan together with any interest that may be deferred pursuant to the terms of the loan agreement which exceeds 5.0% per annum of the principal balance of such indebtedness (excluding contingent participations in income and/or appreciation in the value of the program property); and shall exclude any indebtedness incurred by the program for necessary working capital.

#### §117.6. Non-specified Property Programs.

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

(c) State of investment objectives. A nonspecified property program shall state types of properties in which it proposes to invest, such as first-user apartment projects, subsequent-user apartment projects, shopping centers, office buildings, unimproved land, etc., and the size and scope of such projects shall be consistent with the objectives of the program and the experience of the sponsors. As a minimum, the following restrictions on investment objectives shall be observed.

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

(4) The statement of investment objectives shall indicate whether the program will enter into joint venture arrangements and the projected extent thereof.

(5) The statement of investment objectives shall not include a quantitative estimate of the program's anticipated economic performance or anticipated return to investors (in the form of distributable funds or tax benefits). The presentation of a proposed



level of economic performance or return to investors (in the form of distributable funds or tax benefits) in connection with a nonspecified property program is prohibited by §117.8(c) of this title (relating to Disclosure and Marketing Requirements).

(d) Period of offering and expenditure of proceeds. Subject to compliance with applicable state securities laws and regulations, an [Permits in this state are valid only for one year from issuance but may be renewed pursuant to the Act, §10.B. An] offering of securities in a nonspecified property program may extend for up to two years from the date of original effectiveness provided that the minimum amount of program interests necessary to satisfy the greater of the minimum capitalization requirements of subsection (a) of this section or the impound requirements set by the program is sold within one year of commencement of the offering. While the proceeds of an offering are awaiting investment in real property, the proceeds may be temporarily invested in short-term highly liquid investments where there is appropriate safety of principal, such as United States Treasury Bonds or Bills. Any proceeds of the offering of program interests not invested within the later of two years after commencement of the offering or one year after the termination of the offering, or, if allowed by the securities commissioner, six months from the last scheduled mandatory deferred payment date (except for necessary operating capital) shall be distributed pro rata to the participants as a return of capital so long as the adjusted investment in properties is in compliance with §117.4(c) of this title (relating to Fees—Compensation—Expenses).

(e) (No change.)

#### §117.7. Rights and Obligations of Participants.

(a) (No change.)

(b) Voting rights of limited partners.

(1) To the extent permitted by the law of the state of formation, the program agreement shall [in question is not inconsistent, the limited partnership agreement must] provide that a majority of the [then] outstanding program [limited partnership] interests may, without [the] necessity for concurrence by the general partner [sponsor], vote to:

(A) amend the program [limited partnership] agreement; [.]

(B) [dissolve the program,] remove the general partner(s); [sponsor and]

(C) elect a new general partner(s); [sponsor, and]

(D) approve or disapprove the sale of all or substantially all of the assets of the program except pursuant to a plan disclosed in the final prospectus; and [.]

(E) dissolve the program.

(2) Without concurrence of a majority of the outstanding program interests, the general partner(s) may not:

(A) amend the program agreement except for amendments which do not adversely affect the rights of participants;

(B) voluntarily withdraw as a general partner unless such withdrawal would not affect the tax status of the program and would not materially adversely affect the participant;

(C) appoint a new general partner(s);

(D) sell all or substantially all of the program's assets other than in the ordinary course of the program's business;

(E) cause the merger or other reorganization of the program; or

(F) dissolve the program. Notwithstanding subparagraph (B) of this paragraph, an additional general partner may be appointed without obtaining the consent of the participants if the addition of such person is necessary to preserve the tax status of the program, such person has no authority to manage or control the program under the program agreement, there is no change in the identity of persons who have authority to manage or control the program, and the admission of such person as an additional general partner does not materially adversely affect the participants.

(3) Any amendment to the program agreement which modifies the compensation or distributions to which a general partner is entitled or which affects the duties of a general partner may be conditioned upon the consent of the general partner.

(4) If the law of the state of formation provides that the program will dissolve upon termination of a general partner(s) unless the remaining general partner(s) continues the existence of the program, the program agreement shall obligate the remaining general partner(s) to continue the program's existence; and if there will be no remaining general

partner(s), the termination of the last general partner shall not be effective for a period of at least 120 days during which time a majority of the outstanding program interests shall have the right to elect a general partner who shall agree to continue the existence of the program.

(5) The program agreement shall provide for a successor general partner where the only general partner of the program is an individual [The agreement should provide for a method of valuation of the sponsor interest, upon removal of the sponsor, that would not be unfair to the participants. The agreement should also provide for a successor sponsor where the only sponsor of the program is an individual].

(c) Reports to holders of limited partnership interests. The partnership agreement shall provide that the sponsor shall cause to be prepared and distributed to the holder of program interests during each year the following reports:

(1) in the case of a program registered under the Securities Exchange Act of 1934, §12(g), within 60 days after the end of each quarter of the program, a report containing:

(A)-(B) (No change.)

(C) a statement of cash flows for [flow statement of] the quarter then ended, which may be unaudited; and

(D) (No change.)

(2) (No change.)

(3) in the case of all programs, with 120 days after the end of each program's fiscal year, an annual report containing:

(A) audited financial statements accompanied by an auditor's report which, for purposes of this section only, may contain a qualified, adverse, or disclaimer opinion or explanatory paragraph [a balance sheet as of the end of its fiscal year and statements of income, partners' equity, and changes in financial position and a cash flow statement, for the year then ended, all of which, except the cash flow statement, shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of an independent certified public accountant];

(B) -(C) (No change.)

(4) (No change.)

(5) where assessments have been made during any period covered by any report required by paragraphs (1) -[, (2), and] (4) of this subsection, then such report shall contain a detailed statement of

such assessments and the application of the proceeds derived from such assessments;

(6) (No change.)

(d)-(i) (No change.)

(j) Special reports. Within 60 days after the end of each quarter during which there have been real property acquisitions, a "special report" (which may be part of the quarterly report) shall be sent to all participants until the proceeds of the offering are committed or returned to the investors. The report shall contain the following information:

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

(k) Arbitration of disputes. Except as permitted in §117.2(f) of this title (relating to Requirements of Sponsors [Rights and Obligations of Participants]), no provision requiring mandatory arbitration of disputes between the participant and the sponsor or the program is permitted. Nothing contained herein shall apply to preexisting contracts between broker-dealers and participants.

#### §117.8. Disclosure and Marketing Requirements.

(a) Sales promotional efforts.

(1) (No change.)

(2) Group meetings. All advertisements of and oral or written invitations to "seminars" or other group meetings at which program interests are to be described, offered, or sold shall clearly indicate that the purpose of such meeting is to offer such program interests for sale, the minimum purchase price thereof, and the name of the sponsor, underwriter, or selling agent. No cash, merchandise, or other item of value shall be offered as an inducement to any prospective participants to attend any such meeting. In connection with the offer or sale of program interests, no general offer shall be made of "free" or "bargain price" trips to visit property in which the program or proposed program has invested or intends to invest. All written or prepared audiovisual presentations (including scripts prepared in advance for oral presentations) to be made at such meetings must be submitted in advance to the securities commissioner not less than three business days prior to the first use thereof. [The foregoing paragraphs] Paragraphs (1) and (2) of this subsection shall not apply to meetings consisting only of representatives of securities broker-dealers.

(b) Contents of prospectus. The prospectus shall meet the requirements of Guide 5 of the Securities and Exchange Commission. The use of proceeds tabular summary required by Guide 5 shall include a separate line item for estimated acquisition expenses to be incurred by the program. All of the information required to be set forth in the use of proceeds tabular summary by Guide 5

shall also be provided for estimated acquisition expenses, including an estimate of acquisition expenses to be paid to the sponsor. The description of the method for the allocation of the acquisition of properties by two or more programs of the same sponsor shall meet the requirements of §117.6(e) of this title (relating to Nonspecified Property Programs). The prospectus shall contain a full description of the terms, consequences, and risks to investors and the program of any mandatory deferred payments. The securities commissioner may require additional disclosure if, in the securities commissioner's opinion, specific facts concerning the offering require it.

(c) Forecasts.

(1) (No change.)

(2) Presentation of [Requirements for] forecasts. Forecasts for specified property programs shall be included in the prospectus[, offering circular,] or sales material of the program only if they comply with the following requirements.

(A) General. Forecasts shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of the presentation. Forecasts shall [should] be examined by an independent certified public accountant in accordance with the Statement on Standards for Accountant's Services on Prospective Financial Information and the Guide For Prospective Financial Statements, as promulgated by the American Institute of Certified Public Accountants[, and that person or firm should be identified in the prospectus or offering circular as being responsible for the examination of the forecasts.] The accountant's examination report shall be included in the prospectus. No forecasts shall be permitted in any sales literature which does not appear in the prospectus [or offering circular]. If any forecasts are included in the sales literature, all forecasts must be presented.

(B)-(C) (No change.)

(D) Additional disclosures and limitations.

(i)-(ii) (No change.)

(iii) Forecasts shall disclose all possible undesirable tax consequences of an early sale of the program property (such as, depreciation recapture or the failure to sell the property at a price which would return sufficient cash to meet resulting tax liabilities of the participants).

(iv) (No change.)

(3) (No change.)

(4) No quantitative estimate or anticipated return. The prospectus and

sales material shall not include a quantitative estimate of a program's anticipated economic performance or anticipated return to participants (in the form of distributable funds or tax benefits), except as permitted under subsection (c) of this section.

#### §117.9. Miscellaneous Provisions.

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

(d) Financial information required on application. In any offering of interests by a program, the program shall provide as an exhibit to the application the following financial information.

[(1) Cash flow statement. If the program has been formed and owns assets, an unaudited cash flow statement for each of the last three fiscal years shall be part of the prospectus. If the program has operated less than three fiscal years, the statement(s) shall cover the period from organization to a current date.]

(1)[(2)] Financial statements of program. The prospectus shall include audited financial statements of the program for each of the last three fiscal years (or for the life of the program, if less), provided that the only audited balance sheet that shall be required shall be as of the end of the most recent fiscal year of the program. When a program has operated less than one fiscal year, audited financial statements are not required unless requested by the securities commissioner [an audited balance sheet of the program as of the end of its most recent fiscal year].

(2)[(3)] Balance sheet of corporate sponsor. Audited financial statements consisting only of an audited [A] balance sheet for each [of any] corporate sponsor [sponsors] as of the end of the sponsor's [their] most recent fiscal year[, examined and reported upon by an independent certified public accountant and prepared in accordance with generally accepted accounting principles. An unaudited balance sheet as of a date not more than 135 days prior to the date of filing should also be prepared. Such statements] shall be included in the prospectus.

(3)[(4)] Other sponsors. A balance sheet for each noncorporate sponsor (including individual partners or individual joint ventures of a sponsor) as of a date [time] not more than 135 days prior to the date of filing the [an] application shall be submitted. Such [; such] balance sheet shall be prepared in accordance with generally accepted accounting principles and reviewed [examined] and reported upon by an independent certified public accountant under the [limited] review standards set forth by the American Institute of Certified Public Accountants, and shall be signed and sworn to by such sponsor [sponsors]. A representation of the amount of such net

worth must be included in the prospectus, or in the alternative, a representation that such sponsor meets the net worth requirements of §117.2(b) of this title (relating to Requirements of Sponsors) shall be so included.

(4)[(5)] Interim financial information. Where an [the] audited balance sheet required by this subsection is as of a date more than 90 days prior to the date of filing, an unaudited balance sheet as of a date not more than 90 days prior to the date of filing shall also be provided. Where the application is made in coordination with a registration statement submitted to the Securities and Exchange Commission pursuant to the Securities Act of 1933, an interim unaudited balance sheet as of a date not more than 135 days prior to the date of filing shall be provided only if the audited balance sheet is as of a date more than 134 days prior to the date of filing. Interim unaudited statements of income, partners' equity, and cash flows [changes in financial position] shall also be provided with the unaudited balance sheet in instances where such statements are required by this subsection as part of the audited financial statements for the last fiscal year. The securities commissioner may require the interim unaudited information to be included in the prospectus when the audited information required by this section must be included [When a program has operated less than one fiscal year, audited financial information is not required unless requested by the securities commissioner].

(5)[(6)] Filing of other statements. The securities commissioner may permit the omission of one or more of the statements required under this subsection and the filing (in substitution thereof) of appropriate statements verifying financial information having comparable relevance to an investor in determining whether to invest in the program. Such substitution will only be allowed where the securities commissioner finds this would be consistent with the protection of investors.

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

(g) Provisions of partnership agreement. The requirements and/or provisions of appropriate portions of the following sections shall be included in the [a] partnership agreement: §117.1(b) of this title (relating to Definitions); §117.2(c)-(f) of this title (relating to Requirements of Sponsors); §117.4(c)-(i) of this title (relating to Fees-Compensation-Expenses); §117.5(a)-(i), (k)-(n) [and (l)] of this title (relating to Conflicts of Interest and Investment Restrictions); §117.6(c) and (d) of this title (relating to Nonspecified Property Programs); §117.7 (a)-(f), [and] (h), (j), and (k)[- (k)] of this title (relating to Rights and Obligations of Participants); and subsections (a)-(c) of this section.

(h) (No change.)

(i) Amendments and supplements. A redlined copy of all amendments and supplements to an application shall be filed with the securities commissioner as soon as the amendment or supplement is available.

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 10, 1990.  
TRD-9003672

Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 474-2233

◆ ◆ ◆  
Chapter 121. Administrative  
Guidelines for the  
Registration of Oil and Gas  
Programs

• 7 TAC §§121.1-121.10

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

The State Securities Board proposes the repeal of §§121.1-121.10, concerning administrative guidelines for registration of oil and gas programs. Repeal of the current guidelines will allow for the simultaneous adoption of newly revised oil and gas program guidelines adopted by the North American Securities Administrators' Association.

Micheal Northcutt, director, Securities Registration Division, has determined that for the first five-year period the proposed repeals is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Northcutt also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be continued uniformity with other states in applying standards for the registration of oil and gas programs. There will be no effect on small businesses as a result of enforcing the repeals. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The repeals are proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§121.1. Introduction.

§121.2. Requirements of Sponsor.

§121.3. Selling of Units and Sales Materials.

§121.4. Suitability of the Participant.

§121.5. Fees, Compensation, and Expenses.

§121.6. Transactions with Affiliates and Conflicts of Interest.

§121.7. Farm-Outs.

§121.8. Rights and Obligations of Participants.

§121.9. Miscellaneous Provisions.

§121.10. Prospectus and Disclosure and Marketing Requirements.

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

Issued in Austin, Texas, on April 10, 1990.

TRD-9003674

Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 474-2233

◆ ◆ ◆  
The State Securities Board proposes new §§121.1-121.10, concerning administrative guidelines for registration of oil and gas programs. The sections reflect the current oil and gas guidelines adopted by the North American Securities Administrators' Association.

Micheal Northcutt, director, Securities Registration Division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Northcutt 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 continued uniformity with other states in applying standards for the registration of oil and gas programs. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new sections are proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

#### §121.1. Introduction.

##### (a) Application.

(1) These guidelines apply to the registration and qualification of oil and gas programs as defined in subsection (b)(23) of this section, and will be applied by analogy to oil and gas programs in other forms, including, but not limited to, multi-tier structures. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain guidelines may be modified or waived by the securities commissioner.

(2) Where the individual characteristics of specific programs warrant modification from these standards, they will be accommodated, insofar as possible, while still being consistent with the spirit of these guidelines.

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

(1) Administrative costs—All customary and routine expenses incurred by the sponsor for the conduct of program administration, including: legal, finance, accounting, secretarial, travel, office rent, telephone, data processing, and other items of a similar nature.

(2) Administrator—Referred to as "securities commissioner" throughout these guidelines.

(3) Affiliate of a specified person—

(A) Any person directly or indirectly owning, controlling, or holding with power to vote 10% or more of the outstanding voting securities of such specified person.

(B) Any person 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such specified person.

(C) Any person directly or indirectly controlling, controlled by, or under common control with such specified person.

(D) Any officer, director, trustee, or partner of such specified person.

(E) If such specified person is an officer, director, trustee, or partner, any person for which such person acts in any such capacity.

(4) Assessments—Additional amounts of capital which may be mandatorily required of or paid voluntarily by a participant beyond his subscription commitment.

(5) Capital contributions—The total investment, including the original investment, assessments, and amounts reinvested, in a program by a participant or by all participants, as the case may be.

(6) Capital expenditures—Those costs associated with property acquisition and the drilling and completion of oil and gas wells which are generally accepted as capital expenditures pursuant to the provisions of the Internal Revenue Code.

(7) Carried interest—An equity interest in a program issued to a person without consideration, in the form of cash or tangible property, in an amount proportionately equivalent to that received from the participants.

(8) Cost, when used with respect to property in §121.6 of this title (relating to Property Transactions with Affiliates and Other Restricted Activities)—

(A) The sum of the prices paid by the seller to an unaffiliated person for such property, including bonuses.

(B) Title insurance or examinations costs, brokers' commissions, filing fees, recording costs, transfer taxes, if any, and like charges in connection with the acquisition of such property.

(C) A pro rata portion of seller's actual necessary and reasonable expenses for seismic and geophysical services.

(D) Rentals and ad valorem taxes paid by the seller with respect to such property to the date of its transfer to the buyer, interest, and points actually incurred on funds used to acquire or maintain such property, and such portion of the seller's reasonable, necessary, and actual expenses for geological, engineering, drafting, accounting, legal, and other like services allocated to the property cost in conformity with generally accepted accounting principles and industry standards, except for expenses in connection with the past drilling of wells which are not producers of sufficient quantities of oil or gas to make commercially reasonable their continued operations, and provided that the expenses enumerated in this subparagraph shall have been incurred not more than 36 months prior to the purchase by the program; provided that such period may be extended, at the discretion of the securities

commissioner, upon proper justification. When used with respect to services: the reasonable, necessary, and actual expense incurred by the seller on behalf of the program in providing such services, determined in accordance with generally accepted accounting principles. As used elsewhere: the price paid by the seller in an arm's-length transaction.

(9) Development well—A well drilled within the proved area of an oil or gas reservoir to the depth of a stratigraphic horizon known to be productive.

(10) Direct costs—All actual and necessary costs directly incurred for the benefit of the program and generally attributable to the goods and services provided to the program by parties other than the sponsor or its affiliates. Direct costs shall not include any cost otherwise classified as organization and offering expenses, administrative costs, operating costs, or property costs. Direct costs may include the cost of services provided by the sponsor or its affiliates if such services are provided pursuant to written contracts and in compliance with §121.5(b)(8) of this title (relating to Fees, Compensation, and Expenses).

(11) Exploratory well—A well drilled to find commercially productive hydrocarbons in an unproved area, to find a new commercially productive horizon in a field previously found to be productive of hydrocarbons at another horizon, or to significantly extend a known prospect.

(12) Farmout—An agreement whereby the owner of the leasehold or working interest agrees to assign his interest in certain specific acreage to the assignees, retaining some interest such as an overriding royalty interest, an oil and gas payment, offset acreage, or other type of interest, subject to the drilling of one or more specific wells or other performance as a condition of the assignment.

(13) Horizon—A zone of a particular formation; that part of a formation of sufficient porosity and permeability to form a petroleum reservoir.

(14) Independent expert—A person with no material relationship to the sponsor who is qualified and who is in the business of rendering opinions regarding the value of oil and gas properties based upon the evaluation of all pertinent economic, financial, geologic, and engineering information available to the sponsor.

(15) Landowner's royalty interest—An interest in production, or the proceeds therefrom, to be received free and clear of all costs of development, operation, or maintenance, reserved by a landowner upon the creation of an oil and gas lease.

(16) Non-capital expenditures—Those expenditures associated with property acquisition and the drilling and completion of oil and gas wells that under

present law are generally accepted as fully deductible currently for federal income tax purposes.

(17) Operating costs—Expenditures made and costs incurred in producing and marketing oil or gas from completed wells, including, in addition to labor, fuel, repairs, hauling, materials, supplies, utility charges, and other costs incident to or therefrom, ad valorem and severance taxes, insurance and casualty loss expense, and compensation to well operators or others for services rendered in conducting such operations.

(18) Organization and offering expenses—All costs of organizing and selling the offering, including, but not limited to, total underwriting and brokerage discounts and commissions (including fees of the underwriters' attorneys), expenses for printing, engraving, mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositaries, engineers and other experts, expenses of qualification of the sale of the securities under federal and state law including taxes and fees, accountants' and attorneys' fees, and other front-end fees.

(19) Overriding royalty interest—An interest in the oil and gas produced pursuant to a specified oil and gas lease or leases, or the proceeds from the sale thereof, carved out of the working interest, to be received free and clear of all costs of development, operation, or maintenance.

(20) Participant—The purchaser of a unit in the oil and gas program.

(21) Person—Any natural person, partnership, corporation, association, trust, or other legal entity.

(22) Production purchase or income program—Any program whose investment objective is to directly acquire, hold, operate, and/or dispose of producing oil and gas properties. Such a program may acquire any type of ownership interest in a producing property, including, but not limited to, working interests, royalties, or production payments. A program which spends at least 90% of capital contributions and funds borrowed (excluding offering and organizational expenses) in the previously described activities is presumed to be a production purchase or income program.

(23) Program—One or more limited or general partnerships or other investment vehicles formed, or to be formed, for the primary purpose of exploring for oil, gas, and other hydrocarbon substances or investing in or holding any property interests which permit the exploration for or production of hydrocarbons or the receipt of such production or the proceeds thereof (a prospectus may offer a series of programs with individual programs being formed in sequence).

(24) Prospect—An area covering

lands which are believed by the sponsor to contain subsurface structural or stratigraphic conditions making it susceptible to the accumulations of hydrocarbons in commercially productive quantities at one or more horizons. The area, which may be different for different horizons, shall be designated by the sponsor in writing prior to the conduct of program operations and shall be enlarged or contracted from time to time on the basis of subsequently acquired information to define the anticipated limits of the associated hydrocarbon reserves and to include all acreage encompassed therein. A prospect with respect to a particular horizon may be limited to the minimum area permitted by state law or local practice, whichever is applicable, to protect against drainage from adjacent wells if the well to be drilled by the program is to a horizon containing proved reserves.

(25) Proved reserves—Those quantities of crude oil, natural gas, and natural gas liquids which, upon analysis of geologic and engineering data, appear with reasonable certainty to be recoverable in the future from known oil and gas reservoirs under existing economic and operating conditions. Proved reserves are limited to those quantities of oil and gas which can be expected, with little doubt, to be recoverable commercially at current prices and costs, under existing regulatory practices and with existing conventional equipment and operating methods. Depending upon their status of development, such proved reserves shall be subdivided into the following classifications.

(A) Proved developed reserves. These are proved reserves which can be expected to be recovered through existing wells with existing equipment and operating methods.

(i) This classification shall include:

(I) proved developed producing reserves. These are proved developed reserves which are expected to be produced from existing completion interval(s) now open for production in existing wells;

(II) proved developed non-producing reserves. These are proved developed reserves which exist behind the casing of existing wells, or at minor depths below the present bottom of such wells, which are expected to be produced through these wells in the predictable future, where the cost of making such oil and gas available for production should be relatively small compared to the cost of a new well.

(ii) Additional oil and gas expected to be obtained through the application of fluid injection or other improved recovery techniques for supplementing the natural forces and mechanisms of

primary recovery should be included as proved developed reserves only after testing by a pilot project or after the operation of an installed program has confirmed through production response that increased recovery will be achieved.

(B) Proved undeveloped reserves. These are proved reserves which are expected to be recovered from new wells on undrilled acreage, or from existing wells where a relatively major expenditure is required for recompletion. Reserves on undrilled acreage shall be limited to those drilling units offsetting productive units, which are virtually certain of production when drilled. Proved reserves for other undrilled units can be claimed only where it can be demonstrated with certainty that there is continuity of production from the existing productive formation. Under no circumstances should estimates for proved undeveloped reserves be attributable to any acreage for which an application of fluid injection or other improved recovery technique is contemplated unless such techniques have been proved effective by actual tests in the area and in the same a reservoir. If warranted, however, a narrative discussion can be provided to point out those areas where future drilling or other operations may develop oil and gas production which at the time of filing is considered too uncertain to be expressed as numerical estimates for proved reserves.

(26) Sponsor—Any person directly or indirectly instrumental in organizing, wholly or in part, a program or any person who will manage or is entitled to manage or participate in the management or control of a program. The term sponsor includes the managing and controlling general partner(s) and any other person who actually controls or selects the person who controls 25% or more of the exploratory, developmental, or producing activities of the program, or any segment thereof, even if that person has not entered into a contract at the time of formation of the program. The term sponsor does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of units. Whenever the context of these guidelines so requires, the term sponsor shall be deemed to include its affiliates.

(27) Subordinated interest—An equity interest in a program issued to a person, without payment of full consideration, after the attainment of certain specified performance by the program.

(28) Working interest—An interest in an oil and gas leasehold which is subject to some portion of the costs of development, operation, or maintenance.

#### *§121.2. Requirements of Sponsor.*

(a) Experience. The sponsor or its

chief operating officers shall have at least three years' relevant oil and gas experience demonstrating the knowledge and experience to carry out the stated program policies and to manage the program operations. Additionally, the sponsor or any affiliate providing services to the program shall have had not less than four years' relevant experience in the kind of service being rendered, or otherwise must demonstrate sufficient knowledge and experience to perform the services proposed. If any managerial responsibility for the program is to be rendered by persons other than the sponsor, then such persons must be identified in the prospectus, their experience must be similar to that required of a sponsor and must be set out in the prospectus, and a contract setting forth the basis of their relationship with the program must be filed with and not disapproved by the securities commissioner.

(b) Net worth.

(1) The financial condition of the sponsor must be commensurate with any financial obligations assumed by it in connection with the offering and the operation of the program.

(A) For limited partnership offerings, the general partner must specifically have a minimum aggregate net worth at all times equal to 5.0% of participants' capital in all existing program organized by the general partner plus 5.0% of total subscriptions in the program being offered, but such minimum required net worth shall in no case be less than \$200,000 nor shall net worth in excess of \$2 million be required.

(B) For general partnership offerings and other offerings in which investors are not provided statutory protection against unlimited liability, the managing or controlling general partner's net worth should be of a sufficient amount to adequately protect the participants against unreasonable exposure to program liabilities. Unless the securities commissioner establishes a different amount based upon mitigating factors, \$5 million will be considered a presumptively reasonable net worth.

(2) For purposes of computing a managing or controlling general partner's net worth, 70% of the standardized measure of discounted future net cash flows relating to the proved oil and gas reserves, as determined by a qualified independent petroleum consultant, of a managing or controlling general partner may be used as an alternative to the stated value of the associated oil and gas properties on the sponsor's balance sheet. Reserves, notes, and accounts receivables from all programs, interests in all programs, and all contingent liabilities will be scrutinized carefully to determine the appropriateness of their inclusion in the net worth computation. If an

individual managing or controlling general partner's net worth is used in complying with the preceding requirements, a statement as to such net worth shall be included in the prospectus.

(3) If more than one person acts or serves as managing or controlling general partner of a program, the net worth requirements may be met by aggregating the net worth of all such persons. In addition, the net worth of any guarantor of the managing or controlling general partner's obligations to or for the program may be included in the net worth computation, but only if the guarantor's liability is coextensive with that of the managing or controlling general partner and the financial statements of the guarantor, prepared in accordance with the requirements of subsection (c) of this section, are furnished to the securities commissioner and made available to participants.

(c) Financial statements.

(1) Managing or controlling general partners, other than individuals, shall provide to the securities commissioner and make available to participants, upon request, audited financial statements for the most recent fiscal year and unaudited financial statements for any interim period ending not more than 90 days prior to the date of filing the application; provided however, if the application is made in coordination with a securities and exchange commission filing, the date of the financial statements may be not more than 135 days prior to the date of filing the registration application. The financial statements shall include, at a minimum, a balance sheet and a statement of operations. The statements shall be prepared in accordance with generally accepted accounting principles and the statements for the most recent fiscal year shall be accompanied by an audit report from an independent certified public accountant.

(2) Individual managing or controlling general partners, whose net worth is being relied upon for purposes of demonstrating compliance with subsection (b) of this section, shall provide the securities commissioner and make available to participants a statement of financial condition as of a date not more than 90 days prior to the date of filing the application. The statement of financial condition shall be prepared in accordance with generally accepted accounting principles and accompanied by a review report from an independent certified public accountant.

(d) Additional requirements for general partnerships and working interests programs. For offerings in which investors are not provided statutory protection against unlimited liability:

(1) the sponsor shall agree to fully indemnify each participant against all program related liabilities which exceed the participant's interest in the undistributed net assets of the program. This indemnification

shall be included in the program agreement;

(2) unless the securities commissioner establishes different terms, the sponsor shall obtain insurance coverage protecting the program and the participants against potential liabilities. The coverage should include public liability insurance with limits, including umbrella policy limits, of at least two times the program's capitalization but in no event less than \$10 million. Coverage limits in excess of \$50 million will not be required unless there are extraordinary circumstances. Other insurance policies, such as well control, environmental damage, and workers compensation, should also be obtained if the program is going to engage directly in operating activities or will otherwise be exposed to potential losses in these areas. The program agreement must require the sponsor to notify the participants 30 days prior to the effective date of any adverse material change in the program's insurance coverage. If the insurance coverage is to be materially reduced, the program agreement must provide the participants a right to convert their program interests from general partnership or working interests to limited partnership interests prior to such reduction, or in the alternative, the program agreement may require the cessation of all drilling activity until the required insurance coverage can be obtained;

(3) the prospectus shall disclose the terms of the indemnification agreement and shall also disclose the types and amounts of insurance coverage to be obtained for the benefit of the program and the participants along with the insurance claims history of the sponsor in the area where the program anticipates drilling wells, if such information is material. The securities commissioner may establish different requirements for the protection of participants based on the specific circumstances surrounding the program's proposed activities. In establishing such requirements, the securities commissioner may consider factors such as the net worth of the sponsor and any other person who has agreed to indemnify the participants, the insurance claims history of the sponsor and its previous programs, the availability and cost to the program of the insurance, the extent to which the drilling to be conducted by the program may include exploratory drilling, the geological and other characteristics of the formations to be developed by the program, an other procedures or policies implemented by the sponsor which may increase or decrease the potential risk of loss or liability to the program or the potential magnitude of loss or liability to the program.

(e) Tax ruling or opinion. If a significant feature for federal income or excise tax purposes of a program is either deductions in excess of income from the program being available in a year to reduce income from other sources in that year or credits in

excess of the tax attributable to the income from the investment being available within a year to offset taxes on income from other sources in that year, then the sponsor must receive a tax ruling from the Internal Revenue Service or an opinion of qualified tax counsel in a form acceptable to the securities commissioner concerning the status of the program for federal income tax purposes and an opinion of qualified tax counsel in a form acceptable to the securities commissioner indicating whether it is more likely than not that an investor will prevail on the merits of each material tax issue respecting which there is a reasonable possibility that the Internal Revenue Service will challenge the tax effect disclosed in the prospectus.

(f) Investment in program.

(1) In appropriate cases, in order to create an identity of interest with the participants, the securities commissioner may require that the sponsor purchase for cash up to 5.0% of the program units.

(2) Any program units acquired by a sponsor prior to the end of the second year succeeding the date of formation shall be entitled to the same allocation of profit, loss, income, gain, and other credit as any other program unit, but any such program units shall not be entitled to vote or consent on any matters submitted to participants for their consent. In determining the existence of a quorum and the requisite percentage in interest of program units necessary to approve any program matter, any program units owned by the sponsor shall not be included.

(g) Reports. The sponsor shall agree to file with the securities commissioner, if he so requests it, concurrently with their transmittal to participants, a copy of each report made pursuant to §121.8(b) of this title (relating to Rights and Obligations of Participants).

(h) Fiduciary duty.

(1) The program agreement and prospectus shall provide that the sponsor shall have a fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in the sponsor's possession or control, and that the sponsor shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the program.

(2) Except as provided in paragraph (3) of this subsection, neither the program agreement nor any other agreement between the sponsor and the program shall contractually limit any fiduciary duty owed to the participants by the sponsor under any applicable law.

(3) The program agreement may contractually limit fiduciary duties owed to the participant by the sponsor as follows.

(A) The program may indemnify and hold harmless the sponsor and its affiliates as provided in subsection (i) of this section.

(B) The sponsor may be required to devote only so much of its time as is necessary to manage the affairs of the program.

(C) The sponsor and its affiliates may conduct business with the program in a capacity other than as sponsor but only in compliance with §121.5 of this title (relating to Fees, Compensation, and Expenses) and §121.6 of this title (relating to Property Transactions with Affiliates and Other Restricted Activities).

(D) Except as otherwise provided in §121.6 of this title (relating to Property Transactions with Affiliates and Other Restricted Activities), the sponsor and any of its affiliates may pursue business opportunities that are consistent with the program's investment objectives for their own account only after they have determined that such opportunity either cannot be pursued by the program because of insufficient funds or because it is not appropriate for the program under the existing circumstances.

(E) The sponsor may manage multiple programs simultaneously.

(i) Liability and indemnification of the sponsor.

(1) The program shall not provide for indemnification of the sponsor, or its affiliates performing services on behalf of the program, for any liability or loss suffered by the sponsor or affiliate, nor shall it provide that the sponsor or affiliate be held harmless for any loss or liability suffered by the program, unless all of the following conditions are met:

(A) the sponsor has determined, in good faith, that the course of conduct which caused the loss or liability was in the best interests of the program;

(B) the sponsor or affiliate was acting on behalf of or performing services for the program;

(C) such liability or loss was not the result of negligence or misconduct by the sponsor or affiliate; and

(D) payments arising from such indemnification or agreement to hold harmless are recoverable only out of the tangible net assets of the program.

(2) Notwithstanding anything to the contrary contained in paragraph (1) of

this subsection, the sponsor, its affiliates, and any person acting as a broker-dealer shall not be indemnified for any losses, liabilities, or expenses arising from or out of an alleged violation of federal or state securities laws by such party unless the following conditions are met:

(A) there has been successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee;

(B) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee; or

(C) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and the related costs should be made, and the court considering the request for indemnification has been advised of the position of the Securities and Exchange Commission and of the position of any state securities regulatory authority in which securities of the program were offered or sold as to indemnification for violations of securities laws; provided however, the court need only be advised of the positions of the securities regulatory authorities of those states:

(i) which are specifically set forth in the program agreement; and

(ii) in which plaintiffs claim they were offered or sold program units.

(3) The program may not incur the cost of that portion of liability insurance which insures the sponsor for any liability as to which the sponsor is prohibited from being indemnified under this subsection; provided however, that this paragraph shall not preclude the program from purchasing and paying for such types of insurance, including extended coverage liability, casualty and workers' compensation, as is customary in the oil and gas industry.

(4) The advancement of program funds to a sponsor or its affiliates for legal expenses and other costs incurred as a result of any legal action for which indemnification is being sought is permissible only if the program has adequate funds available and the following conditions are satisfied:

(A) the legal action relates to acts or omissions with respect to the performance of duties or services on behalf of the program;

(B) the legal action is initiated by a third party who is not a participant, or the legal action is initiated by a



participant and a court of competent jurisdiction specifically approves such advancement; and

(C) the sponsor or its affiliates undertake to repay the advanced funds to the program, together with the applicable legal rate of interest thereon, in cases in which such party is found not to be entitled to indemnification.

(j) Arbitration provisions. The program agreement may contain provisions relating to the use of arbitration as a means of dispute resolution; provided however, it may not require arbitration for allegations involving breach of contract, negligence, violations of state or federal securities laws, breach of fiduciary duty or other misconduct by the sponsor, nor shall it provide for mandatory venue. Program agreements which contain arbitration provisions shall prominently disclose such fact on the cover page of the program agreement. Allocation of the cost of arbitration may be made a matter for determination in the proceedings. This subsection should not be interpreted to prohibit separate arbitration agreements between sponsors and participants if the agreements are not a condition of making an investment in the program.

#### §121.3. Selling of Units and Sales Material.

##### (a) Sales of units.

(1) Compensation to all broker-dealers shall be a cash commission. Compensation of an indeterminate nature to broker-dealers for sales of program units, or for services of any kind rendered in connection with or related to the distribution of program units, including, but not necessarily limited to, a percentage of a management fee, a profit sharing arrangement, overriding royalty interest, net profit interest, percentage of revenues, reversionary interest, working interest, or other similar incentive items shall be prohibited.

(2) Compensation to wholesale dealers must be a cash commission, must be reasonable, and must be fully disclosed.

(3) Sales commissions based on assessment of units or unfunded capital contributions are prohibited.

(4) The sale of units in a program together with shares, options to purchase shares, or other securities issued by the sponsor or another issuer will not be permitted unless such other securities, viewed separately, satisfy the requirements otherwise applicable to their registration.

##### (b) Sales material.

(1) Supplementary materials. Supplementary materials (including prepared presentations for group meetings) must be submitted to the securities commissioner in advance of use, and its use must either be preceded by or accompanied with an effective prospectus.

(2) Sales literature. Sales literature, including without limitation, books, pamphlets, movies, slides, article reprints, and television and radio commercials, sales presentations (including prepared presentations to prospective participants at group meetings) and all other advertising used in the offer or sale of units shall conform in all applicable aspects to filing, disclosure, and adequacy requirements currently imposed on the sale of corporate securities under applicable regulations. When periodic or other reports, except those required by and filed with the Securities and Exchange Commission, furnished to participants in prior programs are furnished to prospective participants in a program not yet sold, such reports will be treated as sales literature subject to the preceding requirements. Statements made in sales literature may not conflict with, or significantly modify, risk factors or other statements made in the prospectus. Sales literature shall not be so excessive in size or amount as to detract from the prospectus, nor shall any sales literature be used by securities broker-dealers or agents unless such literature has been approved by the sponsor in writing and incorporates, if the securities commissioner so requests, disclosure of the participant suitability standards imposed by §121.4 of this title (relating to Suitability of the Participant).

(3) Group meetings. All advertisements of, and oral or written invitations to seminars or other group meetings at which units are to be described, offered, or sold shall clearly indicate that the purpose of such meeting is to offer such units for sale, the minimum purchase price thereof, the suitability standards to be employed, and the name of the person selling the units. No cash, merchandise, or other items of value shall be offered as an inducement to any prospective participants to attend any such meeting. All written or prepared audio-visual presentations (including scripts prepared in advance for oral presentations) to be made at such meetings must be submitted to the securities commissioner within a prescribed review period. The provisions of this section shall not apply to meetings consisting only of representatives of securities broker-dealers.

##### (4) Prohibited representations.

(A) In connection with the offering and sale of interests in a program, neither the sponsor(s) nor the underwriter(s) may, in writing or otherwise, directly or indirectly, represent or imply that the securities commissioner has approved the merits of the investment or any aspects thereof.

(B) Any reference to the program's compliance with these guidelines or any provisions herein which connotes or implies such approval shall be deemed to be in noncompliance with subparagraph (A) of this paragraph.

#### §121.4. Suitability of the Participant.

##### (a) General standards.

(1) In view of the limited transferability, the relative lack of liquidity, the high risk of loss, and the specific tax orientation of many oil and gas programs, suitability standards, which are reasonably related to the risks to be undertaken, will be required for the participants, and they must be set forth both in the prospectus and in a written instrument to be executed by each participant.

(2) The sponsor and each person selling program interests on behalf of the sponsor or program shall make every reasonable effort to assure that those persons being offered or sold the program interests are appropriate in light of the suitability standards set forth as follows and the investment is consistent with the customers' investment objectives and financial situations. In the case of sales to fiduciary accounts, the suitability standards may be met by the account or each beneficiary of the account. Where the fiduciary is the donor of the funds for investment in the program, the suitability standards may be met by the fiduciary.

(3) Persons selling program units shall make every reasonable effort to assure that the participants specifically understand the following (when applicable):

(A) the risks involved in the offering, including the speculative nature of the investment;

(B) the financial hazards involved in the offering, including the risk of losing their entire investment;

(C) the lack of liquidity of program units;

(D) the restrictions on transferability of program units;

(E) the background and qualifications of the sponsor and/or the manager or persons responsible for the offering;

(F) the tax consequences of the investment; and

(G) the unlimited liability associated with working interests or general partnership offerings.

(b) Suitability standards for drilling programs.

(1) For purposes of determining the participant's ability to bear the various risks associated with a limited partnership investment, unless the circumstances warrant and the securities commissioner



establishes another standard, the participant shall have:

(A) a net worth of \$225,000 or more (exclusive of home, furnishings, and automobiles); or

(B) a net worth of \$60,000 or more (exclusive of home, furnishings, and automobiles) and shall have had during the last tax year, or estimates that he or she shall have during the current tax year, "taxable income" as defined in the Internal Revenue Code of 1986, §63, as amended, of \$60,000 or more, without regard to the investment in the program.

(2) For purposes of determining the participant's ability to bear the various risks associated with an investment in a general partnership or other offering in which the participant is not provided statutory protection against unlimited liability, the securities commissioner may require a higher suitability standard. The following higher standard will be considered presumptively reasonable:

(A) an individual or joint net worth with his or her spouse of \$225,000 or more, without regard to the investment in the program (exclusive of home, home furnishings, and automobiles) and a combined "taxable income" as defined in the Internal Revenue Code of 1986, §63, as amended, of \$100,000, or more for the current year and for the two previous years;

(B) an individual or joint net worth with his or her spouse in excess of \$1 million inclusive of home, home furnishings, and automobiles;

(C) an individual or joint net worth with his or her spouse in excess of \$500,000, exclusive of home, home furnishings, and automobiles; or

(D) a combined "gross income" as defined in the Internal Revenue Code of 1986, §61, as amended, in excess of \$200,000 in the current year and the two previous years.

(c) Suitability standards for other types of programs.

(1) In the case of production purchase or income programs, unless circumstances warrant and the securities commissioner establishes another standard, the participant shall have:

(A) a net worth of \$100,000 or more (exclusive of home, furnishings, and automobiles); or

(B) a net worth of \$30,000 (exclusive of home, furnishings, and

automobiles) and a taxable income in the current year of \$30,000 or more.

(2) In the case of programs that utilize at least 90% of capital contributions and funds borrowed (excluding organization and offering expenses) in providing completion financing, debt financing, or making other types of oil and gas investments, unless the circumstances warrant and the securities commissioner establishes another standard, the participant shall have:

(A) a net worth of \$150,000 or more (exclusive of home, furnishings, and automobiles); or

(B) a net worth of \$40,000 or more (exclusive of home, furnishings, and automobiles) and a taxable income in the current year of \$40,000 or more.

(d) Mitigating factors with respect to suitability standards. In the presence of mitigating factors, the securities commissioner may approve any offering with participant suitability standards different from those contained in subsections (b) and (c) of this section. The securities commissioner may take into consideration the identity of the participants, an alternative type of suitability standard to be employed, the relationship of the participants to the sponsor, the knowledgeability of the participants, the legal, business, technical, and accounting advice available to and utilized by the participants, the marketability of the program units, the prior performance of the sponsor, the additional obligations and financial condition of the sponsor, and any other factors deemed relevant.

(e) Minimum investment. For a drilling program, the minimum purchase shall not be less than \$5,000, and in the event deferred payments are allowed, the initial payment by a participant shall not be less than \$5,000. For an income or production purchase program, the minimum purchase shall not be less than \$2,000 and in the event deferred payments are allowed, the initial payment by a participant shall not be less than \$2,000.

(f) Maintenance of suitability records. The sponsor shall maintain for a period of at least six years a record of the information obtained as evidence that a participant meets the suitability standards established in connection with the offer and sale of the program units. In addition, the sponsor must obtain a representation from each participant that he or she has purchased units for his, her, or their own account or, in lieu of such representation, information indicating that the participants for whose account the purchase was made met such suitability standards. Such information may be obtained from the participant through inclusion of the statement in the written instrument described in subsection (a) of this section.

#### §121.5. Fees, Compensation, and Expenses.

(a) Organization and offering expenses, and management fees.

(1) All organization and offering expenses incurred in order to sell program units shall be reasonable, and the total of those organization and offering expenses, which may be charged to the program, plus any management fee, which may be charged by the sponsor, shall not exceed 15% of the initial subscriptions.

(2) Commissions payable on the sale of program units shall be paid in cash solely on the amount of initial subscriptions. Payment of commissions in the form of overriding royalties, net profit interests, or other interests in production will not be approved, except that no objection will be raised to the payment of commissions in the form of interests in the program provided the amount does not exceed that purchasable by applying the aggregate cash commission allowable to the unit offering price.

(3) All items of compensation to underwriters or dealers, including, but not limited to, selling commissions, expenses, rights of first refusal, consulting fees, finders' fees, and all other items of compensation of any kind or description paid by the program, directly or indirectly, shall be taken into consideration in computing the amount of allowable selling commissions.

(b) Compensation. The participation in program revenues by the sponsor and any affiliate shall be reasonable, taking into account all relevant factors. Overriding royalty interests will be looked upon with disfavor. Subject to §121.2(f)(1) of this title (relating to Requirements of Sponsor), the sponsors' interests in revenues will be considered reasonable if they meet the standards set forth as follows. Any other combination of fees, carried interests, or interests subordinated to pay out to the public investors, which can be demonstrated to provide participants equal or more favorable terms of participation in the program, may also be considered reasonable by the securities commissioner.

(1) Drilling programs: functional allocation.

(A) Where the sponsor agrees to pay the capital expenditures of the program, but in any case at least 10% of the capital contributions to the program (including any capital contributions from the sponsor or any of its affiliates), its share of revenues will be determined by the following formula.

(i) If the agreement is to pay capital expenditures but in any case a sum of not less than 10% of the capital contributions to the program (including any

capital contributions from the sponsor or any of its affiliates), the sponsor will be entitled to receive 25% of program revenues.

(ii) The sponsor's revenue sharing may be increased in additional increments of 1.0% for each additional 1.0% increase in the percentage of capital contributions to the program (including any capital contributions from the sponsor or any of its affiliates) actually made by the sponsor up to a maximum of 50% of revenues subject to sponsor's agreement to pay in any case all capital expenditures.

(B) The aforesaid arrangement to pay capital expenditures refers to and includes capital expenditures for the drilling and completing of wells during the life of the program but does not include capital expenditures for facilities downstream of a wellhead. If the sponsor should enter into a farmout or other arrangements through which only the sponsor is relieved of its obligations to pay for such capital expenditures, then the sponsor's share of revenue shall be proportionately reduced, the amount to be determined on an individual basis.

(C) In order to elect a sharing arrangement as provided in this subsection, the sponsor must have a net worth of \$300,000 or 10% of the total contributions to the program by the participants, whichever is greater, and must be under a contractual obligation to pay its share of expenses as such expenses are paid by the program and to complete its minimum financial commitment to the program by the payment of cash by the end of the first fiscal year succeeding the fiscal year in which the program commenced operations. Any additional contributions made by the sponsor will be used to pay program expenses which would otherwise be charged to the participants; provided however, the sponsor may receive credit for the amount of such payments against any subsequent capital expenditure incurred by the program and allocated to the sponsor.

(D) For the purposes of this subsection, if a well is not abandoned within 60 days following the commencement of production, then it shall be deemed to be a commercial well insofar as the program is concerned and the sponsor may not recapture its capital expenditures from the program, which otherwise would be treated as noncapital expenditures upon abandonment. As used herein, production shall refer to the commencement of the commercial marketing of oil or gas, and shall not include any spot sales of oil or gas produced as a result of testing procedures. All revenues from a well abandoned under this subsection shall be allocated pro rata to those persons bearing the costs of such well.

(E) The sharing arrangement set forth in this subsection shall not be considered presumptively reasonable:

(i) in the case of sharing arrangements in which the sponsor pays all development costs and exploratory wells are drilled on prospects which cannot reasonably be expected to require developmental drilling if the exploratory drilling is successful; or

(ii) in the case of sharing arrangements where the sponsor does not pay its share or category of costs on a current basis.

(2) Drilling programs: subordinated interest.

(A) As an alternative to sharing revenues on a basis related to costs paid, it will be considered reasonable for a sponsor of a drilling program to receive a promotional interest in the form of a subordinated interest in program distributions. A subordinated interest will be considered presumptively reasonable if it does not exceed 25% of program distributions after the participants have been distributed an amount equal to their capital contribution.

(B) At such time as the sponsor is entitled to receive its promotional interest, it shall also be allocated and pay program costs in the same ratio as it participates in program revenues.

(1) Drilling programs: other alternatives. A sponsor who is allocated and pays at least 1.0% of all program costs as incurred (excluding organizational and offering expenses, and management fees) may receive 11% of program revenues plus an additional percentage of program revenues equal to the additional percentage of program costs which it pays in excess of 1.0% up to a maximum of 50% of program revenues. The sponsor must be allocated and pay operating expenses, direct costs, and administrative costs in the same ratio as they participate in program revenues.

(4) Prospect origination services of the sponsor.

(A) The sharing arrangements for drilling programs set forth in this subsection shall not be considered presumptively reasonable for a sponsor who does not actively participate in obtaining a significant portion of the program's prospects and who does not assume management responsibility for drilling, completing, equipping, and operating a significant portion of a program's wells, unless such sponsor shall satisfactorily demonstrate that its compensation together with the costs of procuring such services for the program from third parties does not exceed the permissible compensation to the

sponsor set forth in this subsection. For the purposes of these guidelines, a sponsor shall be deemed to be actively participating in obtaining a significant portion of a program's prospects if the sponsor has in-house or under contract the technical capability of originating and/or fully evaluating the prospects to be acquired by that program. Prospect origination is the process of formulating a geological or geophysical concept and negotiating for the acquisition of a sufficient acreage interest in the area to warrant drilling and testing. Prospect evaluation is the process of determining the viability of a prospect which has been originated by a third party.

(B) A sponsor must describe in adequate detail in the offering documents the nature of the sponsor's capability to originate and/or evaluate the prospects the sponsor intends to transfer to a program. If the capability is in-house, the operation section of the offering documents should have a full discussion of the process by which such origination and evaluation will take place and the management section of those documents should include a biographical discussion of the key personnel of the sponsor performing these activities. If the capability is to be provided by third parties under contract to the sponsor, the third parties should be identified, their qualifications described, and the contractual nature of the arrangement between the sponsor and the third party should be fully disclosed. This should include a detailed discussion of the administrative process involved in the relationship. It will be deemed presumptively unreasonable, in the latter instance, if the contracts do not provide the program with comparable capabilities to those that would be provided if the sponsor's capability was in-house, including, among other things, availability of technical expertise and the provisions of adequate response time. Unless the sponsor can adequately demonstrate the availability of such capability, it will not be permitted to elect any of the sharing of costs and revenues described in the guidelines.

(5) Income or production purchase programs. An interest in the program will be allowed as a promotional interest provided that the amount or percentage or such interest is reasonable. An interest will generally be presumed reasonable if it is within the limitations expressed as follows.

(A) Where the sponsor does not maintain a technical staff which has the necessary capability and experience to originate, evaluate, and consummate property acquisitions without substantial third party assistance, the sponsor may take a fully participating 3.0% carried interest until participants have received cash distributions in an amount equal to their capital contributions after which the sponsor may

take up to a fully participating 5.0% carried interest.

(B) Where the sponsor maintains a technical staff which has the necessary capability and experience and will in fact originate, evaluate, and consummate property acquisitions without substantial third party assistance, the sponsor may take:

(i) a fully participating 10% carried interest; or

(ii) a fully participating 1.0% carried interest until participants have received cash distributions in an amount equal to their capital contributions after which the sponsor may take up to a fully participating 20% carried interest.

(6) Operator services. If the sponsor or one of its affiliates reserves the right to be designated as operator of any property acquired by the program, the prospectus must disclose the extent of the sponsor's or affiliate's operating experience and capabilities. Operator services may not be provided unless the sponsor or the affiliate has substantial operating experience. If the sponsor or an affiliate is designated as operator of any property acquired by the program, such services must be performed pursuant to a model form operating agreement issued by the American Association of Petroleum Landmen and an accounting procedure for joint operations issued by the Council of Petroleum Accountants Societies of North America, or other form of agreement acceptable to the securities commissioner, all in a form which is customary and usual for the geographic area in which the properties are located. In no event shall any consideration received for operator services be in excess of the competitive rate or duplicative of any consideration or reimbursements received pursuant to the program agreement. The sponsor may not benefit by interpositioning itself between the program and the actual provider of operator services.

(7) Drilling contractor services. If the sponsor or one of its affiliates reserves the right to act as contractor in connection with the drilling of program wells, the prospectus must disclose the extent of the sponsor's or affiliate's contracting experience and capabilities. Contracting services may not be provided unless the sponsor or the affiliate, or their principals, has substantial contracting experience. The prospectus must disclose the material terms pursuant to which contractor services may be provided and if there is a separate contract to be utilized in connection with such services a copy of the form of such contract must accompany the registration application. Turnkey drilling contracts or

other contracts with the sponsor or an affiliate of the sponsor that establish a fixed price for drilling services shall not be permitted. The sponsor or affiliate may guarantee cost estimates of subcontractors or provide indemnification against cost overruns, provided no additional compensation is received by the sponsor or affiliate as a result of such guarantees or indemnification. The rates charged for drilling contractor services must be competitive with the rates charged by unaffiliated contractors in the same geographic region. With respect to subcontractor services provided by the sponsor or an affiliate, there must be documentation, maintained for the life of the program, demonstrating compliance with paragraph (8) of this subsection. The sponsor may not benefit by interpositioning itself between the program and the actual provider of drilling contractor services.

(8) Equipment, supplies, and services.

(A) Neither the sponsor nor any affiliate shall render to the program any oil field, equipage, or other services nor sell or lease to the program any equipment or supplies unless:

(i) such entity is engaged, independently of the program and as an ordinary and ongoing business, in the business of rendering such services or selling or leasing such equipment and supplies to a substantial extent to other persons in the industry in addition to programs in which the sponsor or its affiliates have an interest; and

(ii) the compensation, price, or rental therefore is competitive with the compensation, price, or rental of other persons in the area engaged in the business of rendering comparable services or selling or leasing comparable equipment and supplies which could reasonably be made available to the program.

(B) If such entity is not engaged in the business as required by subparagraph (A)(i) of this paragraph, then such compensation, price, or rental shall be the cost of such services, equipment, or supplies to such entity, or the competitive rate which could be obtained in the area, whichever is less.

(9) Written contracts. All services for which the sponsor or any affiliate is to receive compensation shall be embodied in a written contract (which may be the program agreement) that specifically describes each service to be rendered and all compensation to be paid.

(c) Program expenses.

(1) Administrative costs and other charges for goods and services must be fully supportable as to the necessity thereof and the reasonableness of the amount charged. All actual and necessary expenses incurred by the program may be paid out of capital contributions and out of program revenues.

(2) Direct costs shall be billed directly to and paid by the program to the extent practicable.

(3) The sponsor may be reimbursed for administrative costs, provided such costs are reasonably allocated to the program on the basis of assets, revenues, time records, or other method conforming with generally accepted accounting principles. No portion of the salaries, benefits, compensation, or remuneration of controlling persons shall be reimbursed as administrative costs. Controlling persons include directors, executive officers, and those holding 5.0% or more equity interest in the sponsor or a person having power to direct or cause the direction of the voting, whether through the ownership of voting securities, by contract, or otherwise. A description of the method to be used for allocating costs shall be clearly described in the prospectus and such allocations must be audited annually by the sponsor's independent certified public accountants. The program agreement shall require the independent certified public accountants to provide written attestation annually, to be included as part of the program's annual report, that the method used to make allocations was consistent with the method described in the prospectus and that the total amount of costs allocated did not materially exceed the amounts actually incurred by the sponsor. If the sponsor subsequently decides to allocate expenses in a manner different from that described in the prospectus, such change must be reported to the participants together with an explanation of why such change was made and the basis used for determining the reasonableness of the new allocation method.

(4) The prospectus shall disclose in tabular form an estimate of expenses to be charged to the program showing direct costs and administrative costs separately, and the sponsor must demonstrate that it has a reasonable basis for such estimates. The estimate of direct costs and administrative costs shall be broken down into the various types of services and costs. The following is the type of tabular disclosure which will be considered reasonable for disclosing estimated direct costs and administrative costs:

**ESTIMATED PROGRAM EXPENSES**

The sponsor estimates that direct costs and administrative costs allocable to the program for the first 12 months of operation will be approximately \$\_\_\_\_\_ if the minimum program capital is received (representing \_\_\_\_\_% of program capital) and approximately \$\_\_\_\_\_ if the maximum program capital is received (representing \_\_\_\_\_% of program capital). The sponsor estimates that the components of such allocable amounts will be as follows:

	<u>Minimum Program</u>	<u>Maximum Program</u>
<b>Administrative Costs:</b>		
Legal	\$	\$
Accounting		
Geological		
Secretarial		
Travel		
Office Rent		
Telephone		
Data Processing		
Other (list)		
<b>Direct Costs:</b>		
External Legal		
Audit Fees		
Independent Engineering Reports		
Outside Computer Services		
Other (list)		
TOTAL	_____	_____
	\$	\$

The procedures followed to determine the amounts of administrative costs to be allocated to the program are enumerated as follows:

- 1.
- 2.
- 3.
4. etc.

(5) The prospectus shall disclose in tabular form for each program formed in the last three years the dollar amount of direct costs and administrative costs incurred and the percentage of subscriptions raised reflected thereby.

(6) The sponsor shall bear a percentage of direct costs and administrative costs equal to its percentage of revenue participation. A subordinated interest shall bear its percentage of direct costs and administrative costs from the time that the sponsor becomes eligible to receive its subordinated interest.

*§1 21.6. Property Transactions with Affiliates and Other Restricted Activities.*

(a) Sales and purchases of properties.

(1) Sales to drilling programs. Neither the sponsor nor any affiliate,

including an affiliated program, shall sell, transfer, or convey any property to a drilling program, directly or indirectly, except pursuant to transactions that are fair and reasonable to the participants of the program and then subject to the following conditions:

(A) the prospectus discloses the possibility that the sponsor or an affiliate may sell, transfer, or convey property to the program and whether or not the property may be sold from an existing inventory;

(B) the property is sold, transferred, or conveyed to the program at cost, unless the seller or transferor has cause to believe that cost is materially more than the fair market value of such property, in which case such sale should be made for a price not in excess of its fair market value; provided however, if the sale, trans-

fer, or conveyance is from an affiliated program that has held the property for more than two years and in which program the interest of the sponsor is substantially similar to, or less than, its interest in the subject program, the sale, transfer, or conveyance may be made at fair market value;

(C) if the sponsor or an affiliate sells, transfers, or conveys any oil, gas, or other mineral interests or property to the program, it must, at the same time, sell to the program an equal proportionate interest in all its other property in the same prospect;

(D) during a period of five years from the date of formation of the program if the sponsor or any of its affiliates proposes to acquire an interest, from an unaffiliated person, in a prospect in which the program possesses an interest or in a prospect in which the program's interest has

been terminated without compensation within one year preceding such proposed acquisition, the following conditions shall apply.

(i) If the sponsor or the affiliate does not currently own property in the prospect separately from the program, then neither the sponsor nor the affiliate shall be permitted to purchase an interest in the prospect.

(ii) If the sponsor or the affiliate currently own a proportionate interest in the prospect separately from the program then the interest to be acquired shall be divided between the program and the sponsor or the affiliate in the same proportion as is the other property in the prospect; provided however, if cash or financing is not available to the program to enable it to consummate a purchase of the additional interest to which it is entitled, then neither the sponsor nor the affiliate shall be permitted to purchase any additional interest in the prospect.

(E) if the area constituting a program's prospect is subsequently enlarged to encompass any area wherein the sponsor or an affiliate of the sponsor owns a separate property interest, such separate property interest or a portion thereof shall be sold, transferred, or conveyed to the program in accordance with subsection (a)(1) of this section if the activities of the program were material in establishing the existence of proved undeveloped reserves which are attributable to such separate property interest;

(F) a sale, transfer, or conveyance of less than all of the ownership of the sponsor or any of its affiliates in any lease interest or property is prohibited unless the interest retained by the sponsor or affiliate is a proportionate working interest, the respective obligations of the sponsor or affiliate and the program are substantially the same after the sale of the interest by the sponsor or affiliate and its interest in revenues does not exceed the amount proportionate to its retained working interest. The sponsor or affiliate may not retain any overrides or other burden on the interest conveyed to the program;

(G) for purposes of subsection (a)(1)(C), (D), (E), and (F) of this section, the terms "sponsor" and "affiliate" shall not include another program in which the interest of the sponsor is substantially similar to or less than its interest in the subject program;

(H) if the program acquires property pursuant to a farmout or joint venture from an affiliated program, the sponsor's and/or its affiliates aggregate compensation associated with the property and any direct and indirect ownership inter-

est in the property may not exceed the lower of the compensation and ownership interest the sponsor and/or its affiliates could receive if the property were separately owned or retained by either one of the programs.

(2) Sales to production purchase or income programs. Neither the sponsor nor any affiliate, including an affiliated program, shall sell, transfer, or convey any property to a production purchase or income program, directly or indirectly, except pursuant to transactions that are fair and reasonable to the participants of the program and then subject to the following conditions:

(A) the prospectus discloses the possibility that the sponsor or a affiliate may sell property to the program and whether the property may be sold from existing inventory;

(B) if the property has been held for less than two years and there have not been significant expenditures made in connection with the property, the sale, transfer, or conveyance to the program from the sponsor or an affiliate, other than an affiliated program in which the interest of the sponsor is substantially similar to or less than its interest in the subject program, must be at cost as adjusted for intervening operations, unless the sponsor has cause to believe that such adjusted cost is materially more than the fair market value of such property, in which case such sale must be made at fair market value.

(C) if the property has been held for less than six months and there have not been significant expenditures made in connection with the property, the sale, transfer, or conveyance to the program from an affiliated program, in which the interest of the sponsor is substantially similar to or less than its interest in the subject program, must be at cost as adjusted for intervening operations, unless the sponsor has cause to believe that such adjusted cost is materially more than the fair market value of such property, in which case such sale must be made at fair market value;

(D) in all other circumstances, the sale, transfer, or conveyance to the program from the sponsor or an affiliate, including an affiliated program, must be made at not more than fair market value.

(3) Purchases from all programs. Neither the sponsor nor any affiliate, including affiliated programs, may purchase or acquire any property from the program, directly or indirectly, except pursuant to transactions that are fair and reasonable to the participants of the program and then subject to the following conditions.

(A) A sale, transfer, or conveyance, including a farmout, of an undeveloped property from the program to the sponsor or an affiliate, other than an affiliated program, must be made at the higher of cost or fair market value.

(B) A sale, transfer, or conveyance of a developed property from the program to the sponsor or an affiliate, other than an affiliated program in which the interest of the sponsor is substantially similar to or less than its interest in the subject program, shall not be permitted except in connection with the liquidation of the program and then only at fair market value.

(C) Except in connection with farmouts or joint ventures made in compliance with paragraph (1)(H) of this subsection, a transfer of an undeveloped property from a program to an affiliated drilling program must be made at fair market value if the property has been held for more than two years. Otherwise, if the sponsor deems it to be in the best interest of the program, the transfer may be made at cost.

(D) Except in connection with farmouts or joint ventures made in compliance with paragraph (1)(H) of this subsection, a transfer of any type of property from a program to an affiliated production purchase or income program must be made at fair market value if the property has been held for more than six months or there have been significant expenditures made in connection with the property. Otherwise, if the sponsor deems it to be in the best interest of the program, the transfer may be made at cost as adjusted for intervening operations.

(4) Determination of fair market value. A determination of fair market value as required by the provisions of this section must be supported by an appraisal from an independent expert. Such opinion and any associated supporting information must be maintained in the program's records for at least six years.

(b) Custody of program funds and properties.

(1) Funds of a program must not be commingled with funds of any other entity and the prospectus and program agreement must clearly prohibit any such commingling. Notwithstanding the preceding, the sponsor may establish a master fiduciary account pursuant to which separate subtrust accounts are maintained for the benefit of affiliated programs, provided, the program's funds are protected from the claims of such other programs and their creditors. The prohibition of this paragraph shall not apply to investments meeting the requirements of paragraph (4) of this subsection.

(2) Advance payments to the sponsor or its affiliates are prohibited, except where necessary to secure tax benefits of prepaid drilling costs. These payments, if any, shall not include nonrefundable payments for completion costs prior to the time that a decision is made that the well or wells warrant a completion attempt.

(3) Program properties may be held in the names of nominees temporarily to facilitate the acquisition of properties and for similar valid purposes. On a permanent basis, program properties may be held in the name of a special nominee entity organized by the sponsor provided the nominee's sole purpose is the holding of record title for oil and gas properties and it engages in no other business and incurs no other liabilities. If properties are held in the name of a special nominee, either a ruling from the Internal Revenue Service or an opinion of qualified tax counsel shall be obtained to the effect that such arrangement shall not change the ownership status of the program for federal income tax purposes.

(4) Program funds may not be invested in the securities of another person except in the following instances:

(A) investments in working interests or undivided lease interests made in the ordinary course of the program's business;

(B) temporary investments made in compliance with paragraph (5) of this subsection;

(C) multi-tier arrangements meeting the requirements of subsection (c)(1) of this section;

(D) investments involving less than 5.0% of program capital which are a necessary and incidental part of a property acquisition transaction; and

(E) investments in entities established solely to limit the program's liabilities associated with the ownership or operation of property or equipment, provided, in such instances duplicative fees and expenses shall be prohibited.

(5) Until proceeds from the public offering are invested in the program's operations, such proceeds may be temporarily invested in income producing short-term, highly liquid investments, where there is appropriate safety of principal, such as United States Treasury Bills. Any such income shall be allocated pro rata to the participants providing such capital contributions.

(6) Any proceeds of the public offering of a drilling program not used, or committed for use, as evidenced by a written agreement, in the program's

operations within one year of the closing of the offering, except for necessary operating capital, must be distributed pro rata to the participants as a return of capital, and the sponsor shall reimburse the participants for selling, management fees, and offering expenses allocable to the return of capital.

(7) If a production purchase program sponsor has not used, or committed for use, as evidenced by a written agreement, an amount equal to 100% of the net proceeds of the public offering for property acquisitions within two years of the closing of the offering, any excess proceeds, except for necessary operating capital and amounts reserved for identified activities, must be distributed pro rata to the participants as a return of capital, and the sponsor shall reimburse the participants for selling, management fees, and offering expenses allocable to the return of capital.

(c) Other restricted and prohibited activities.

(1) Programs structured to participate in other partnerships or joint ventures (multi-tier arrangements) shall be permitted provided that the terms of any such arrangements do not result in the circumvention of any of the requirements or prohibitions contained in these guidelines. In particular, all such program agreements shall accompany the prospectus and shall contain provisions which assure:

(A) that there will be no duplication or increase in organization and offering expenses, sponsor's compensation, program expenses, or other fees and costs;

(B) there will be no substantive alteration in the fiduciary and contractual relationship between the sponsor and the participants; and

(C) there will be no diminishment in the voting rights of the participants.

(2) A sponsor or affiliate shall not take any action with respect to the assets or property of the program which does not primarily benefit the program, including among other things:

(A) the utilization of program funds as compensating balances for its own benefit; and

(B) the commitment of future production.

(3) All benefits from marketing arrangements or other relationships affecting property of the sponsor or affiliate and the program shall be fairly and equitably apportioned according to the respective interests of each.

(4) Any agreements or arrangements which bind the program must be fully disclosed in the prospectus.

(5) Anything to the contrary notwithstanding, a sponsor or affiliate may never profit by drilling in contravention of his fiduciary obligation to the participants.

(6) No loans may be made by the program to the sponsor or any affiliate of the sponsor.

(7) On loans made available to the program by the sponsor or affiliate, the sponsor or affiliate may not receive interest in excess of its interest costs, nor may the sponsor or affiliate receive interest in excess of the amounts which would be charged the program (without reference to the sponsor's financial abilities or guarantees) by unrelated banks on comparable loans for the same purpose, and the sponsor or affiliate shall not receive points or other financing charges or fees, regardless of the amount.

(8) No rebates or give-ups may be received by the sponsor or any affiliate nor may the sponsor or any affiliate participate in any reciprocal business arrangements which would circumvent these guidelines.

#### *§121.7. Farmouts, Special Disclosure Requirements.*

(a) Definition. The prospectus shall contain the definition of farmout and no other term shall be used to describe a farmout transaction.

(b) Disclosure of circumstances. The prospectus shall state the circumstances under which the sponsor may farmout a prospect or lease, the ability to farmout to other public programs of the sponsor or its affiliates, and any limitations on the ability to farmout to such public programs.

(c) Sponsor's determination. The prospectus shall state that no program lease will be farmed out, sold, or otherwise disposed of unless the sponsor, exercising the standard of a prudent operator, determines:

(1) the program lacks sufficient funds to drill on the leases and cannot obtain suitable alternative financing for such drilling;

(2) the leases have been downgraded by events occurring after assignment to the program so that drilling would no longer be desirable for the program;

(3) drilling on the leases would result in an excessive concentration of program funds creating in the sponsor's opinion undue risk to the program; or

(4) the best interests of the program would be served by the farmout.

(d) Conflicts of interest. The prospectus shall state that the decision with respect to making a farmout and the terms

of a farmout to a program involve conflicts of interest, as the sponsor may benefit from cost savings and reduction of risk, and in the event of a farmout to an affiliated public program, the sponsor will represent both partnerships.

(e) For stated purpose only. Except as required by §121.6(a)(1) of this title (relating to Property Transactions with Affiliates and Other Restricted Activities), the prospectus shall state that the program shall acquire only those leases that are reasonably acquired for the stated purpose of the program and no leases shall be acquired for the purpose of subsequent sale or farmout, unless the acquisition of such leases by the program is made after a well has been drilled to a depth sufficient to indicate that such an acquisition is believed to be in the best interests of the program.

(f) No avoidance of sponsor's costs. The prospectus shall state that the sponsor shall not farmout a lease for the primary purpose of avoiding payment of sponsor's costs relating to drilling a lease or prospect.

#### *§121.8. Rights and Obligations of Participants.*

(a) Meetings. Meetings of the participants may be called by the sponsor or by participants holding 10% or more of the then outstanding units for any matters for which the participants may vote as set forth in the program agreement. Such call for a meeting shall be deemed to have been made upon receipt by the sponsor of a written request from holders of the requisite percentage of units stating the purpose(s) of the meeting. The sponsor shall deposit in the United States mails within 15 days after receipt of said request, written notice to all participants of the meeting and the purpose of such meeting, which shall be held on a date not less than 30 nor more than 60 days after the date of mailing of said notice, at a reasonable time and place. Provided however, that the date for notice of such a meeting may be extended for a period of up to 60 days, if in the opinion of the sponsor such additional time is necessary to permit preparation of proxy or information statements or other documents required to be delivered in connection with such meeting by the Securities and Exchange Commission or other regulatory authorities. Participants shall be granted the right to vote in person or by proxy.

(b) Annual and periodic reports.

(1) The program agreement shall provide for the transmittal to each participant of an annual report within 120 days after the close of the fiscal year, and commencing with the year following investment of substantially all the program subscriptions, a report within 75 days after the end of the first six months of its fiscal year, containing, except as otherwise indicated, at least the following information:

(A) financial statements, including a balance sheet and statements of operations, partners' equity, and cash flows prepared in accordance with generally accepted accounting principles and accompanied by a report of an independent certified public accountant stating that his audit was made in accordance with generally accepted auditing standards and that in his opinion such financial statements present fairly the financial position, results of operations, partners' equity, and cash flows in accordance with generally accepted accounting principles, except that semiannual reports need not be audited;

(B) a summary itemization, by type and/or classification of the total fees and compensation, including any administrative cost reimbursements and operating fees, paid by the program, or indirectly on behalf of the program, to the sponsor and affiliates of the sponsor together with the accountant's attestation as required by §121.5(c) of this title (relating to Fees, Compensation, and Expenses). If compensation is paid on a subordinated interest, a reconciliation of all such payments to the conditions precedent and limitations thereto is required;

(C) a description of each property in which the program owns an interest, including the cost, location, number of acres under lease, and the interest owned therein by the program, except succeeding reports need contain only material changes, if any, regarding such property;

(D) if a drilling program, a list of the wells drilled or abandoned by such program during the period of the report (indicating whether each of such wells has or has not been completed), and a statement of the cost of each well completed or abandoned. Justification shall be included for wells abandoned after production has commenced;

(E) a description of all farmouts, farmins, and joint ventures, made during the period of the report, including sponsor's justification for the arrangement and a description of the material terms.

(F) if assessments have been made during any period covered by the report, then such report shall contain a detailed statement of such assessments and the application of the proceeds derived from such assessments;

(G) with respect to a program which compensates the sponsor on a basis related to certain costs paid by the sponsor:

(i) a schedule reflecting the total program costs, and where applicable, the costs pertaining to each prospect, the costs paid by the sponsor, and the costs paid by the participants;

(ii) the total program revenues, the revenues received or credited to the sponsor, and the revenues received or credited to the participants; and

(iii) a reconciliation of such expenses and revenues to the limitations prescribed;

(H) annually, beginning with the fiscal year succeeding the fiscal year in which the program commenced operations, a computation of the total oil and gas proved reserves of the program and dollar value thereof at then existing prices and of each participant's interest in such reserve value. The reserve computations shall be based upon engineering reports prepared by qualified independent petroleum consultants. In addition, there shall be included an estimate of the time required for the extraction of such reserves, and the present worth of such reserves, with a statement that, because of the time period required to extract such reserves, the present value of revenue to be obtained in the future is less than if immediately receivable. In addition to the annual computation and estimate required, as soon as possible, and in no event more than 90 days after the occurrence of an event leading to a reduction of such reserves of the program of 10% or more, excluding reduction as a result of normal production, sales of reserves, or product price changes, a computation and estimate shall be sent to each participant.

(2) By March 15 of each year, the general partner must furnish a report to each participant containing such information as is pertinent for tax purposes.

(3) Programs which agree to make all relevant financial and engineering reports available to participants on request will not be required to transmit to participants reports other than:

(A) the annual reports required under paragraph (1) of this subsection;

(B) the reports for tax purposes required by paragraph (2) of this subsection; and

(C) a quarterly cash receipts and disbursements statement after the program commences its operational phase.

(c) Access to program records.

(1) The general partner shall maintain a list of the names and addresses of all participants at the principal office of the partnership. Such list shall be made available for the review of any participant



or his representative at reasonable times, and upon request either in person or by mail the general partner shall furnish a copy of such list to any participant or his representative for the cost of reproduction and mailing.

(2) The participants and/or their accredited representatives shall be permitted access to all records of the program, after adequate notice, at any reasonable time. The sponsor shall maintain and preserve during the term of the program and for four years thereafter all accounts, books, and other relevant program documents. Notwithstanding the foregoing, the sponsor may keep logs, well reports, and other drilling data confidential for a reasonable period of time.

(d) Admission of participants.

(1) Upon the original sale of program units, the participants should be admitted as unit holders not later than 15 days after the release from escrow of participants' funds to the program, and thereafter participants should be admitted into the program not later than the last day of the calendar month in which their subscriptions were accepted by the program. Subscriptions shall be accepted or rejected by the program within 30 days of their receipt; if rejected, all funds shall be returned to the subscriber immediately.

(2) The program shall amend its records at least once each calendar quarter to effect the substitution of substituted participants, although the sponsor may elect to do so more frequently. In the case of assignments, where the assignee does not become a substituted participant, the program shall recognize the assignment not later than the last day of the calendar month following receipt of notice of assignment and required documentation.

(3) Restrictions on assignment of units or the substitution of participants are generally disfavored and will be allowed only to the extent necessary to preserve the tax status of the partnership or the classification of program income for tax purposes and any restriction must be supported by opinion of counsel as to its legal necessity.

(e) Assessability and defaults.

(1) In appropriate cases there may be a provision for assessability; provided, however, that the maximum amount for voluntary assessments shall not exceed 100% of initial subscriptions and for mandatory assessments shall not exceed 25% of initial subscriptions, and provided further, that in no case shall the total of all assessments exceed 100% of initial subscriptions. All assessments shall be made solely for the purpose of conducting subsequent operations on prospects upon which evaluation had begun during a program's initial operations, or on leases sufficiently related to such prospects as to

merit, in the sponsor's judgment, additional operations to fully develop those prospects. In such cases, the aggregate offering price of the units as set forth in the application for qualification shall include and show separately the basic unit offering price and the maximum amount of the assessment.

(2) In the event of a default in all or a portion of the payment of assessments, the participant's percentage interest in the program represented by his unit should not be subject to forfeiture, but may be subject to a reasonable reduction for the failure of the participant to meet his commitment. Unless the sponsor agrees to pay all defaulted assessments, the nondefaulting limited partners shall have the first option to pay any defaulted assessments. Provisions which conform to the following will be considered reasonable.

(A) For voluntary assessments:

(i) a proportionate reduction of the participant's percentage interest in revenues derived from the wells drilled and/or completed with the proceeds of the assessments based on the ratio of the participant's unpaid assessment to all capital contributions and assessments used for such drilling and/or completion; or

(ii) a subordination of the defaulting participant's right to receive revenues from the wells drilled and/or completed with the proceeds of the assessments until those nondefaulting participants who have paid the defaulting participant's assessment have received an amount of revenues from revenues of the program from such wells equal to 300% of the proportionate amount of the defaulted assessment which they paid.

(B) For mandatory assessments:

(i) a proportionate reduction of the participant's percentage interest in program revenues based on the ratio or his unpaid assessment to all capital contributions and assessments;

(ii) a subordination of the defaulting participant's right to receive revenues from the program until those nondefaulting participants who have paid the defaulting participant's assessment have received an amount of revenues from all revenues of the program equal to 300% of the proportionate amount of the defaulted assessment which they paid; or

(iii) personal liability of a participant as to the amount defaulted upon. The sponsor may enforce such personal liability through a lien on the participant's program interest, which permits the sponsor to withhold and apply all revenues attributable to the participant to the payment of any delinquent assessment. For purposes of this subsection, voluntary assessments which a

participant has committed to pay will be considered mandatory assessments.

(C) In order to make any assessment, the sponsor shall include with the call for such assessment a statement of the purpose and intended use of the proceeds from such assessment, a statement of the reduction to be imposed for failure of the participant to meet the assessment, and to the extent practicable, a summary of pertinent geological data on the relevant properties to which the assessments relate and any other information material to a participant's decision to fund the assessment.

(D) The alternatives, set forth in subparagraphs (A) and (B) of this paragraph, are not exclusive and other provisions demonstrated to be essentially equivalent to these alternatives may be permitted by the securities commissioner.

(f) Voting rights of participants.

(1) To the extent the law of the state of organization is not inconsistent, the program agreement must provide that a majority in interest of the then outstanding unit holders may, without the necessity for concurrence by the sponsor, vote to:

(A) amend the program agreement; provided however, any such amendment may not increase the duties or liabilities of any participant or sponsor or increase or decrease the profit or loss sharing or required capital contribution of any participant or sponsor without the approval of such participant or sponsor. Furthermore, any such amendment may not affect the classification of program income and loss for federal income tax purposes without the unanimous approval of all participants;

(B) dissolve the program;

(C) remove the sponsor and elect a new sponsor;

(D) elect a new sponsor if the sponsor elects to withdraw from the program;

(E) approve or disapprove the sale of all or substantially all of the assets of the program; and

(F) cancel any contract for services with the sponsor or any affiliate without penalty upon 60 days' notice.

(g) Removal or withdrawal of the sponsor.

(1) In the event the sponsor is removed in accordance with subsection (f) of this section, the incoming sponsor and the removed sponsor shall, by mutual



agreement, select an independent expert to value the removed sponsor's interests in the program. In determining the value of the sponsor's interest, the independent expert will take into account appropriate discount factors in light of the risk of recovery of oil and gas reserves, and, in any event will utilize a risk factor discount no less than that utilized in the most recent offer extended pursuant to §121.9(c) of this title (relating to Miscellaneous Provisions), if any. The incoming sponsor, or the program, shall have the option to purchase at least 20% of the interests of the removed sponsor for the value determined by the expert.

(2) The method of payment for such interest must be fair and must protect the solvency and liquidity of the program. Where the termination is voluntary, the method of payment will be deemed presumptively fair where it provides for a non-interest bearing unsecured promissory note with principal payable, if at all, from distributions which the terminated sponsor otherwise would have received under the program agreement had the sponsor not been terminated. Where the termination is involuntary, the method of payment will be deemed presumptively fair where it provides for an interest bearing promissory note coming due in no less than five years with equal installments each year.

(3) If the sponsor withdraws as sponsor and the participants elect to continue the program, the valuation procedure outlined in paragraph (1) of this subsection applies. The sponsor may not voluntarily withdraw from the program prior to the program's completion of its primary drilling and/or acquisition activities, and then only after giving 120 days' written notice. The sponsor may not partially withdraw its property interests held by the program unless such withdrawal is necessary to satisfy the bona fide request of its creditors or approved by a majority in interest vote of the participants. The sponsor must fully indemnify the program against any additional expenses which may result from a partial withdrawal of property interests and such withdrawal may not result in a greater amount of direct costs or administrative costs being allocated to the participants. The withdrawing sponsor shall pay all expenses incurred as a result of its withdrawal.

#### §121.9. Miscellaneous Provisions.

(a) Minimum program capital. The minimum amount of funds to activate a program shall be sufficient to accomplish the objectives of the program, including "spreading the risk." Any minimum less than \$1 million will be presumed to be inadequate to spread the risk of the public investors. In those instances where it appears unlikely that the stated objectives of the program can be achieved with the minimum subscriptions, the securities commissioner may require a greater amount

or a reduction of the stated objectives of the program. Provision must be made for the return to public investors of 100% of paid subscriptions in the event that the established minimum to activate the program is not reached. All funds received prior to activation of the program must be deposited in an interest bearing account with an independent custodian, trustee, or escrow agent whose name and address shall be disclosed in the prospectus.

(b) Deferred payment. Arrangements for deferred payments on account of the purchase price of program interests may be allowed when warranted by the investment objectives of the partnership, but in any event such arrangements shall be subject to the following conditions.

(1) The period of deferred payments shall coincide with the anticipated cash needs of the program, but the full amount of the purchase price shall be paid within nine months of the date on which the program commences operations.

(2) Selling commissions paid upon deferred payments are collectible when such payment is made.

(3) The program shall not sell or assign the deferred payments.

(4) Such deferred payments shall be contractually binding obligations of the buyer whether or not a promissory note is taken.

(5) In the event of a default in the payment of any deferred payment when due, the participant's percentage interests in the program shall not be subject to forfeiture but may be subject to a reasonable reduction for failure of the participant to meet his commitment. Reduction provisions will be considered reasonable if they conform to the reduction provisions provided for in §121.8(e)(2)(B) of this title (relating to Rights and Obligations of Participants).

(c) Cash redemptions.

(1) When cash redemption values of units are computed, such values must be supported by an appraisal of properties prepared by an independent petroleum consultant within 120 days of the commencement date of such cash redemptions. Any evaluation by company personnel must be based on such independent appraisal. Any redemption must be for cash. No redemption shall be considered effective until after cash payments have been paid to the participants.

(2) Provisions in the program agreement or other documents which require a participant to sell his unit or give the program or any other person the right to repurchase such unit, irrespective of the desire of the participant to sell, will not be approved unless the participant made misrepresentations which jeopardize the legal or tax status of the program.

(d) Exchange offers.

(1) The program agreement shall provide that neither the sponsor nor any person affiliated with the sponsor (exchange offeror) may make or cause to be made any offer to a participant to exchange the participant's units in a program for a security unless:

(A) such offer is made after the expiration of two years after such program commenced operations;

(B) such offer is made to all participants;

(C) such offer is on a basis no more advantageous to a sponsor, exchange offeror, or underwriter of the offer and their respective affiliates than to participants; provided, however, that this subsection shall not prohibit, if permitted under applicable state and self-regulatory organization guidelines:

(i) compensation (including the issuance of securities) to such persons in exchange for such persons' other balance sheet assets (non-program interests) for inclusion of the sponsor entity in the exchange offer or tender of other balance sheet assets of the sponsor, underwriter, or their affiliates, based upon exchange valuation principles consistent with these guidelines;

(ii) compensation to an underwriter for services in connection with the offer; provided, however, that no compensation shall be payable to an underwriter for the tender of interests by the exchange offeror, its affiliates, or the underwriter; and

(iii) compensation that may be permitted under subparagraph (G) of this paragraph;

(D) payments for services rendered are fully supportable, actual, and necessary;

(E) in computing the exchange ratio, the value of oil and gas reserves and other assets must be supported by an appraisal prepared by an independent expert which is based upon all pertinent information, including a reserve estimate prepared by an independent petroleum consultant, as of the most current feasible date, but in no event more than 12 months prior to the effective date of the exchange offer;

(F) the offer is made pursuant to all registration requirements under both federal and state laws;

(G) if the exchange offeror is a corporation, the offer is made in compliance with applicable registration requirements for corporate securities and

may not allow a security with different rights and privileges to be issued to the sponsor or affiliates unless there is justification therefore;

(H) the offer does not allow for an accelerated subordinated interest to the partnership sponsors without regard to the existing payout provision;

(I) additional shares to be issued pursuant to future reevaluation of properties include reevaluation of similar properties held by participants;

(J) there will be no overrides newly established to the sponsor, exchange offeror, or affiliates on leases to be part of the exchange and any overrides to be established to nonaffiliates on such leases and the basis therefore are disclosed in detail;

(K) all properties to be exchanged are to be evaluated on the same basis or standard of evaluation; and

(L) material properties of the sponsor or affiliates to be exchanged have complete cost disclosure. Recent acquisitions of the sponsors or affiliates will be reviewed to determine if any claimed value increase is justified.

(2) For the purposes of paragraph (1) of this subsection, an offer of exchange includes any security (unit) of a program which is convertible into a security issued by the sponsor or another issuer. Departures from the guidelines in this subsection may be considered where good cause and proper justification are shown.

(e) Reinvestment plans.

(1) No offering will be approved by the securities commissioner that includes a provision which requires that the participant reinvest his share of distributable cash distributions.

(2) If permitted under applicable securities laws, a program may make available to its participants a voluntary plan for systematic reinvestments in such program or in any other program if the terms of the plan are fair and reasonable to the participants.

(3) To the extent it is economically feasible, money held for reinvestment must be placed in an income-producing account which provides an appropriate safety for the principal, and must be subject to withdrawal by the participant upon not less than 10 days' notice. If the funds are not reinvested within 180 days of the date of distribution, they must be distributed, with such income, if any, to the participants.

(4) No sales commissions may be deducted directly or indirectly from the reinvested funds.

(f) Distribution of revenues. From time to time and not less often than quarterly, the sponsor must review the program's accounts to determine whether cash distributions are appropriate. The program shall distribute pro rata to the participants funds received by the program and allocated to their accounts which the sponsor deems unnecessary to retain in the program. In no event, however, shall funds be advanced or borrowed for purposes of distributions, if the amount of such distributions would exceed the partnership's accrued and received revenues for the previous four quarters, less paid and accrued operating costs with respect to such revenues. The determinations of such revenues and costs shall be made in accordance with generally accepted accounting principles, consistently applied. Cash distributions from the program to sponsor shall only be made in conjunction with distributions to participants and only out of funds properly allocated to the sponsor's account.

(g) Distributions in kind. The program agreement shall provide that any in kind property distributions to the participants will be made to a liquidating trust or similar entity for the benefit of the participants, unless at the time of distribution:

(1) the sponsor shall offer the individual participants the election of receiving in kind property distributions and the participants accept such offer after being advised of the risks associated with such direct ownership; or

(2) there are alternative arrangements in place which assure the participants that they will not, at any time, be responsible for the operation or disposition of program properties.

*§121.10. Prospectus Disclosure.*

(a) Offerings registered with the Securities and Exchange Commission. With respect to offerings registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, and registered or qualified with the securities commissioner, a prospectus which is part of a registration statement which has been declared effective by said commission shall be deemed to comply with all requirements as to form; provided, however, the securities commissioner reserves the right to require additional disclosure in his discretion.

(b) Offerings not registered with the Securities and Exchange Commission.

(1) A prospectus which is not part of a registration statement filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933 shall generally conform to the disclosure requirements which would apply if the offering was registered with the Securities

and Exchange Commission. The format and information requirements of Guides Two and Four promulgated by the Securities and Exchange Commission should be followed, with appropriate adjustments made for the different business objectives of the program.

(2) At the minimum and in addition to the specific disclosures required by §§121.2-121.8 of this title (relating to Requirements of Sponsor; Selling of Units and Sales Material; Suitability of the Participant; Fees, Compensation, and Expenses; Property Transactions with Affiliates and Other Restricted Activities; Farmouts, Special Disclosure Requirements; and Rights and Obligations of Participants), the following topics shall be thoroughly covered in the prospectus:

(A) the definition of technical terms;

(B) the suitability requirements of participants;

(C) risk factors;

(D) sponsor experience;

(E) sponsor compensation;

(F) use of proceeds;

(G) proposed activities;

(H) deferred payment and/or assessment policies;

(I) property descriptions (if applicable);

(J) prior performance information as required by subsection (c) of this section;

(K) federal tax consequences;

(L) plan of distribution;

(M) legal proceedings involving the program, the sponsor, or affiliates, if material;

(N) conflicts of interest and possible transactions between the program and the sponsor or its affiliates; and

(O) financial statements as required by subsection (b)(3) of this section.

(3) Financial statements.

(A) The program. If the program is operational at the time the offering commences, the prospectus shall include complete financial statements prepared in accordance with generally accepted accounting principles and accompanied by an audit report from an independent certified public accountant. The financials shall include a balance sheet and statements of operations, partner's or shareholder's equity, and cash flows. The statements must show financial results for the three most recent fiscal years (or period of existence, if less), and if the most recent fiscal year ended as of a date more than 90 days prior to the filing of the registration application, supplemental unaudited statements shall be included which show financial results for an interim period ending not more than 90 days prior to the filing of the application.

(B) The sponsor. The financial statements of the managing or controlling general partner and any guarantor, as required by §121.2(c) of this title (relating to Requirements of Sponsor), shall be included in the prospectus, except that individual managing or controlling general partners will not be required to disclose their statement of financial condition if the prospectus contains a representation of the amount of the individual's net worth and the prospectus discloses that the statement of financial condition is available for review by participants upon request.

(c) Prior performance. The prospectus shall contain a narrative summary of the track record or prior performance of programs sponsored by the sponsor and its affiliates containing at least the information set forth as follows. The prior performance tables should be preceded by a narrative introduction with appropriate cross references. The narrative summary in the text should explain the significance of the track record disclosed in the tables and explain where additional information can be obtained. Each table should be introduced by a brief narrative explaining the objective of the table and what it covers so that the investor will be able to understand the significance of the information presented. There also should be set forth with or in each table any further material information that may be necessary to make the required tabular data, in light of the circumstances under which it is presented, not misleading. Information should be given for each prior program, public or nonpublic, with investment objectives similar to those of the program offered by the prospectus. If the sponsor has not sponsored at least five such programs, then information must be given for each prior program, public or nonpublic, even if the investment objectives for those programs are not similar to those of the program in question. In that case, programs with investment objectives that are not similar to those of the program should be grouped together according to the investment objective and information about those programs presented separately.

(1) Experience in raising funds. Information presented shall include at least the following:

(A) the date each program commenced operations;

(B) the gross amount of capital raised by each program;

(C) the number of participants in each program; and

(D) the amount of the investment of the sponsor, if any.

(2) Experience in investing funds. Information presented shall include at least the following:

(A) if the program is a drilling program, the drilling results of the program, including the number and classification (i.e., exploratory or development) of gross and net wells drilled and completed or abandoned;

(B) if the program is a production purchase program, the costs incurred in connection with the proper acquisitions and the period during which the program was engaged in property acquisitions; or

(C) if the program has other investment objectives, then a description of the investments made or assets acquired and the period during which the program was engaged in making investments or acquiring assets.

(3) Operating results and prior programs. Information should be presented on the basis of generally accepted accounting principles. However, where information about non-public programs is included, such information may be presented on a tax basis if the program's books have not been kept in accordance with generally accepted accounting principles. If there are any significant differences between these methods in the operating results, they should be explained. This explanation should provide the reader with any additional information about the particular program presented that may be necessary to make the information contained in the table not materially misleading in light of the circumstances under which the information is given. Information presented shall include the following:

(A) any borrowings by the program;

(B) total program revenues allocated;

(C) total expenditures of the program for other than operating costs, administrative costs, and direct costs;

(D) total operating costs, administrative costs, and direct costs, separately;

(E) total cash distributed on a cumulative basis and for the last three months for which information is presented; and

(F) the discounted present value, at a 10% discount rate, of future net cash flows associated with program reserves, if available, prepared by an independent petroleum consultant, in accordance with the Statement of Financial Accounting Standards (SFAS) Number 69, before tax, as of the latest practicable date, but in any event not more than 15 months prior to the date of the prospectus. The disclosure should also show the expected timing of revenues to be recognized from the sale of the reserves.

(d) Demonstration of guideline compliance in program agreement. The requirements and/or provisions of appropriate portions of the following sections shall be included in the program agreement: §121.1(b) of this title (relating to Definitions), §121.2(d), (f), (h), (i), and (j) of this title (relating to Requirements of Sponsor), §121.4(f) of this title (relating to Suitability of the Participant), §121.5(a)-(c) of this title (relating to Fees, Compensation, and Expenses), §121.6(a)-(c) of this title (relating to Property Transactions with Affiliates and Other Restricted Activities), §121.8(a)-(g) of this title (relating to Rights and Obligations of Participants), and §121.9(b)-(g) of this title (relating to Miscellaneous Provisions).

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 10, 1990.

TRD-9003675 Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 474-2233

## Chapter 133. Forms

### • 7 TAC §133.12

The State Securities Board proposes an amendment to §133.12, concerning the renewal application for mutual funds, employee benefit plans, and other continuous offerings. The amendments eliminate misleading examples used in the form.

Micheal Northcutt, director, Securities Regis-

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

Mr. Northcutt also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the elimination of misleading examples used in the form. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

**§133.12. Renewal Application-Mutual Funds, Employee Benefit Plans and Other Continuous Offerings.** The State Securities Board adopts by reference the renewal application-mutual funds, employee benefit plans and other continuous offerings, as amended in **June, 1990** [May, 1988]. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

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 10, 1990.

TRD-9003676 Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 474-2233

◆ ◆ ◆  
• 7 TAC §133.13

The State Securities Board proposes an amendment to §133.13, concerning application for renewal permit. The amendment adds language to identify the exact time period during which the reported number of shares and dollar amount of securities were sold.

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

Mr. Northcutt also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the inclusion of language on the form that

identifies the exact time period during which the reported number of shares and dollar amount of securities were sold. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

**§133.13. Application for Renewal Permit.** The State Securities Board adopts by reference the State Securities Board application for renewal permit, as amended in **June, 1990** [May, 1988]. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

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 10, 1990.

TRD-9003677 Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 474-2233

◆ ◆ ◆  
• 7 TAC §133.24

The State Securities Board proposes an amendment to §133.24, concerning application for registration as a securities salesman or agent. The amendment makes the form consistent with applicants' reporting requirements relating to prior charges, indictments or convictions that are contained in other agency application forms. The name of the form is also changed.

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

Ms. Peters 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 consistent reporting requirements relating to prior charges, indictments, or convictions regardless of the application form used by applicants for dealer, salesman, agent, or investment adviser registration. The name of the form is also changed to add the word "agent" which is used along with the word "salesman" in the Securities Act, §4.D. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

**§133.24. Application for Registration as a Securities Salesman or Agent.** The State Securities Board adopts by reference the State Securities Board application for registration as a securities salesman or agent, as amended in **June, 1990** [May, 1988]. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

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 10, 1990.

TRD-9003678 Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 474-2233

◆ ◆ ◆  
• 7 TAC §133.31

The State Securities Board proposes an amendment to §133.31, concerning the real estate guidelines cross reference sheet. The amendments reflect items in the form that were revised in the most recent changes adopted by the North American Securities Administrators' Association.

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

Mr. Northcutt also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the review of real estate program offerings will be quicker than would be the case otherwise since the form enables the securities analysts to review such programs and process such applications more efficiently. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which

provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

*§133.31. State Securities Board Real Estate Guidelines Cross Reference Sheet.* The State Securities Board adopts by reference the State Securities Board real estate guidelines cross reference sheet, as amended in June, 1990 [October, 1989]. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

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 10, 1990.

TRD-9003673 Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 474-2233

◆ ◆ ◆  
**TITLE 13. CULTURAL  
RESOURCES**  
Part II. Texas Historical  
Commission  
Chapter 13. State Markers

• 13 TAC §13.1

The Texas Historical Commission proposes an amendment to §13.1, concerning the State Marker Program. The amendment will incorporate changes of the State Marker Committee. These changes will be printed in a new rule book for the agency and distributed to the public.

George Ramirez, fiscal officer, 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. Ramirez, 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 Cindy Laguna Dally, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

The amendment is proposed under the Texas Government Code, Chapter 442.005(q), which provides the Texas Historical Commission with the authority to adopt rules

as is considered proper for the effective administration of this chapter Texas Civil Statutes, Article 6145, §§39(c), 7, 8A, 8B, 8C, 9, 11, 15, 15A, 16, 16B, 17, 19, 20, 21, 22.

*§13.1. State Marker Committee.* All policies and procedures related to the marker process are determined by the State Marker Committee, comprised of members of the Texas Historical Commission appointed by the chairman. The decisions of the committee about the eligibility of marker topics are final. When additional information warrants, and the applicant submits a new application form and narrative history, the marker committee may re-evaluate a topic that has been previously rejected. Protection of historical buildings has been a long standing goal of the Texas Historical Commission. Likewise, historic institutions, businesses, and organizations in Texas are encouraged to preserve their historic buildings. The committee shall rule on the appropriateness of the proposed placement of any Official Texas Historical Marker.

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 January 26, 1990.

TRD-9003752 Curtis Tunnell  
Executive Director  
Texas Historical  
Commission

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 463-6100

◆ ◆ ◆  
**TITLE 16. ECONOMIC  
REGULATION**  
Part III. Texas Alcoholic  
Beverage Commission

Chapter 45. Marketing  
Practices

Subchapter D. Advertising and  
Promotion

• 16 TAC §45.103

The Texas Alcoholic Beverage Commission proposes new §45.103, concerning regulation of happy hour. This section is designed to curb abuses of happy hour promotions in on-premise establishments.

Randy Yarbrough, assistant administrator, 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.

There will be no local employment impact.

Mr. Yarbrough 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 reduc-

tion in public intoxication and driving while intoxicated. There is 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 Joe Darnall, General Counsel, P. O. Box 13127, Austin, Texas 78711. A public hearing will be held on Thursday, May 3, 1990, at 9 a.m. in Room 320, Jefferson Building, 1600 West 38th Street, Austin.

The new section is proposed under the Texas Alcoholic Beverage Code, §5.31, which authorizes the Texas Alcoholic Beverage Commission to promulgate rules regulating the sale and promotion of alcoholic beverages by licensed establishments.

*§45.103. Regulations of "Happy Hour."*

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

(1) "Happy Hour"—Any promotional scheme including the advertisement of alcoholic beverages for sale at a reduced price or prices.

(2) Permittee of licensee—A holder of a permit or license issued by the commission and includes any agent, servant, or employee of either a permittee or a licensee.

(3) Day—7 a.m. until 2 a.m. the following calendar day.

(4) Cost—The actual cost of the alcoholic beverage to the retailer in terms of the alcoholic contents of the drink.

(b) Except as provided in subsection (c) of this section, the following rules shall be applied to maintain the utilization of a "happy hour" as an appropriate means of attracting customers.

(1) No permittee or licensee shall sell or serve, offer to sell, or serve two or more open containers of alcoholic beverages for the price of one such container of alcoholic beverages, or for the price of any number of containers of alcoholic beverages less than the number offered, sold, or served.

(2) Except as specifically authorized by statute or rule of this agency, no holder of a permit or license shall serve an alcoholic beverage at no charge; provided, however, it shall not be construed as preventing the permittee or licensee from giving, without prior advertising, an alcoholic beverage to individual customers celebrating their weddings, birthdays, anniversaries, or similar events or to one person or a group in a situation where the providing of an alcoholic beverage at no charge would be in conformity with normal business practices. Under no circumstances shall alcoholic beverages be served at no charge to any general segment of the population. Unless specific authorization

has been granted to any permittee or licensee by the commission, the number of complimentary servings of alcoholic beverages may not exceed 5.0% of the total number of drinks served during the month.

(3) No permittee or licensee shall sell or offer to sell any alcoholic beverage at a price fixed on an "all you can drink" basis.

(4) No permittee or licensee shall sell or offer to sell any alcoholic beverage at a price less than cost.

(5) No permittee or licensee shall sponsor, join in the sponsorship of, or allow any person on the licensed premises to sponsor, conduct, or participate in any game or contest to be determined on the basis of the number of servings of an alcoholic beverage or beverages consumed or where alcoholic beverages are awarded as prizes.

(6) No permittee or licensee shall increase the volume of alcohol contained in a drink without increasing proportionally the price regularly charged for the same type of drink.

(7) No permittee or licensee shall advertise or offer any "happy hour" promotion after 11 p.m. on any day.

(c) The rules set out in subsection (b) of this section are not to be applied in circumstances where:

(1) the permittee or licensee has entered into an agreement under the terms of which all or a portion of the licensed premises are utilized for a private party, a meeting of a particular organization, or an event sponsored by a specifically identified group of individuals;

(2) a caterer's permit is used for a private party, a meeting of a particular organization, or an event sponsored by a specifically identified group of individuals; or

(3) a licensee or permittee is operating under a temporary license or permit authorizing the sale of alcoholic beverages at picnics, celebrations, or similar events.

(d) Nothing in subsection (b) of this section shall be construed to prohibit any permittee or licensee from:

(1) offering free food or entertainment at any time;

(2) including alcoholic beverages as part of a meal package;

(3) including alcoholic beverages as part of a hotel/motel package;

(4) holding wine tastings with prior approval of the commission;

(5) selling or delivering wine by the bottle or carafe; or

(6) selling pitchers of beer or other beverages (or the equivalent, including, but not limited to, buckets), ca-

rafes, or bottles of alcoholic beverages which are sold in such manner and delivered to two or more persons at one time.

(e) Violation of any provision of this section shall be grounds for suspension or cancellation of a license or permit.

(f) Every licensee establishment shall prepare and maintain a record and make available at any time upon request to an authorized representative of the commission a price list showing the establishment's current prices per drink for all drinks and the quantity of alcoholic beverages used in each type of drink mixed on the licensed premises.

(g) Some specific practices which shall be considered as violation of this section are listed as follows. This list is intended to enumerate some of the most common practices and is neither meant to be exclusive in its content nor to infer that any practice not listed here is legal:

(1) sale of two for one, or any multiple drinks for the price of one;

(2) doubles for the price of singles;

(3) ladies nights (where ladies drink free or for a reduced price);

(4) one price, all you can drink;

(5) nickel beer nights.

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 16, 1990.

TRD-9003857

Joe Darnall  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 458-2500

#### • 16 TAC §45.105

The Texas Alcoholic Beverage Commission proposes new §45.105, concerning outdoor advertising by mixed beverage establishments. This section will restrict the exterior advertising at locations covered by a mixed beverage permit.

Randy Yarbrough, assistant administrator, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Yarbrough 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 public intoxication and driving while intoxicated. 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 Joe Darnall, General Counsel, P. O. Box 13127, Austin, Texas 78711. A public hearing will be held on Thursday, May 3, 1990, at 9 a.m. in Room 320, Jefferson Building, 1600 West 38th Street, Austin.

The new section is proposed under the Texas Alcoholic Beverage Code, §5.31, which authorizes the Texas Alcoholic Beverage Commission to promulgate rules regulating the sale and promotion of alcoholic beverages by licensed establishments.

*§45.105. Outdoor Advertising by Mixed Beverage Establishments.* The holder of any permit allowing the sale or service of mixed beverages may not advertise any brand name or prices on any sign, billboard, marquee, or any other display on or outside of the building.

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 16, 1990.

TRD-9003858

Joe Darnall  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 458-2500

## Part IV. Texas Department of Licensing and Regulation

### Chapter 62. Career Counseling Services

#### • 16 TAC §§62.71-62.73

*(Editor's Note: The Texas Department of Licensing and Regulation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)*

The Texas Department of Licensing and Regulation proposes new §§62.71-62.73, concerning the responsibilities of the certificate holder, prohibited acts, consumer complaints, and advertising for anyone acting as a career counseling serviced. The new sections are proposed because the sections' language was changed and renumbered and was not included in the adoption of chapter 62.

Elvis G. Schulze, 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. Schulze also has determined that for each year of the first five years the sections as proposed are in effect the public benefit

anticipated as a result of enforcing the sections as proposed will be clear and concise rules for the certificate holder and service recipients to follow concerning prohibited acts, consumer complaints, and advertising for career counseling services. 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 Elvis G. Schulze, General Counsel, Texas Department of Licensing and Regulation, 920 Colorado Street, Austin, Texas or P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 5221a-8, which provide the commissioner of the Texas Department of Licensing and Regulation with the authority to adopt rules to administer the career counseling program.

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 13, 1990.

TRD-9003783

Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: May 21, 1990

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

## Part VI. Texas Motor Vehicle Commission

### Chapter 101. Practice and Procedure

#### General Rules

##### • 16 TAC §101.13

The Texas Motor Vehicle Commission proposes an amendment to §101.13, concerning the filing of documents with the commission. The amendment changes that part of the section pertaining to the filing of documents by mail to provide that if documents are postmarked on or before the last day for filing and are received by the commission not more than three days tardily, the documents will be deemed timely filed. The amendment also adds complaints and notices of protest to clarify that such documents are included under the document filing provisions.

Russell Harding, 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. Harding 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 clarification of the agency's document filing requirements and elimination of inconsistent

requirements. 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 Russell Harding, Executive Director, Texas Motor Vehicle Commission, P.O. Box 2293, Austin, Texas 78768.

The amendment is proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the commission with the authority to adopt rules necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

**§101.13. Filing of Documents.** All applications, petitions, notices of protest, complaints, motions, briefs, or other papers or documents required or permitted to be filed under these rules or by law must be received for filing at the Office of the Texas Motor Vehicle Commission (commission) in Austin, within the time limit, if any, for such filing. [The date of receipt by the commission and not the date of posting, shall be determinative.] If papers or documents, otherwise acceptable for filing, are sent to the commission by first-class United States mail in an envelope or wrapper properly addressed, stamped, and deposited in the mail on or [five days or more] before the last day for filing same and the envelope or wrapper bears a postmark showing such deposit, and such are received by the commission not more than three [five] days tardily, the same shall be filed by the commission and deemed filed in time.

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 11, 1990.

TRD 9003815

Russell Harding  
Executive Director  
Texas Motor Vehicle  
Commission

Proposed date of adoption: July 1, 1990

For further information, please call: (512) 476-3587

### Chapter 103. General Rules Licensing, Records, and Protests

##### • 16 TAC §103.5

The Texas Motor Vehicle Commission proposes an amendment to §103.5, concerning the time for filing protests to new motor vehicle dealer license applications. The amendment deletes the specific wording that protests received after the filing date will not be considered, to eliminate an inconsistency with 16 TAC §101.13, which allows an additional three-day period for notices filed by mail. The amendment also adds facsimile communications as an acceptable method of filing a notice of protest.

Russell Harding, 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. Harding also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the elimination of potentially conflicting filing requirements and attaining consistency with the commission's general filing requirement contained in §101.13. 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 Russell Harding, Executive Director, Texas Motor Vehicle Commission, P.O. Box 2293, Austin, Texas 78768-2293.

The amendment is proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the commission with the authority to adopt rules necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

**§103.5. Time for Filing Protest.** Notices of protest must be received in the Texas Motor Vehicle Commission's (commission) offices in Austin, not later than 15 days from the date of mailing of the commission's notification to the licensees of the filing of the application. [Any notice of protest received after such date shall be deemed not timely filed and shall not be considered by the commission.] A notice of protest may be filed by telegram, [or] mailgram, or facsimile [or other similar means of communication], provided that a notice of protest in conformance with §103.4(a) (1)-(3) of this title (relating to Notification of License Application; Protest Requirements) is filed with the commission not later than five days following the filing of the notice by telegram, [or] mailgram, or facsimile. Failure to file a formal notice of protest within the specified time period shall result in the disallowance of the protest.

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 11, 1990.

TRD-9003816

Russell Harding  
Executive Director  
Texas Motor Vehicle  
Commission

Proposed date of adoption: July 1, 1990

For further information, please call: (512) 476-3587



## TITLE 22. EXAMINING BOARDS

### Part II. State Board of Barber Examiners

#### Chapter 51. Practice and Procedure

#### Barber Colleges, Schools, and Students

##### • 22 TAC §51.39

The State Board of Barber Examiners proposes an amendment to §51.39, concerning mandatory curriculum for a refresher course. The amendment defines enrollment requirements and procedures, defines the curriculum for a 300 hour barber refresher course, requires that hours earned by a student must be reported to the board on the monthly progress report, and prohibits a student from working at the school while enrolled in a refresher course. The amended section is proposed in accordance with Texas Civil Statutes, Article 8407a, §9(d), as amended by Acts of the 71st Legislature.

Jo King McCrorey, 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. McCrorey, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that consumers' health and welfare will be protected by the opportunity for current and formerly licensed barbers who have not practiced barbering for a period of time to renew and update their skills before returning to the practice of barbering. 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 Jo King McCrorey, Executive Director, 9101 Burnet Road, Suite 103, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 8407a, §28(a), which provide the State Board of Barber Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties, and Article 8407a, §9(d), which mandates that the board by rules shall set the curriculum for a refresher course.

§51.39. [Requirements for] Barber Refresher [Advanced] Course [Courses].

(a) The purpose of a barber refresher course is to renew or update the skills of a currently licensed barber who has not practiced barbering for a period of time, or to prepare a formerly licensed barber for the state board examination.

(b) An applicant for a barber refresher course must hold a current or expired barber license issued by the State of Texas or another state or country.

(c) An applicant for a barber refresher course must comply with all standard student enrollment requirements, and must submit a photocopy of said current or expired barber license with the enrollment application.

(d) The curriculum for a barber refresher course will consist of 300 hours, to include:

(1) 10 hours of theory instruction in Texas barber laws;

(2) 290 hours of instruction in practical work, to include:

(A) haircutting—150;

(B) permanent waving and chemical applications—75;

(C) styling, curling and blow-drying—55; and

(D) manicuring—10.

(e) All hours earned by a student in a barber refresher course must be reported to the board on the school's monthly progress report, and the student certificate must be returned promptly to the board office when the student has completed 300 hours.

(f) A licensed barber who is enrolled in a barber refresher course cannot at the same time be employed or serve as a manager or instructor in the school.

[No barber college may conduct refresher courses or offer advanced courses unless the school is closed to the general public. The classes must not be conducted during regular school hours. Each person attending the course has to be a licensed barber, and no fee can be charged to the models for services rendered.]

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 6, 1990.

TRD-9003620

Jo King McCrorey  
Executive Director  
State Board of Barber  
Examiners

Proposed date of adoption: June 5, 1990

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

#### Examinations and Licensing

##### • 22 TAC §51.53

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

The State Board of Barber Examiners proposes an amendment to §51.53, concerning out-of-state applicants. The amendment defines the requirements for a barber licensed by another state or country to apply for an examination to qualify as a Class A registered barber in Texas and to apply for a journeyman's work permit to practice barbering until examined, and specifies the examination fee. The amendment is proposed to further define the application requirements, and to expedite the licensing of out-of-state barbers by eliminating the requirement that the applicant be interviewed by the board.

Jo King McCrorey, 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. McCrorey also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that barbers licensed by another state or country will be able to have their application for examination approved, receive a journeyman's work permit to practice barbering until examined, and be examined to qualify for a Class A Registered Barber Certificate in a shorter period of time. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo King McCrorey, Executive Director, 9101 Burnet Road, Suite 103, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 8407a, §28(a), which provide the State Board of Barber Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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 5, 1990.

TRD-9003618

Jo King McCrorey  
Executive Director  
State Board of Barber  
Examiners

Proposed date of adoption: June 5, 1990

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

#### Part X. Texas Funeral Service Commission

#### Chapter 201. Licensing and Enforcement-Practice and Procedure

##### • 22 TAC §201.8

The Texas Funeral Service Commission proposes an amendment to §201.8, concerning procedures for the petition for adoption of rules. This amendment clarifies how petitions for adoption of rules are handled once they are received by the commission office.



Larry A. Farrow, 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. Farrow also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that petitions for adoption of rules will be reviewed and acted upon in a timely manner. 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 Larry A. Farrow, Executive Director, Texas Funeral Service Commission, 8100 Cameron Road, Building B, Suite 550, Austin, Texas 78753.

The amendment is proposed under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to promulgate rules and regulations.

*§201.8. Procedures for the Petition for Adoption of Rules.*

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

(d) When a petition is received that meets the requirements of subsection (c) of this section, the executive director will forward the petition to the commission chairman who will either task a standing committee or appoint an ad hoc committee to study the petition and make a recommendation to the commission. [The executive director will advise the commission of all requests submitted by interested persons for the adoption, amendment, or repeal of a rule when submitted in accord with this procedure].

(e) The tasked committee will report all petitions out of committee with a recommendation to the commission regarding its adoption.

(f)[(e)] The commission will consider within 60 days after the submission of a petition and may either deny the petition or instruct the executive director to initiate rulemaking proceedings in accordance with the Administrative Procedure and Texas Register Act, §5. In the event a petition is denied, the executive director will advise the interested person in writing of the denial and will state the reason for the denial of the commission.

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

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

TRD-9003487

Larry A. Farrow  
Executive Director  
Texas Funeral Service  
Commission

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 834-9992

◆ ◆ ◆  
**Part XIX. Polygraph  
Examiners Board**  
**Chapter 391. Polygraph  
Examiner Internship**

• 22 TAC §391.3

The Polygraph Examiners Board proposes an amendment to §391.3, concerning internship training schedule. The amendment is proposed for the ultimate benefit of the public by insuring that only qualified polygraph schools will be approved by the board.

Bryan M. Perot, executive officer, 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. Perot also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more closely regulated polygraph industry in areas that the board determines to be critical. 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 Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

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

*§391.3. Internship Training Schedule.* The following internship schedule has been approved and adopted by the board as a minimum type and number of hours of any internship training program to be utilized in a course of supervised instruction of not less than 32 hours per week.

(1)-(12) (No change.)

(13) Approved polygraph schools include the following:

(A)-(J) (No change.)

[(K) Sturm School of Polygraph;]

(K)[(L)] Los Angeles Institute of Polygraph;

(L)[(M)] Arizona School of Polygraph Science;

(M)[(N)] any other polygraph school or institution the board may approve from time to time.

(14)-(16) (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 10, 1990.

TRD-9003714

Bryan M. Perot  
Executive Officer  
Polygraph Examiners  
Board

Earliest possible date of adoption: May 21, 1990

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

◆ ◆ ◆  
**TITLE 25. HEALTH  
SERVICES**  
**Part I. Texas Department  
of Health**

**Chapter 1. Board of Health**

**Definition, Treatment, and Disposition of Special Waste from Health Care Related Facilities**

• 25 TAC §1.134, §1.135

The Texas Department of Health proposes amendments to §1.134 and §1.135, concerning definition, treatment, and disposition of special waste from health care related facilities. The sections cover exemptions and application.

The amendments will exclude teeth from regulation; allow the donation of tissues and/or fetuses; allow the sale of placentas; and make the language of the sections conform to the provisions of the statutes.

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

Mr. Seale also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to allow the disposal of teeth along with regular waste without adverse effects on public health or the environment. There will be no effect on small businesses as a result of enforcing the sections. There will be no cost to persons to comply with the sections as proposed.

Written comments may be submitted to Mr. T.A. Outlaw, P.E., Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th, Austin, Texas 78756-3199. Comments on the proposal will be accepted until May 30, 1990

The amendments are proposed under the Health and Safety Code, §§81.081-81.092, which provide the Board of Health with the authority to prevent and control communicable diseases; §142.012, which as-

signed the powers and duties of the Board of Health with respect to home health agencies; §241.026, which provides the Board of Health with the authority to establish rules and minimum standards for hospital licensure; §243.009, which provides the Board of Health with the authority to adopt rules for ambulatory surgical centers; §244.009, which provides the Board of Health with the authority to adopt rules for birthing centers; §§245.009-0.010, which provides the Board of Health with the authority to adopt rules for abortion facilities; §246.003, which provides the Board of Health with the authority to adopt rules for continuing care facilities; §361.011 and §361.024, which establish the Department's jurisdiction for municipal solid waste management and to adopt rules to manage municipal solid waste; §694.001 which which provides the Board of Health with the authority to adopt rules for the disposition of the body; and §773.041, as amended by the Acts 1989 of the 71st Legislature, Chapters 372, §3 and §7, related to rules for emergency medical service providers; 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.

**§1.134. Exemptions.** These sections do not apply to:

(1) waste generated by the operation of the following entities:

(A)[(1)] single or multi-family dwellings; and

(B) [(2)] hotels, motels, or other accommodations which provide lodging and other services for the public; and

(2) the items listed below:

(A) teeth;

(B) human tissue specimens, or fetuses which are donated to an institution accredited by any voluntary national accreditation or certification organization; and

(C) placentas designated for sale and obtained from a licensed hospital or a licensed birthing center.

**§1.135. Application.** These sections apply to special waste from health care related facilities generated by the operation of the following publicly or privately owned or operated health care related facilities, including but not limited to:

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

(9) emergency medical service providers [services];

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 13, 1990.

TRD-9003818

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

Proposed date of adoption: August 18, 1990

For further information, please call: (512) 458-7271

### Chapter 31. Special Supplemental Food Program for Women, Infants and Children (WIC)

#### • 25 TAC §31.2

The Texas Department of Health proposes an amendment to §31.2, which adopts by reference the Women, Infants and Children (WIC) state plan of operations. The amendment will be to the text of the section and to material being adopted by reference.

The State Plan of Operations contains the federal approved requirements and procedures for the administration of the WIC Program in the State of Texas in accordance with United States Department of Agriculture (USDA) regulations in 7 Code of Federal Regulations, Part 246. Prior to receiving a mandated change from the USDA, the department's WIC Program submits suggested amendments to the USDA for its consideration in developing final changes in the regulations. The WIC Program is now considering submitting proposed amendments to the state plan to USDA for its consideration as follows. Presently the Texas WIC Program is serving only 26% of the state's potentially eligible population and currently limiting access to the program because funding from all sources has been maximized. As such, the WIC Program seeks to implement further cost reduction measures by soliciting competitive bids for the cereals purchased by the WIC Program. The WIC Program intends to accomplish this objective by proposing an amendment to the state plan and publishing it in the *Texas Register* for public comment prior to submitting the proposal to the USDA for its consideration. Under the proposed amendment, the department will request rebate bids from the cereal manufacturers whereby the companies submitting the best rebate offer per ounce of cereal be designated as the allowable brands of cereals authorized for issuance.

Stephen Seale, Chief Accountant III, Budget Division, has determined that there will be fiscal implications as a result of administering the proposal. The savings to state government for each year of the next five years will be \$2 to \$4 million dollars each year. There will be no cost to local government or small businesses and there will be no impact on local employment.

Mr. Seale also has determined that the public benefit of the proposal will be that the savings in food monies each year can be used for increasing the percentage of the state's potential eligible citizens served. There will

be no cost to persons to comply with the proposal.

Comments on the proposal may be submitted to Debra C. Stabeno, Chief, Bureau of WIC Nutrition, Texas Department of Health, 1100 West 49th Street, Austin Texas 78756, (512) 458-7444; Fax (512) 458-7446. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The amendment is proposed under the following statutes and regulations which provide the Board of Health with the authority to adopt rules covering the Special Supplemental Food Program for Women, Infants, and Children: Texas Health and Safety Code, §1.05; the Texas Omnibus Hunger Act of 1985; Acts 1985, 69th Legislature, Chapter 150, Title II; Texas Human Services Code, Chapter 33; the Child Nutrition Act of 1966, 42 United States Code Annotated, §1786; the Commodity Distribution Reforms Act and WIC amendments of 1987 (Public Law 100-237); and 7 Code of Federal Regulations Part 246; 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.

#### §31.2. WIC State Plan of Operations.

(a) The Texas Department of Health adopts by reference the publication titled, "WIC State Plan of Operations", as amended in June [January], 1990. This plan has been developed by the WIC Program, Texas Department of Health.

(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 9, 1990.

TRD-9003624

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) 450-3765

### Chapter 61. Chronic Diseases Diabetic Eye Disease Detection Initiative

#### • 25 TAC §§61.21-61.24

The Texas Department of Health proposes new §61.21-61.24, concerning the diabetic eye disease detection initiative. The sections cover requirements for providers of services to the Diabetes Control Program; and describe requirements for participating providers in the diabetic eye disease detection initiative who provide dilated funduscopy examinations to persons with diabetes so that vision-threatening conditions, such as retinopathy, can be identified and treated. Specifically, the sections cover general

information, patient eligibility, program benefits, and payment for services.

Stephen Seale, Chief Accountant III, has determined that for each year of the first five year period that the sections are in effect, there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government is an estimated additional cost of \$50,000 per year for fiscal years 1990-1994. There will be no fiscal implications for local government or small businesses. There will be no impact on local employment.

Mr. Seale also has determined that for each year of the first five years that the sections as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be the provision of sensitive eye examinations to persons with diabetes so that vision-threatening conditions can be identified and treated. There will be no anticipated cost to persons who are required to comply with the section.

Comments on the proposal may be submitted to Charlene Laramey, R.N., C.S.W., Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, (512) 458-7534. The department will accept comments for 30 days after publication of the proposal in the *Texas Register*.

The new sections are proposed under the Health and Safety Code, §103.013, which provides the department with the authority to assist in the implementation of a state plan for diabetes treatment, education, and training; §12.001, which provides the Board of Health with the authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; and the State Appropriations Act, Chapter 1263, Article 11-20, §9, which provides the department with the authority to use appropriation monies to implement the Health and Safety Code, §103.013.

#### §61.21. General Information.

(a) Background. Diabetes is a major cause of blindness in the United States and in Texas. It is estimated that up to 50% of blindness due to proliferative diabetic retinopathy could be prevented, or at least delayed, by prompt detection and treatment. Annual funduscopic examinations are recommended for nearly all diabetics to detect retinopathy before vision is compromised. Unfortunately, many persons with diabetes are not presently being referred to ophthalmic specialists to receive these annual examinations. While several factors contribute to the problem, lack of resources is a significant factor. It also happens that the prevalence of diabetes is greater among minority populations who historically have been financially disadvantaged. Specifically, the prevalence of diabetes is three to five times greater among Mexican Americans than non-Hispanic whites. Blacks also have a 33% higher prevalence of diabetes than non-hispanic whites. There is also evidence which indicates that minority populations suffer disproportionately higher rates of

complications from diabetes. For these reasons, the Texas Department of Health (TDH), through Texas Diabetes Council funds, is supporting diabetic eye disease screening activities. The diabetic eye disease detection initiative is an attempt to provide needed eye examinations to persons with diabetes who might otherwise not receive services because of a lack of resources.

(b) Introduction. The purpose of the Diabetic Eye Disease Detection Initiative is to provide dilated funduscopic examinations to persons with diabetes so that vision-threatening conditions, such as retinopathy, can be identified and treated. Diabetes Control Program (DCP) services are provided to Texas residents who are at high risk for vision loss due to diabetes, and who meet TDH income eligibility criteria for services.

(c) Participating providers. Persons providing services under the DCP must have a current Texas license to practice medicine or optometry and must be in good standing with the Texas Board of Medical Examiners or Texas Board of Optometry, whichever is applicable. Persons wishing to be providers should furnish the information requested on the department's fee-for-service contract and return the completed contract to the Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(d) Civil rights. Providers of services under the DCP are subject to the provisions of the Federal Civil Rights Act of 1964, Public Law 88-532, and Texas Civil Statutes, Article 6252-16, so that no person will be excluded from participation in the DCP or otherwise subjected to discrimination on the grounds of race, color, or national origin.

(e) Procedures for eligible persons receiving services from the DCP. Individuals must be referred to the staff of TDH regions, local health departments or others approved as nominators by the DCP, TDH. The nominator's responsibility is to assess whether a prospective client with diabetes meets DCP eligibility criteria, and to obtain approval from the TDH regional office to refer the client to a provider. Nominators may also assist in follow-up with clients and providers regarding missed appointments and need for subsequent treatment for eye disease. The regional office will confirm (usually by phone) the client's eligibility and authorize the nominator to refer the client to the participating provider of the client's choice. The nominator will then refer the client and send a tracking form to the provider. This form is the written authorization for the provider to perform services. Upon completion of client's examination, the provider will forward a copy of the tracking form to the appropriate regional office and retain a copy for the provider's record. If treatment is recommended and the client is to be

referred to another facility for treatment, then the provider will forward the remaining copies of the tracking form to the treatment facility. If the provider is also performing treatment, the results of the treatment will be documented on the tracking form and sent to the DCP in Austin.

#### §61.22. Patient Eligibility.

##### (a) Eligible persons.

(1) Eligible persons include individuals with diabetes who:

(A) meet the Diabetes Control Program (DCP) criteria (i.e., being at high risk for developing diabetic eye disease);

(B) are not covered for exams from any other third-party payer; and

(C) who have been certified by the TDH regional office as meeting eligibility requirements for DCP.

(2) To be eligible for services, the prospective patient must meet the basic income criteria established by the Texas Department of Health and participating local health departments as described in the department's guidelines for clinical health services in §1.91(b)(1) of this title (relating to Fees for Clinical Health Services).

(b) Persons at high risk for diabetic eye disease. Persons considered to be at high risk for diabetic eye disease include:

(1) Type I (insulin dependent) diabetics who are 18 years of age or older and who have had diabetes for five years or longer; and

(2) all Type II (non-insulin dependent) diabetics.

#### §61.23. Program Benefits.

##### (a) Scope of services.

(1) Reimbursement will be limited to \$40 per examination for a complete dilated funduscopic examination on both eyes.

(2) These examinations will also include acuity testing, tonometry, assessment of lens opacity, and blood pressure measurement.

(b) Maximum allowable benefits. Maximum allowable benefits per patient per year are limited to one annual screening examination. In instances where eye disease (retinopathy, maculopathy) is detected in the initial exam, two additional follow-up exams may be administered if needed. Total benefits are not to exceed \$120 per patient per year, unless written approval is obtained from the Diabetes Control Program (DCP).

(c) Funding limitations. Payment will not be made for any diagnostic test or for treatment of eye disease.

**§61.24. Payment for Services.**

(a) Payee identification number. Payment for services is made to providers who have a State of Texas payee identification number. To obtain a payee identification number, providers must complete the State of Texas Application For Payee Identification Number, Form AP-107, and return it to the Diabetes Control Program (DCP) in Austin. A form may be obtained from the Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(b) Conditions for payment. The DCP will pay providers only for approved services which have been authorized by the TDH regional dental office prior to the performance of services. Payment for any service will be made only after the delivery of the service. Providers must agree to accept program fees as payment in full for service rendered, although such fee may be below usual and customary charges.

(c) Time limit. The eye examination must be completed within 60 days of the service approval date and the signed tracking forms described in §61.21(e) of this title (relating to General Information) must be received by the DCP within 75 days of the date service was authorized.

(d) Procedures for claims payment. The procedures for claims payment shall be in accordance with the department-developed publication titled *Manual for Providers of Services*.

(e) Claim denials. Payment for eye examinations will not be made if:

- (1) patient is ineligible;
- (2) services provided were not specifically covered by benefits of the DCP;
- (3) patient failed to appear for treatment and no service was rendered (no-shows); or
- (4) claims for the same eye examination were previously paid for by the DCP (duplicate claims).

(f) Reconsideration of denied claims. A claim that has been denied in error by the DCP will be reconsidered for payment if:

- (1) the original claims with the error identified and corrected is returned to the DCP within 30 days from receipt of the notice of denial; and
- (2) the claim is accompanied by a copy of the DCP notice of denial.

(g) Payment of claims which exceed time limit. Eye examinations must be completed within 60 days from the date services were approved and the tracking form must be forwarded to the TDH regional dental office within 75 days of the date service was authorized. If special or extenuating circumstances exist which

make it impossible or impractical for the provider to complete services within that time period, such claims will be evaluated by the Chief, Bureau of Dental and Chronic Disease Prevention, Texas Department of Health, on an individual basis, with due consideration given to the circumstances.

(h) Due process hearing. In the event the provider contract is terminated or suspended, or any claim for payment is denied following reconsideration, the provider will be afforded an opportunity for a due process hearing. The provider must request such hearing in writing to the Chief, Bureau of Dental and Chronic Disease Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, within 10 days from the provider's receipt of notice of termination, suspension, or denial of claim for payment.

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 12, 1990.

TRD-9003748

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) 458-7534

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## Chapter 325. Solid Waste Management

### Subchapter A. General Information

The Texas Department of Health proposes amendments to §325.5 and §325.136, and new §§325.1001-325.1004, concerning solid waste management. The sections cover general definition of terms and abbreviations, disposal of special wastes; and the purpose, applicability, definitions, and generators of medical waste. The amendments will incorporate the policy established by the Texas Board of Health in 25 TAC §1.131-1.137, concerning definition, treatment, and disposition of special waste from health care related facilities; establish rules for persons who generate or handle medical waste; and add definitions regarding waste from health care related facilities. The new sections will establish procedures and requirements for the handling, transportation, and disposal of special waste from health care related facilities.

Stephen Seale, Chief Accountant III, Budget Division, Texas Department of Health, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections because existing 25 TAC §325.136, concerning disposal of special waste requires segregation of some types of medical waste. Additional department personnel and the new proposed

§§325.1001-325.1004 will ease the enforcement task. Sections 1.131-1.137 already describe the items of medical waste which will be regulated in the State of Texas, and existing §325.136 requires segregation and separate collection of some items of medical waste since 1984. Therefore, facilities which are complying with existing §325.136 should not experience an increase in disposal costs because of these proposed sections. Since many large facilities, such as hospitals, have treated any waste in contact with a patient as a special waste, these facilities should experience some reduction in waste disposal costs because less waste will be regulated as a special waste.

The following are estimates of the cost for disposal of medical waste regulated by the department. The cost to a private practitioner (small business or individual) will vary according to the amount of waste produced and will depend upon the degree to which the business is complying with existing rules. Typically a cost of \$35 per month will be incurred for compliance with these sections if all waste is sent off site untreated. Some practitioners will experience higher costs because of the nature of their practice, for example allergists. Clinics and small laboratories may incur costs of approximately \$75-\$100 per month. A 200 bed hospital, either publicly or privately owned, with 60% occupancy, and generating 2.5 pounds of regulated waste for each patient per bed per day should incur a cost of \$5,000 per month for off-site medical waste disposal; the amount will vary depending upon the amount of waste which may be treated on-site. The inclusion of additional wastes because of poor segregation or identification, or because of requirements imposed by other agencies will probably increase the costs because of the increase in waste volume. Hospitals should experience a reduction in disposal cost since the amount of waste handled as a special waste will be less. This is because §§1.131-1.137 are very specific and facilities do not have to make judgements about which wastes are regulated, such as including any item which has come in contact with a patient. The cost estimates/effects are based on the items regulated under the proposed sections. There will be no significant effect on local employment as result of rule changes.

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 the establishment of specifically stated requirements for identification and packaging of medical waste of public concern. Individuals should not experience an increase in disposal costs because of these proposed sections, except for the previously mentioned private practitioners.

Written comments may be submitted to Mr. T.A. Outlaw, P.E., Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th, Austin, Texas 78756-3199. Comments on the proposed sections will be accepted until June 30, 1990.

#### • 25 TAC §325.5

The amendment is proposed under the Health and Safety Code, §361.011 and §361.024, which establishes the department's jurisdiction for municipal solid waste management and to adopt rules to manage

municipal solid waste; 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.

**§325.5 Definitions.** The following words, [and] terms, and abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions pertinent to specific sections, are contained within the appropriate sections.

**[Infectious waste—Waste containing pathogens or biologically active material which because of its type, concentration, and quantity is capable of transmitting disease to persons exposed to the waste.]**

**Medical waste—Waste generated by health care related facilities which is associated with health care activities not including garbage or rubbish generated from offices, kitchens, or other non-health care activities.**

**Other regulated medical waste—Medical waste which is not included within special waste from health care related facilities, but which is subject to special handling requirements within the generating facility by other state or federal agencies, excluding medical waste which is subject to Chapter 289 of this title (relating to Occupational Safety and Radiation Control),**

**Special waste from health care related facilities—Waste as defined in §1.132 of this title (relating to Definitions) which includes animal waste, bulk human blood and blood products, microbiological waste, pathological waste, and sharps; but does not include the items listed in §1.134(b) of this title (relating to Exemptions).**

**Special Waste—Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties require special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed or disposed of, or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes include, but are not limited to:**

(A)-(B) (No change.)

(C) **special waste from health care related facilities [infectious and pathological wastes from health care facilities, veterinary hospitals, or laboratories];**

(D)-(L) (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 13, 1990.

TRD-9003819

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

Proposed date of adoption: August 18, 1990

For further information, please call: (512) 458-7271

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**Subchapter F. Operational  
Standards for Solid Waste  
Land Disposal Sites.**

**Other Operational Standards  
for Type I, II, III, and IV  
Sites.**

• **25 TAC §325.136**

The amendment is proposed under the Health and Safety Code, §361.011 and §361.024, which establishes the department's jurisdiction for municipal solid waste management and to adopt rules to manage municipal solid waste; 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.

**§325.136. Disposal of Special Wastes.**

(a) (No change.)

(b) Receipt of the following special wastes do not require further written authorization from the bureau [department] for acceptance provided the waste is handled in accordance with the noted provisions for each waste.

(1) **Special wastes from health care related facilities which have not been treated in accordance with the procedures specified in §1.136 of this title (relating to Approved Methods of Treatment and Disposition) shall not be accepted at a Type I solid waste landfill unless approved by the bureau in writing. Approval to accept untreated waste will be granted only for waste from generators located more than 75 miles from a permitted, operational medical waste treatment facility. The approval shall be valid only for 18 months after the effective date of this paragraph. Special wastes from health care related facilities shall be received only if the wastes have been identified and packaged in accordance with §325.1004(l) of this title (relating to Generators of Medical Waste).** [Infectious or pathological wastes from laboratories, research facilities, and health and veterinary facilities may be accepted at a Type I municipal solid waste site without further written approval if the wastes are double-bagged in plastic bags

not less than 1.5 mils thick each and conspicuously marked.] The waste shall not be commingled with routine solid waste, but shall be segregated for special collection and transportation without compaction. The wastes shall be covered with three feet of other solid waste or two feet of soil immediately upon receipt.

(2)-(8) (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 13, 1990:

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

Proposed date of adoption: August 18, 1990

For further information, please call: (512) 458-7271

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**Subchapter Y. Medical Waste  
Management**

• **25 TAC §§325.1001-325.1004**

The new sections are proposed under the Health and Safety Code §361.011 and §361.024, which establishes the Department's jurisdiction for municipal solid waste management and to adopt rules to manage municipal solid waste; 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.

**§325.1001. Purpose.** The purpose of these sections is to establish procedures and requirements for the handling, transportation, and disposal of special waste from health care related facilities as defined in §1.132 of this title (relating to Definitions) which have been identified by the Board of Health as waste which requires special handling to protect human health or the environment.

**§325.1002. Applicability.** These sections are applicable to persons who generate, collect, transport, store, process, treat or dispose of special wastes from health care related facilities. These sections shall not apply to the entities identified in §1.134(a) of this title (relating to Exemptions). These sections shall not apply to waste which is subject to Chapter 289 of this title (relating to Occupational Safety and Radiation Control).

**§325.1003. Definitions.** The words, terms, and abbreviations when used in these sections are defined in §1.132 of this title (relating to Definitions) and/or in §325.5 of this title (relating to Definition of Terms

and Abbreviations). When the definitions found in §1.132 of this title (relating to Definitions) are changed, such changes shall prevail over the definitions found in §325.5 of this title (relating to Definition of Terms and Abbreviations).

§325.1004. *Generators of Medical Waste.*

(a) The requirements of this section are applicable to any entity which generates special wastes from health care related facilities including, but not limited to, the entities identified in §1.135 of this title (relating to Application), but are not applicable to the entities identified in §1.134(a) of this title (relating to Exemptions).

(b) All entities subject to this section shall identify and segregate special wastes from health care related facilities, as defined in §325.5 of this title (relating to Definition of Terms and Abbreviations), from ordinary rubbish and garbage produced within or by the entity. Other regulated medical waste, as defined in §325.5 of this title (relating to Definition of Terms and Abbreviations), may be combined with special wastes from health care related facilities or may be identified and segregated as a separate waste stream. Where special wastes from health care related facilities and other regulated medical wastes are mixed, the mixed waste shall be considered to be special waste from health care related facilities.

(c) Requirements for special wastes from health care related facilities, if treated on site, shall be as follows.

(1) Special waste from health care related facilities shall be treated in accordance with the provisions of §1.136(a) of this title (relating to Approved Methods of Treatment and Disposition). The approved treatment methods as defined in §1.132 of this title (relating to Definitions) are:

- (A) chemical disinfection;
- (B) incineration;
- (C) encapsulation (only for sharps in containers);
- (D) steam sterilization; and
- (E) thermal inactivation.

(2) An entity which treats waste generated on site shall comply with the provisions of §1.136(c) of this title (relating to Approved Methods of Treatment and Disposition).

(3) An entity which generates 50 pounds or less per calendar month of special wastes from health care related facilities on site and which treats all or part

of the wastes on site shall maintain a written record which, at a minimum, contains the following information:

- (A) the date of treatment;
- (B) the amount of waste treated;
- (C) the method/conditions of treatment; and
- (D) the name (printed) and initials of the person(s) performing treatment.

(4) An entity which generates more than 50 pounds per calendar month of special wastes from health care related facilities and which treats all or part of the wastes on site shall maintain a written record which, at a minimum, contains the following information for each batch of waste treated:

- (A) the date of treatment;
- (B) the amount of waste treated;
- (C) the method/conditions of treatment;
- (D) the name (printed) and initials of the person(s) performing treatment; and
- (E) a written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment.

(d) Requirements for disposal of special wastes from health care related facilities which have been treated on site in accordance with the provisions of §1.136(a) of this title (relating to Approved Methods of Treatment and Disposition) are as follows.

(1) Microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding which have been treated in accordance with the provisions of §1.136(a) of this title (relating to Approved Methods of Treatment and Disposition) may be discarded with routine municipal solid waste provided any markings which identify the waste as a special waste from health care related facilities are covered with a label which identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the treated waste or by a label which states that the contents of the disposable container have been treated in

accordance with the provisions of §1.136(a) of this title (relating to Approved Methods of Treatment and Disposition).

(2) Carcasses and body parts of animals designated as a special waste from health care related facilities which have been treated in accordance with the provisions of §1.136(a) of this title (relating to Approved Methods of Treatment and Disposition) may, after treatment, be disposed of in a permitted landfill in accordance with the provisions of §325.136(b)(2) of this title (relating to Disposal of Special Waste). The collection and transportation of these wastes shall conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than these sections.

(3) Recognizable human body parts, tissues, fetuses, organs and the products of human abortions, spontaneous or induced, shall not be disposed of in a municipal solid waste landfill. These items shall be disposed of in accordance with the provisions of §1.136(a)(4) of this title (relating to Approved Methods of Treatment and Disposition).

(4) Sharps which have been treated in accordance with the provisions of §1.136(a) of this title (relating to Approved Methods of Treatment and Disposition) shall be disposed of as follows.

(A) Broken glassware and pipets may be placed in puncture-resistant packaging and discarded with routine municipal solid waste.

(B) Hypodermic needles, syringes with attached needles, scalpel blades, and/or razors shall be placed in containers designed for sharps. If the container's contents have not been encapsulated, then the container shall be segregated from the regular municipal solid waste collection system and shall be collected and transported without compaction for disposal in a permitted municipal solid waste landfill.

(C) Sharps placed in containers designed for sharps may be encapsulated by addition of an agent to the container which will solidify and encase the contents of the container with a solid matrix. The agent must completely fill the container. The container and solidified contents must withstand an applied pressure of 40 pounds per square inch without disintegration. The container shall be identified as containing sharps which have been encapsulated in accordance with this subparagraph and may be discarded with routine municipal solid waste.

(e) Unused hypodermic needles, syringes with attached needles and scalpel blades shall be disposed of as treated sharps as specified in subsection (d)(4)(B) or (4)(C).

(f) For the purposes of this section, on site shall mean on a facility consisting of:

(1) any contiguous structures, or portion thereof, which are operated by one entity;

(2) any structures located on contiguous properties which are operated by one entity; and

(3) any combination of structures operating as a single entity under a license issued by the Department.

(g) Other regulated medical waste which has not been mixed or commingled with special wastes from health care related facilities may be discarded with routine municipal solid waste provided a label has been affixed to the container which states that the waste within the container is not a special waste from health care related facilities.

(h) Requirements for shipment of untreated special wastes from health care related facilities off site are as follows.

(1) Untreated special wastes from health care related facilities which are to be shipped off site for treatment or disposal must be identified and packaged in accordance with the provisions of subsection (i) of this section.

(2) Shipments of untreated special wastes from health care related facilities shall be released only to a transporter who is registered with the department to transport special wastes from health care related facilities as required elsewhere in this Chapter. Release of untreated waste to unregistered transporters shall be a violation of this paragraph. This requirement shall not be effective until 60 days after the effective date of rules requiring registration of transporters of special wastes from health care related facilities.

(3) The generator shall obtain from the transporter a signed receipt for each shipment of regulated medical waste using a form provided by, or approved by, the bureau.

(4) The generator shall maintain a file of receipts for shipments of special waste from health care related facilities for a period of three years following the date of

shipment. This time period may be extended by the bureau for investigative purposes or in case of enforcement action. Failure to maintain the file of receipts in an orderly fashion, destruction of receipts prior to the end of the specified time or prior to the expiration of an extended retention time shall be a violation of this paragraph.

(5) The file of receipts for shipments of special wastes from health care related facilities shall be available for inspection by department personnel during normal business hours without prior notice. Refusal to allow department personnel to inspect such file during normal hours shall be a violation of this paragraph.

(6) For the purpose of this subsection, the United States Postal Service is a registered transporter. A receipt for registered mail shipment shall satisfy the requirements of paragraph (3) of this subsection.

(i) Requirements for identification and packaging of special wastes from health care related facilities are as follows.

(1) Special wastes from health care related facilities, other than sharps, shall be placed in a plastic bag which is either 1.5 mils thick or meets the requirements of ASTM Standard No. D 1709-75. If empty containers which held free liquids are placed into the bag, 1 cup of absorbent material for each six cubic feet, or fraction thereof, of bag volume must be placed in the bottom of the bag.

(2) The bag containing special wastes from health care related facilities shall be placed in a rigid container which is constructed of a material which meets or exceeds the strength of 175 pound, C-Flute board.

(3) If the waste contains free liquids in containers, the plastic bag and/or the rigid container shall contain absorbent material sufficient to absorb 15% of the volume of free liquids placed in the bag.

(4) The outer container shall be conspicuously marked with a warning legend which must appear in English and in Spanish, along with the international symbol for biohazardous material. The warning must appear on the sides of the container, twice in English and twice in Spanish. The wording of the warning legend shall be as follows:

CAUTION,  
contains medical waste  
which may be biohazardous

and

CAUCION,  
contiene desechos medicos  
que pueden ser biopeligroso.

(5) The generator shall affix to each container a label which contains the name and address of the generator and the date of shipment.

(6) The transporter shall affix to each container a label which contains the name, address, telephone number, and state registration number of the transporter. This information may be printed on the container.

(7) The printing on labels required in paragraphs (5) and (6) of this subsection shall be done in indelible ink with letters at least 0.5 inch in height. A single label may be used to satisfy the requirements of paragraphs (5) and (6) of this subsection.

(8) The requirements of paragraphs (5) and (6) of this subsection shall not apply to shipments where the United States Postal Service is the transporter.

(9) Sharps must be placed in a marked, puncture-resistant rigid container designed for sharps. This container may be placed in the plastic bag described in paragraph (1) of this subsection. The bag must then be placed in a rigid container as described in paragraph (2) of this subsection.

(j) The Department may waive any or all of the requirements in this section when, in the judgment of the Commissioner of Health or his/her designee, a situation exists which requires a waiver of such requirements in order to protect the public health and safety from the effects of a natural or man made disaster.

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 13, 1990.

TRD-9003821

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

Proposed date of adoption: August 18, 1990

For further information, please call: (512) 458-7271

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TITLE 31. NATURAL  
RESOURCES AND CON-  
SERVATION

Part II. Parks and Wildlife  
Department

Chapter 57. Fisheries

Oyster Harvest

• 31 TAC §57.610, §57.611

The Texas Parks and Wildlife Commission proposes to adopt new 31 TAC §57.610 and §57.611, concerning the management of oysters in Texas. The new sections are in compliance with Texas Parks and Wildlife Code, §76.301, which allows the commission by proclamation to regulate the taking, possession, purchase, and sale of oysters. The commission finds that a proclamation is needed to implement the provisions of the Texas Oyster Fishery Management Plan, the Texas Oyster Fishery Management Plan Economic Impact Statement, and the Texas Oyster Fishery Management Source Document, adopted by commission action on November 3, 1988.

In 1985, the 69th Texas Legislature delegated to the Texas Parks and Wildlife Commission authority to regulate the oyster fishery in Texas. The Legislature mandated that before existing regulations were changed, the Texas Parks and Wildlife Department must prepare an oyster fishery management plan and economic impact analysis in accordance with Chapter 76 (Parks and Wildlife Code). Recommendation Number 2 in the Texas Oyster Fishery Management Plan states that as the specifics of the plan are developed through the adopting of rules and regulations by the Texas Parks and Wildlife Commission it is vital to have the continued input of all individuals and groups interested in the oyster resources of Texas. To accomplish this, the plan recommends the establishment of an advisory committee, appointed by the commission chairman, consisting of persons from the oyster industry and individuals and groups interested in the oyster resources of Texas.

On May 15, 1989, the Parks and Wildlife Commission Chairman appointed a four-member Oyster Advisory Committee. This committee held meetings in Austin on June 20, July 20, October 2, 1989, and February 12, 1990. During the course of these four meetings and through considerable mail and telephone correspondence, staff has received and commented on a variety of committee suggestions for modifying oyster harvest regulations. At the February 12, 1990 meeting, staff received the committee's final recommendations for rule changes for the 1990-91 public reef harvest season. By consensus, the committee recommended that harvest regulations remain unchanged, except for increasing the tolerance of undersized oysters from five to 15%.

The Texas Oyster Fishery Management Plan to include the Texas Oyster Fishery Management Plan Economic Impact State-

ment and Texas Oyster Fishery Management Source Document are available for public inspection at the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, extension 4863 or 512-389-4863.

The commission proposes to adopt by proclamation the recommendations of the Oyster Advisory Committee.

Under the provisions of Parks and Wildlife Code, §76.301 the commission is granted authority to regulate the taking, possession, purchase, and sale of oysters. In those areas under which the commission was not granted authority to promulgate regulations such as licenses and penalties and in those sections of the Parks and Wildlife Code over which the commission is granted authority to promulgate regulations but chose not to do so within this proclamation, the applicable provisions of Parks and Wildlife Code, Chapter 76 will apply. Under the Parks and Wildlife Code, §76.301(d), proclamations issued under the authority granted to the commission in §76.301 prevail over any conflicting provision of the Parks and Wildlife Code, Chapter 76, and a proclamation of the commission issued under the Wildlife Conservation Act of 1983 (Parks and Wildlife Code, Chapter 61,) to the extent of the conflict.

The provisions found in the Texas Parks and Wildlife Code, §76.112 have been significantly modified in this proclamation and the proposed rules, if adopted, will prevail over this section of the Parks and Wildlife Code.

The provisions of the Texas Parks and Wildlife Code, §76.112 are incorporated in the proclamation with the modification that the percent of a cargo of oysters which are between three-fourths inch and three inches that may be taken or possessed is changed from five to 15.

Mr. Robin Riechers, staff economist, has determined that for each year of the first five years the sections are in effect they will have minimal fiscal implications to the state, local governments, and small businesses.

The combined effects of the proposed sections should either cause no significant change or may minimally increase the state's enforcement costs. The time required for enforcing the minimum percentage of undersized oysters may be increased.

Mr. Riechers 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 to provide on an continuing basis the protection and enhancement of the oyster fishery.

Economic benefits associated with the proposed amendments include increased efficiency in the handling of oysters for those who comply with the new sections. Insofar as the sections are based on sound management and enforcement tenets, it is anticipated the value of the amendments will be positive to the state.

In compliance with Senate Bill 612 and the Administrative Procedure and Texas Register Act (§4A), the proposed rule changes have

been reviewed by the Texas Employment Commission and their comments are "Although this change might affect employment slightly in some areas of the State, it appears at this time that these rule changes would have little or no effect on total employment. Therefore, the Texas Employment Commission foresees no significant impact on overall employment in Texas cities and counties which would result from these rule changes."

Comments on the proposed proclamation for oyster management may be submitted to Ralph Rayburn, Chief Coastal Fisheries, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, telephone, 1-800-792-1112, extension 4863 or 512-389-4863.

The new sections are proposed under Parks and Wildlife Code, §76.301, which provides the Texas Parks and Wildlife Commission with authority to regulate the taking, possession, purchase, and sale of oysters after approval and adopting of an oyster management plan and an economic impact analysis prepared by the department.

*§57.610. General Rules.* Notwithstanding Texas Parks and Wildlife Code, §76.112, it is unlawful for any person to take or possess a cargo of oysters more than fifteen percent of which are between three-fourths inch and three inches measured from beak to bill or along an imaginary line through the long axis of the shell.

*§57.611. Penalty for Violation.* The penalties for violation of this subchapter are prescribed by the Parks and Wildlife Code, Chapter 76.

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 16, 1990.

TRD-9003824

Boyd M. Johnson  
General Counsel  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 389-4805

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Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing

- 31 TAC §§65.1, 65.6, 65.7, 65.11, 65.13-65.24, 65.31-65.39, 65.41-65.48, 65.51, 65.60, 65.71, 65.76-65.81, 65.91

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the*



Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Parks and Wildlife Commission proposes the repeal of 31 TAC §§65.1, 65.6, 65.7, 65.11, 65.13-65.24, 65.31-65.39, 65.41-65.48, 65.51, 65.60, 65.71, 65.76-65.81, and 65.91 concerning statewide hunting and fishing regulations. The repeals will allow new comprehensive rules to be proposed. The repeals and new sections will permit clarification of text that differs from the existing 1989-1990 Statewide Hunting and Fishing Proclamation.

Robin Riechers, staff economist, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

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

Comments on the proposed repeals may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, extension 4974 or (512) 389-4974.

The repeals are proposed under the Texas Parks and Wildlife Code, Chapter 61 (Wildlife Conservation Act of 1983) which provides the Texas Parks and Wildlife Commission with authority to provide wildlife resource regulations for the state and Chapter 66 which provides the authority to change daily catch, retention, and size limits for red drum through commission action under Chapter 61.

§65.1. Application.

§65.6. Definitions.

§65.7. Importation of a Wildlife Resource.

§65.11. Open Seasons: General Rules.

§65.13. Means and Methods

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

§65.46. Turkey.

§65.47. Chachalacas.

§65.48. Migratory Game Birds.

§65.51. Fur-bearing Animals.

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§65.71. Fish.

§65.76. Shellfish (Crabs, Oysters, and Shrimp).

§65.77. Shrimp.

§65.78. Crabs.

§65.79. Oysters.

§65.80. Other Saltwater Life and Marine Animals.

§65.81. Special Coastal Laws.

§65.91. Penalty for Violation.

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 16, 1990.

TRD-9003825

Boyd M. Johnson  
General Counsel  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: May 21, 1990

For further information, please call: 1-800-792-1112, ext. 4641 or (512) 389-4641

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• 31 TAC §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15, 65.17, 65.19, 65.21, 65.23, 65.25, 65.27, 65.29, 65.31, 65.33, 65.36, 65.38, 65.40, 65.42, 65.44, 65.46, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66, 65.68, 65.70, 65.72, 65.78, 65.82, 65.91

The Texas Parks and Wildlife Commission proposes new §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15, 65.17, 65.19, 65.21, 65.23, 65.25, 65.27, 65.29, 65.31, 65.33, 65.36, 65.38, 65.40, 65.42, 65.44, 65.46, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66, 65.68, 65.70, 65.72, 65.78, 65.82, 65.91 concerning hunting and fishing regulations. The new sections will replace existing rules constituting the Statewide Hunting and Fishing Proclamation which is proposed for repeal. The new sections administratively will clarify sections and provide additional gapping of section numbers.

The proposed new sections are in compliance with the Texas Parks and Wildlife Code, Chapter 61 and represent required findings of fact. These findings are based upon scientific studies and surveys which track trends in relative abundance of the different fish and wildlife species.

The new sections that differ from the existing 1989-1990 Statewide Hunting and Fishing Proclamation are summarized below by sections

Section 65.1 concerning application, clarifies that rules do not apply to shrimp and oysters.

Section 65.3 concerning definitions, defines bait, crabline, and fishing, adds new text to include pickerel, sauger, sharks and yellow bass as game fish, adds new text concerning snagging or jerking of fish, and re-defines throwline.

Section 65.15 concerning archery, deletes requirement for name and address on arrow, permits use of expanding broadheads, and requires crossbows to be more than 25 inches in length.

Section 65.19 concerning hunting deer with dogs, prohibits the hunting of deer with dogs.

Section 65.40 concerning deer, provides the taking of antlerless deer without antlerless deer permits for restricted time periods of 18 and four days in length for selected counties, prohibits the use of dogs to take deer, requires the use of antlerless permits in selected counties, reduces the buck bag limit in selected counties, changes the archery-only season to the month of October, and requires National Wildlife Refuge seasons to conform to seasons within the county where located.

Section 65.58 concerning pheasant, opens three Panhandle Counties.

Section 65.62 concerning turkey, opens two Trans-Pecos Counties to spring season and expands area of spring season in three east Texas counties.

Section 65.72 concerning fish, provides additional regulations on yellow bass, gafftopsail catfish, crappie, Florida pompano, snook, and spotted seatrout; provides additional restrictions on black bass in five reservoirs, deletes special reservoir crappie restrictions, prohibits trotlines, juglines, and throwlines in Bastrop Reservoir, reduces freshwater seines from 60 to 20 feet in length, restricts shad trawls, cast nets, minnow traps, and umbrella nets to the taking of bait only, prohibits freshwater netting in Bowie, Cass, Chambers, Delta, Galveston, Hopkins, and Morris Counties, relocates text concerning shrimp trawls in Galveston County, prohibits trotlines and red snapper traps, in Gulf of Mexico within the State's jurisdiction, prohibits trotlines in all coastal waters from Memorial Day through Labor Day, prohibits the possession of potentially harmful fish that are not gutted, and defines legal shrimping operations.

Section 65.76 concerning shellfish (Crabs, Oysters, and Shrimp), deletes this section.

Section 65.77 concerning shrimp, deletes this section as new proclamation governing shrimp is being proposed.

Section 65.78 concerning crabs, permits only a 5.0% tolerance of undersized crabs and clarifies text, clarifies that crablines and umbrella nets are legal gear, and gear tags are valid only for 30 days.

Section 65.79 concerning oysters, deletes this section as new proclamation governing oysters is being proposed.

Section 65.82 renames this section and clarifies that this section applies to both fresh and saltwaters.

Section 65.84 deletes this section as these rules are incorporated into the previous sections.

Robin Riechers, staff economist, has determined that the first five-years the amendments are in effect there will be fiscal implications to state or local governments or small businesses as a result of enforcing or administering the new sections. The fiscal implications are summarized below by species.

The proposed new sections concerning fish resources; generally restrict to an additional degree the bag and possession limits, minimum and maximum size limits, gear, types, and means and methods of take. Fiscal implications to small businesses would comprise the reduced or no sales of certain gear types. Increased or decreased activity by fishermen by locale due to bag and size restrictions is dependent upon department management enhancements upon specifically targeted species. It is not expected that there will be fiscal implications to state or local governments.

The proposed new sections concerning terrestrial wildlife resources generally reflect population levels. Fiscal implications affecting small business focuses at reduced but generally unattainable bag limits by the majority of sportsmen. Small businesses may be affected by department's fine tuning of bag limits within certain counties. The bag limits even though reduced in some instances, by department hunter harvest surveys, exceeds the median. The opening of seasons for game species may increase activity for small businesses.

Mr. Riechers also has determined that for the first five year period the sections are in effect the public benefits anticipated as a result of enforcing the sections will permit continuing opportunity for optimum take of wildlife resources. The new sections are founded upon acknowledged wildlife resource management tenets.

There will be economic costs to those individuals who are required to comply with the new sections; who depend upon the expenditures of others that exercise their recreational or commercial privileges; and who will reduce their expenditures as a result of the new rules.

There will be certain economic benefits associated with the new sections which include increased efficiency in the enforcement of regulations and added clarity of regulations to the public which will reduce confusion to persons who must comply with the regulations.

Since the new rules are based on wildlife resources management, it is anticipated that the net value of economic effects to the state will be positive.

Comments on the proposed new rules may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; telephone: 1-800-792-1112, extension 4974 or 512-389-4974.

The new sections are proposed under the Texas Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983) provide the Texas Parks and Wildlife Commission with authority to establish wildlife resource regulations for this state.

*§65.1. Application.* These sections apply to all of the wildlife resources (except migratory game birds, shrimp, and oysters, and as may be noted in the following sections) in the counties of Texas.

*§65.3. Definitions.* The following words and terms, when used in this subchapter,

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

Antlerless deer—A deer having no hardened antler protruding through the skin.

Automatic firearm or fully automatic firearm—Any firearm that is capable of firing more than one cartridge in succession by a single pull or function of the trigger.

Bait—Something used to lure aquatic animal life.

Bearded hen—A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

Bow—A bow includes, the longbow, recurved bow, or compound bow that is hand-held and hand-drawn, and that has no mechanical device built into, or attached to, that will enable the archer to lock the bow at full or partial draw. Other than energy stored by the hand-held, hand drawn bow, no device to propel the arrow will be permitted.

Buck deer—A deer having a hardened antler protruding through the skin.

Cast net—A net which can be thrown or cast to drop over an area.

Chartered vessel (saltwater)—A boat or vessel whose captain or operator is licensed by the United States Coast Guard to carry paying passengers and whose passengers fish for a fee.

Coastal waters boundary—For purposes of the Texas Parks and Wildlife Code, Chapters 61 and 66, all public waters east and south of the following boundary are considered coastal waters: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence northward along State Highway 36 to the junction of State Highway 332 in Brazoria, thence eastward along State Highway 332 to the junction of F.M. Road 2004 in Lake

Jackson, thence northeastward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northwestward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The public waters north of the dam on Lake Anahuac in Chambers County; north and west of the junction of the north and south forks of the Guadalupe River in Calhoun and Refugio Counties; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; and the Galveston County Reservoir on State Highway 146 in Galveston County, are not considered coastal waters for purposes of this proclamation.

**Crab line**—A baited line with no hook or pole attached.

**Crab measurements**—Blue crabs are measured across the widest point of the body from tip of spine to tip of spine. Stone crab claws are measured by the propodus length which is that distance from the tip of the immovable claw finger to the first joint behind the claw.

**Daily bag limit**—The quantity of a species of game that may be taken in one day (Texas Parks and Wildlife Code, §61.005(5)).

**Day**—As used in daily bag limit is that period of time that begins at midnight and ends at midnight.

**Dip net**—A mesh bag suspended from a frame attached to a handle.

**Final destination for fish**—A place either on the mainland, a peninsula, or barrier island where a fisherman finally lands his catch and does not further transport his fish by boat. Final destination does not include jetties or piers.

**Final destination for all other wildlife resources**—The permanent residence of the person possessing or receiving the wildlife resource, or a part of the wildlife resource, or a commercial processing plant after the carcass of the wildlife resource has been finally processed.

**Fish**—

(A) **Game fish**—Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, wahoo, walleye, white bass, white

marlin, yellow bass, and hybrids or subspecies of the above.

(B) **Non-game fish (rough fish and bait fish)**—All species not listed as game fish, except endangered and threatened fish which are defined and regulated under separate proclamations.

**Fishing**—Taking or attempting to take aquatic animal life by any means.

**Fish length**—The total length which is that straight line distance measured perpendicularly from the tip of the snout to the extreme tip of the tail (caudal fin) that is squeezed together or rotated to produce the maximum overall length while the fish is lying on its side with the jaw closed.

**Fish species names**—The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of *A List of Common and Scientific Names of Fishes of The United States and Canada*.

**Fly fishing**—The use of artificial wet or dry flies as a lure. Wet or dry flies are defined as lures which have a body of either synthetic or natural materials (such as foam, cork, yarn, sponge, chenille, hair, metallic tinsel, or feathers) and the fly, main fishing line, or leader do not have attached any devices such as spinners, springs, or beads other than split shot or flat lead attached directly to the main line or leader for weight.

**Gaff**—Any hand held pole with a hook attached.

**Game animals**—

(A) mule deer, white-tailed deer, pronghorn antelope, desert bighorn sheep, gray or cat squirrels, fox squirrels or red squirrels, and collared peccary or javelina (Texas Parks and Wildlife Code, §63.001);

(B) in Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher Counties only, aoudad sheep are game animals (Texas Parks and Wildlife Code, §63.001);

(C) in Brewster, Culberson, Dallam, Deaf Smith, El Paso, Hartley, Hudspeth, Jeff Davis, Moore, Oldham, Pecos, Potter, Presidio, Reeves, and Terrell Counties wild elk are game animals (Texas Parks and Wildlife Code, §63.001).

**Game birds**—Wild turkey, wild ducks of all varieties, wild geese of all varieties, wild brant, wild grouse, wild prairie chickens, wild pheasants of all varieties, wild partridge, wild bobwhite quail, wild scaled quail, wild Meams' quail, wild Gambel's quail, wild red-billed pigeons, wild band-tailed pigeons, wild mourning doves, wild white-winged doves, wild whitefronted doves, wild snipe of all varieties, wild shore birds of all varieties, chachalacas, wild plover of all varieties, and wild sandhill cranes (Texas Parks and Wildlife Code, §64.001).

**Gear tag**—A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible and contain the name and address of the person using the device and the date the device was set out.

**Gig**—Any hand held shaft with single or multiple points, barbed, or barbless.

**Gill net**—A single wall of webbing held vertically in the water by a line with weights and a line with floats.

**Grabble**—To take or attempt to take fish with the hand.

**Headboat**—A vessel in saltwater that carries seven or more persons who fish for a fee.

**Hoop net**—A net distended by a series of hoops or frames, covered by non-metallic netting.

**Hunt**—Includes take, kill, pursue, trap, and the attempt to take, kill, or trap (Texas Parks and Wildlife Code, §61.005(1)).

**Jug line**—A fishing line with five or less hooks tied to a free-floating device.

**Monofilament**—A single synthetic filament.

**Natural bait (saltwater)**—A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

**Noodling pole**—A length of pole constructed of wood, metal, fiberglass or other material whether hollow or solid, with a hook attached and used to snag or foul hook fish.

**Per season**—The period of time for which a hunting license is valid whether or not the taking of wildlife is permitted in one or more periods during this time.

**Pole and line**—A line with hook, attached to a pole. This gear includes rod and reel.

**Purse seine (net)**—A net with flotation on the corkline adequate to support the net in open water without touching bottom with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

**Possession limit**—The maximum number of a species of game, fish, or other animals that may be possessed at one time.

**Sail line**—A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

**Seine**—A section of non-metallic mesh webbing. The top edge buoyed upwards by a floatline and the bottom edge weighted.

**Silencer or sound suppressing device**—Any device that reduces the normal noise level created when the firearm is discharged or fired.

**Snagging or jerking fish**—A method of taking fish with one or more hooks attached to a line or artificial lure in a manner to foul hook a fish. A fish is foul hooked when caught by a hook in an area other than the fish's mouth.

**Spear**—Any shaft with single or mul-

tiple points, barbed or barbless, which may be propelled by any means, but does not include arrows.

**Spear gun**—Any hand operated device designed and used for propelling a spear, but does not include the crossbow.

**Texas Parks and Wildlife Department or department**—As the context requires, the Parks and Wildlife Department, or a specifically authorized employee of the department.

**Throwline**—A fishing line with five or less hooks and with one end attached to a permanent fixture. Components of a throwline may also include swivels, snaps, rubber and rigid support structures.

**Trammel net**—A net consisting of three walls of webbing suspended from a float line and attached to a single lead line.

**Trap**—A rigid device of various designs and dimensions used to entrap aquatic organisms.

**Trawl**—A bag-shaped net which is dragged along the bottom or through the water to catch fish or other aquatic organisms.

**Trotline**—A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

**Umbrella net**—A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

**Upstream boundary of Sam Rayburn Reservoir on the Angelina River**—The Texas Eastern Transmission Company pipeline.

**Wildlife resources**—All game animals, game birds, marine animals, fish, and other aquatic life (Texas Parks and Wildlife Code, §61.005(2)).

**Wounded deer**—A deer leaving a blood trail.

#### §65.5. Importation of a Wildlife Resource.

(a) For definition of wildlife resource see §65.3 of the title (relating to Definitions).

(b) No person may import or possess a wildlife resource taken in another state or country without a verification document if the wildlife resource falls within one of these categories:

(1) the wildlife resource is required to be tagged in this state;

(2) the number of wildlife resources possessed exceeds the possession limit established by this state; or

(3) the minimum and maximum size limits of the wildlife resource do not comply to those limits established by this state.

(c) A separate verification document must be completed for each species. The verification document must be legible and include the following information:

(1) out-of-state license number or license number from country where the wildlife resource was taken;

(2) number and the species name of wildlife resource possessed;

(3) location where wildlife resource was taken (nearest town, county, parish, name of area such as landowner name, public hunting area name);

(4) signature, printed name, address, and telephone number of person verifying where wildlife resource was taken; and

(5) in lieu of the verification document, a tag or permit required by another state or country to be attached to the wildlife resource is sufficient if it contains the information required in this section.

#### §65.9. Open Seasons: General Rules.

(a) Open seasons are given by their opening and closing dates, and include all days between the opening and closing dates.

(b) There is no open season on game animals or game birds on state game preserves, statutory wildlife sanctuaries, United States wildlife refuges, and on public roads and highways, or rights-of-way of such public roads and highways, and in the state-owned riverbeds in Dimmit, Uvalde, and Zavala Counties, including but not limited to, the Nueces and Frio Rivers.

(c) There shall be an open season on fish, game animals, and game birds on national wildlife refuges as may be provided by the state and federal laws, or rules and regulations.

(d) Seasons are closed during the hours between 1/2 hour after sunset and 1/2 hour before sunrise, except on fish.

(e) It is unlawful to take, attempt to take, or possess any of the wildlife resources except during the open season as provided in these sections.

(f) In counties where only bearded turkey (gobblers or bearded hens) are legal, the beard shall remain on the turkey until it reaches its final destination and is fully processed.

(g) It is unlawful for a person who kills a deer, to fail to keep the head of the deer with the carcass or part of the carcass until it reaches the final destination. In lieu of the head, the person who killed the deer may obtain a receipt from a taxidermist for the head, or a statement from the landowner or the landowner's authorized agent containing the following information:

(1) name of person who killed the deer;

(2) date the deer was killed; and

(3) whether the deer was antlered or antlerless.

(h) No antlerless deer permit will be required to possess an antlerless deer taken with longbow and arrow during the archery only open season.

(i) Every game bird or game animal wounded by hunting and reduced to possession by the hunter must be killed immediately and become a part of the daily bag limit.

(j) Each game bird, game animal, and fish taken or possessed in violation of these sections shall constitute a separate offense (Texas Parks and Wildlife Code, §61.901(a)).

(k) The taking or shooting of turkey from a roost is unlawful.

(l) It is unlawful for a person who kills an antelope to remove all evidence of sex, to possess an antelope or any part of an antelope without the unskinned head, the antelope permit, or a receipt from a taxidermist for the head accompanying the antelope or parts of the antelope until the antelope has been delivered to its final destination and is fully processed.

(m) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the carcass or a part of a carcass is tagged with a hunter's document by the person who killed or caught the wildlife resource. The hunter's document shall accompany the carcass or a part of the carcass until reaching final destination and must contain the following information:

(1) the name and address of the person who killed or caught the resource;

(2) the name of the person receiving the resource;

(3) description of the resource (number and type of species or parts);

(4) date resource was killed or caught; and

(5) location of where the resource was killed or caught (name of ranch, area, lake, bay or stream and county). It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possess a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged.

§65.11. Means and Methods. It is unlawful to hunt any of the wildlife resources of this state, except by the means and methods authorized by this section: §65.13 of this title (relating to Firearms); §65.15 of this title (relating to Archery); §65.17 of this title (relating to Hunting from Vehicle); §65.19 of this title (relating to Hunting Deer with Dogs); §65.21 of this title (relating to Falconry); §65.21 of this title (relating to Calling Devices); and §65.25 of this title (relating to Nuisance Squirrels).

**§65.13. Firearms.**

(a) It is lawful to shoot game animals and game birds with a rifle, shotgun, or other legal firearm including muzzleloading weapons, except it is unlawful to shoot:

- (1) prairie chickens with a rifle;
- (2) migratory game birds with any firearm other than a shotgun; and
- (3) turkey gobblers during spring gobbler seasons in Angelina, Houston, Jasper, Newton, Polk, Trinity, and Tyler Counties with any firearm other than a shotgun.

(b) It is unlawful to use rimfire ammunition, jet gun, or rocket gun in taking or shooting, or attempting to take or shoot, deer, elk, antelope, desert bighorn sheep, or aoudad sheep in Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher Counties.

(c) It is unlawful to hunt deer or turkey with a firearm or possess a firearm while hunting deer or turkey with archery equipment during the archery season.

(d) Subsection (c) of this section does not prohibit the possession of a shotgun on the person of the hunter, in a hunting camp, or in an automobile if:

- (1) the shotgun is not used for the taking or assisting in the taking of deer or turkey; and
- (2) the person possesses on his person or in the hunting camp or automobile no shotgun shells having shot larger in size than number four shot.

(e) It is unlawful to hunt game animals or game birds with automatic or fully automatic firearm or any firearm equipped with a silencer or sound suppressing device.

**§65.15. Archery.**

(a) It is lawful to hunt all game birds and game animals during open seasons with a bow and arrow only if the arrow is not poisoned, drugged, or explosive.

(b) While hunting turkey and all game animals, other than squirrels:

- (1) the bow must have a minimum peak draw weight of 40 pounds; and
- (2) the arrow must be equipped with a broadhead hunting point at least 7/8-inch in width upon impact, with a minimum of two cutting edges. The width must be demonstrable.

(c) Except as provided in subsections (d) and (e) of this section it is unlawful to use a crossbow.

(d) Persons having an upper limb handicap may use a crossbow to hunt deer

and turkey during the Archery Only Open Season, provided:

- (1) no telescopic sight is attached to the crossbow;
- (2) the crossbow has a minimum of 125 pounds of pull;
- (3) the crossbow has a mechanical safety;
- (4) the crossbow stock is not less than 25 inches in length; and
- (5) the bolt conforms with subsections (a) and (b)(2) of this section.

(e) Upper limb handicapped person means a person that has a permanent loss of the use of fingers, hand or arm in a manner that renders the person incapable of using a longbow, compound bow or recurved bow. While hunting deer and turkey with a crossbow persons handicapped in this manner must have in their immediate possession a physician's statement certifying the extent of the disability.

**§65.17. Hunting from Vehicle.**

(a) Regulations concerning hunting from vehicles are prescribed by the Texas Parks and Wildlife Code, §62. 003.

(b) It is unlawful to hunt pheasant with the aid of a cable, chain, rope, or other device connected between moving objects.

**§65.19. Hunting Deer with Dogs.**

(a) It is unlawful to use a dog or dogs in hunting, pursuing, or taking deer in all counties.

(b) It is lawful to use not more than two dogs in trailing a wounded deer in all counties, except in Angelina, Bowie, Camp, Fannin, Franklin, Hardin, Harris, Harrison, Houston, Hunt, Jasper, Jefferson, Lamar, Liberty, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Red River, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Titus, Trinity, Tyler, Walker, Washington, and Wood Counties, in which dogs may not be used to trail wounded deer.

**§65.21. Falconry.**

(a) It is lawful to hunt and take any game bird (except Attwater's prairie chickens and migratory game birds) or game animal by means of falconry, but the hunting or taking is limited to persons holding valid permits issued by the department.

(b) It is lawful to take game bird wildlife resources during the period beginning September 1 through March 1 of each year. Game animal wildlife resources may be taken only during the regular open seasons as provided.

(c) The daily bag limit for game bird wildlife resources is one, either sex, per raptor and the possession limit is two,

either sex, per raptor. The daily bag and possession limits for game animal wildlife resources is as provided under the regular seasons, bag, and possession limits for these resources.

(d) No person may possess a firearm or longbow and arrow or be accompanied by a person possessing a firearm or longbow and arrow while hunting by means of falconry.

**§65.23. Calling Devices.** It is unlawful to use recorded or electrically amplified calling devices to attract game animals and game birds.

**§65.25. Nuisance Squirrels.**

(a) Squirrels causing damage to personal property may be live trapped, transported and released by the landowner or his agent, if local ordinances prohibit the use of the means and methods provided by §65.11 of this title (relating to Means and Methods).

(b) A permit, issued by the department, must be obtained by the landowner or his agent prior to trapping operations.

(c) The permit is valid for 30 days from the date of issuance.

(d) A report, listing number captured and released, date and location of capture, and date and location of release must be submitted to the department not later than 10 days following the expiration date of the permit.

(e) Squirrels may not be released on property without the landowner's permission.

(f) Personnel of the Texas Animal Damage Control Program (Animal Plant Health Inspection Service—United States Department of Agriculture) may take squirrels without a permit in those areas specified by subsection (a) of this section in the fulfillment of their responsibility mandated by state laws. Squirrels taken pursuant to subsection (f) of this section must be accounted for in a report filed with the department by January 31 following the year of handling.

(g) Each device must be imprinted or tagged with owner's name, street address, city, telephone number, and the date it was set out.

**§65.27. Permits.**

(a) No person may hunt antlerless mule deer, pronghorn antelope, elk, or antlerless white-tailed deer in areas where permits are prescribed unless he first procures a valid permit issued by the landowner.

(b) It is unlawful to use an antlerless mule deer, antelope, elk, or

antlerless white-tailed deer permit on more than one antlerless mule-deer, antelope, elk, or antlerless white-tailed deer.

(c) No permit is required to hunt antlerless white-tailed deer on the Aransas National Wildlife Refuge in Aransas County, Laguna Atascosa National Wildlife Refuge in Cameron County, and Hagerman National Wildlife Refuge in Grayson County.

(d) No permit is valid unless it has been issued, used, and possessed strictly in accordance with this section: §65.29 of this title (relating to Antelope Permits); §65.31 of this title (relating to Antlerless Mule Deer and White-tailed Deer Permits); and §65.33 of this title (relating to Elk Permits).

#### §65.29. Antelope Permits.

(a) The department shall designate the number of antelope to be harvested from a given tract of land, and shall issue a like number of permits to the owner or authorized agent of the tract.

(b) No person may hunt antelope unless he is carrying on his person a permit duly issued and signed by the landowner or his agent.

(c) It is unlawful to possess an antelope which does not have attached to it an antelope permit on which appear:

- (1) the date of kill;
- (2) the hunter's name; and

(3) the signature of the owner or agent of the tract on which the antelope was killed.

#### §65.31. Antlerless Mule Deer and White-tailed Deer Permits.

(a) In all counties where antlerless mule deer or white-tailed deer are to be harvested, the department shall issue antlerless mule deer or white-tailed deer hunting permits, except where subsections (h) and (i) of this section apply, for designated tracts of land only to the landowners or their agents only after the owners or agents have applied in writing for the exact number of permits to be used on the designated tracts.

(b) It is unlawful to falsify ownership of land or amount of acreage owned or leased when applying for antlerless mule deer or white-tailed deer permits.

(c) It is unlawful for a landowner or agent to issue an antlerless mule deer or white-tailed deer hunting permit to a hunter to hunt on a tract of land other than the designated tract for which the permit was issued.

(d) The owners or agents shall then issue permits to individual hunters before the hunter begins his hunt on the designated tracts.

(e) It is unlawful for a person to possess an antlerless mule deer or white-tailed deer, unless the person has been issued an antlerless mule deer or white-tailed deer hunting permit on which appear:

- (1) the date of kill;
- (2) the hunter's name; and
- (3) the signature of the owner or agent on whose tract the deer was killed.

(f) It is unlawful for a hunter to use an antlerless mule deer or white-tailed deer hunting permit on a tract of land other than the designated tract for which the permit was issued.

(g) The permit shall be attached to each antlerless mule deer or white-tailed deer taken, and shall remain attached until the deer has been fully processed.

(h) No antlerless mule deer or white-tailed deer permit is required for a deer legally killed with longbow and arrow during the archery only open season (§65.40(2) and (4) of this title (relating to Deer)), when bag limits are designated as either sex.

(i) No antlerless mule deer or white-tailed deer permit is required for deer legally taken during white-tailed deer and mule deer general open seasons (§65.40(1) and (3) of this title (relating to Deer)), when regulations provide that antlerless mule deer or white-tailed deer may be taken without an antlerless deer permit.

#### §65.33. Elk Permits.

(a) The department shall designate the number of elk to be harvested from a tract of land in Brewster, Culberson, Dallam, Deaf Smith, El Paso, Hartley, Hudspeth, Jeff Davis, Moore, Oldham, Pecos, Potter, Presidio, Reeves, and Terrell Counties and shall issue a like number of permits to the owner or authorized agent of such tract.

(b) No person may hunt elk unless he is carrying on his person a permit duly issued and signed by the landowner or his agent.

(c) It is unlawful to possess an elk which does not have attached to it an elk permit on which appear:

- (1) the date of kill;
- (2) the hunter's name; and
- (3) the signature of the owner or agent of the tract on which the elk was killed.

§65.36. *Open Seasons and Bag Limits for Game Animals.* It is unlawful to hunt a game animal at any time other than during the open seasons provided in this section §65.38; of this title (relating to Antelope: Open Seasons and Bag Limits) §65.40; of this title (relating to Deer) §65.42; of this

title (relating to Javelina: Open Seasons and Bag Limits) §65.44; of this title (relating to Squirrel: Open Seasons, Bag, and Possession Limits) §65.46; of this title (relating to Desert Bighorn Sheep) §65.48; of this title (relating to Elk: Open Seasons and Bag Limits) §65.50; of this title (relating to Aoudad Sheep: Open Seasons and Bag Limits) or to take more than the daily bag limits, or to have in possession a game animal taken at any time other than during the open season.

§65.38. *Antelope: Open Seasons and Bag Limits.* In all counties, there is an open season for antelope for nine consecutive days beginning the Saturday nearest October 1, and the bag limit is one antelope per season by permit only.

§65.40. *Deer: White-tailed and Mule Deer.* No person may take more than the aggregate total of five deer per season; of which no more than two may be mule deer, only one of which may be a buck mule deer; no more than two white-tailed buck deer, or no more than five antlerless deer, both species combined.

(1) White-tailed deer: general open seasons, bag, and possession limits shall be as follows.

(A) In Angelina (except on Angelina National Forest and Corps of Engineers lands), Bandera, Bell, Bexar, Blanco, Bosque, Bowie, Brewster, Brown, Burnet, Calhoun, Cass, Cherokee, Coke, Coleman, Comal, Concho, Coryell, Crockett, Culberson, Edwards, Gillespie, Glasscock, Goliad, Hamilton, Hardin, Harrison, Hays, Houston (East of State Highway 19), Irion, Jackson, Jasper (except on Angelina National Forest and Corps of Engineers lands), Jeff Davis, Kendall, Kerr, Kimble, Kinney (only north of U.S. Highway 90), Lampasas, Liberty, Llano, McCulloch, Marion, Mason, Matagorda, Medina (only north of U.S. Highway 90), Menard, Mills, Mitchell, Montgomery (except on Sam Houston National Forest), Nacogdoches (except on Angelina National Forest and Corps of Engineers lands), Newton (except on Sabine National Forest and Sabine River Authority lands), Nolan, Panola, Pecos, Polk, Presidio, Reagan, Real, Reeves, Runnels, Rusk, Sabine (except on Sabine National Forest, Corps of Engineers and Sabine River Authority lands), San Augustine (except on Angelina and Sabine National Forests and Corps of Engineers lands), San Jacinto (except on Sam Houston National Forest), San Saba, Schleicher, Shelby (except on Sabine National Forest and Sabine River Authority lands), Sterling, Sutton, Terrell, Tom Green, Travis, Trinity (except on Davy Crockett National Forest), Tyler, Uvalde (only north of U.S. Highway 90), Val Verde, Victoria, Walker (except on Sam Houston National Forest), Wharton, and Williamson Counties, there is an open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Bag limit: Four deer, no more than two bucks.

(iii) Antlerless white-tailed deer may be taken without an antlerless deer permit required by §65.27 of this title (relating to Permits) and §65.31 of this title (relating to Antlerless Mule Deer and White-tailed Deer Permits).

(iv) Special season: In Angelina (except on Angelina National Forest and Corps of Engineers lands), Houston (only east of State Highway 19 except on the Davy Crockett National Forest), Nacogdoches south of State Highway 7 (except on Angelina National Forest and Corps of Engineers lands), Polk, Trinity (except on Davy Crockett National Forest) and Walker (except on Sam Houston National Forest) Counties, there is a special early antlerless only season October 20-28, 1990. During the period when the archery only season and this special season are concurrent, no person may possess both firearms and archery equipment while hunting. The bag limit is four antlerless white-tailed deer.

(B) In Angelina (only on Angelina National Forest and Corps of Engineers lands), Houston (only on Davy Crockett National Forest), Jasper (only on Angelina National Forest and Corps of Engineers lands), Montgomery (only on Sam Houston National Forest), Nacogdoches (only on Angelina National Forest and Corps of Engineers lands), Newton (only on Sabine National Forest and Sabine River Authority lands), Sabine (only on Sabine National Forest, Corps of Engineers, and Sabine River Authority lands), San Augustine (only on Angelina and Sabine National Forests and Corps of Engineers lands), San Jacinto (only on Sam Houston National Forest), Shelby (only on Sabine National Forest and Sabine River Authority lands), Trinity (only on Davy Crockett National Forest), and Walker (only on Sam Houston National Forest) Counties, there is an open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Bag limit: Four white-tailed deer, no more than two bucks, antlerless by permit only.

(C) In Aransas, Atascosa, Bee, Brooks, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kennedy, Kinney (only south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina (only south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (only south of U.S. Highway 90), Webb, Willacy, Zapata, and Zavala Counties, there is an open season for white-tailed deer.

(i) Open season: Second Saturday in November through the second Sunday in January.

(ii) Bag limit: Four white-tailed deer, no more than two bucks.

(iii) Antlerless white-tailed deer may be taken without an antlerless deer permit required by §65.27 of this title (relating to Permits) and §65.31 of this title (relating to Antlerless Mule Deer and White-tailed Deer Permits).

(iv) Special (South Texas) late season: In the counties listed in this subparagraph there is a special late antlerless only white-tailed deer season.

(I) Open season: January 19-February 3, 1991.

(II) Bag limit: Four antlerless white-tailed deer only. Antlerless white-tailed deer may be taken without an antlerless deer permit in compliance with clause (iii) of this subparagraph. The bag limit is not in addition to the general or archery only season bag limits.

(D) No person may take or possess more than one whitetailed buck deer per season from counties, in the aggregate, listed within this subparagraph.

(i) In Anderson, Archer, Armstrong, Baylor, Borden, Brazos, Briscoe, Bureson, Camp, Carson, Childress, Clay, Collingsworth, Cooke, Cottle, Crane, Crosby, Delta, Denton, Dickens, Donley, Ector, Ellis, Falls, Fannin, Fisher, Floyd, Foard, Franklin, Freestone, Garza, Gray, Gregg, Grimes, Hall, Hardeman, Haskell, Hemphill, Hill, Hopkins, Houston (west of State Highway 19), Howard, Hunt, Hutchinson, Jack, Johnson, Jones, Kent, King, Knox, Lamar, Leon, Limestone, Lipscomb, Loving, Madison, McLennan, Midland, Milam, Montague, Motley, Navarro, Ochiltree, Parker, Rains, Randall, Red River, Roberts, Robertson, Scurry, Smith, Stonewall, Swisher, Tarrant, Titus, Upshur, Upton, Van Zandt, Ward, Wheeler, Wichita, Wilbarger, Wise, Wood, and Young Counties, there is an open season for white-tailed deer.

(I) Open season: First Saturday in November through the first Sunday in January.

(II) Bag limit: Three white-tailed deer, no more than one buck and no more than two antlerless deer, antlerless by permit only.

(ii) In Brazoria, Callahan, Chambers, Comanche, Eastland, Erath, Fort Bend, Grayson (only on Hagerman National Wildlife Refuge), Harris, Hood, Jefferson, Morris, Orange, Palo Pinto, Shackelford, Somervell, Stephens,

Taylor, and Throckmorton Counties, there is an open season for white-tailed deer.

(I) Open Season: First Saturday in November through the first Sunday in January

(II) Bag limit: Three white-tailed deer, no more than one buck and no more than two antlerless deer.

(III) Antlerless white-tailed deer may be taken without an antlerless deer permit required by §65.27 of this title (relating to Permits) and §65.31 of this title (relating to Antlerless Mule Deer and White-tailed Deer Permits).

(iii) In Hartley, Moore, Oldham, and Potter Counties, there is an open season for white-tailed deer.

(I) Open Season: Saturday before Thanksgiving for 16 consecutive days.

(II) Bag limit: Three white-tailed deer, no more than one buck and no more than two antlerless deer, antlerless by permit only.

(E) In Colorado (only in that portion of the county that lies south and west of the Colorado River), DeWitt, Gonzales, Guadalupe (south of IH10 and east of State Highway 123), Karnes, Lavaca (south of U.S. Highway 90A and east of U.S. Highway 77), and Wilson Counties, there is an open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Bag limit: Three white-tailed deer, no more than one buck and no more than two antlerless deer.

(iii) Antlerless deer may be taken only during the first nine days and the last nine days of the general season. Antlerless deer may be taken without an antlerless deer permit required by §65.27 of this title (relating to Permits) and §65.31 of this title (relating to Antlerless Mule Deer and White-tailed Deer Permits).

(F) In Austin, Bastrop, Caldwell, Colorado (only in that portion of the county that lies north and east of the Colorado River), Fayette, Guadalupe (north of IH10 and west of State Highway 123), Lavaca (north of U.S. Highway 90A and west of U.S. Highway 77), Lee, Waller, and Washington Counties, there is an open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.



(ii) Bag limit: Three white-tailed deer, no more than one buck and no more than two antlerless deer.

(iii) Antlerless deer may be taken only during the first two days and the last two days of the general season. Antlerless deer may be taken without an antlerless deer permit required by §65.27 of this title (relating to permits) and §65.31 of this title (relating to Antlerless Mule Deer and White-tailed Deer Permits).

(G) In Henderson County, there is an open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Bag limit: Four white-tailed deer, no more than two bucks.

(iii) Special Requirement: In that portion of Henderson County bounded on the north by the county line, on the east by U.S. Highway 175 and Tin Can Alley Road, on the south by State Highway 31, and on the west by State Highway 274, hunting, shooting, or taking of deer is restricted to shotguns with buckshot or longbow and arrows, and other game animals or game birds may be taken only with shotgun or longbow and arrows.

(iv) Antlerless deer may be taken without an antlerless deer permit required by §65.27 of this title (relating to Permits) and §65.31 of this title (relating to Antlerless Mule Deer and White-tailed Deer Permits).

(H) In Andrews, Bailey, Castro, Cochran, Collin, Dallam, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Grayson (except Hagerman National Wildlife Refuge), Hale, Hansford, Hockley, Hudspeth, Kaufman, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Sherman, Terry, Winkler, and Yoakum Counties, there is no general open season for white-tailed deer.

(2) White-tailed deer: archery only open seasons, bag, and possession limits shall be as follows.

(A) In Angelina, Aransas, Atascosa, Bandera, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brewster, Brooks, Brown, Burnet, Calhoun, Cameron, Cass, Cherokee, Coke, Coleman, Conal, Concho, Coryell, Crockett, Culberson, Dimmit, Duval, Edwards, Frio, Gillespie, Glasscock, Goliad, Hamilton, Hardin, Harrison, Hays, Henderson, Hidalgo, Houston (east of State Highway 19), Irion, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Kendall, Kennedy, Kerr, Kimble, Kinney, Kleberg, Lampasas, LaSalle, Liberty, Live Oak, Llano, McCulloch, McMullen, Marion, Mason, Matagorda, Maverick, Medina, Menard,

Mills, Mitchell, Montgomery, Nacogdoches, Newton, Nolan, Nueces, Panola, Pecos, Polk, Presidio, Reagan, Real, Reeves, Refugio, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Shelby, Starr, Sterling, Sutton, Terrell, Tom Green, Travis, Trinity, Tyler, Uvalde, Val Verde, Victoria, Walker, Webb, Wharton, Willacy, Williamson, Zapata, and Zavala Counties, there is an open season during which white-tailed deer may be taken only with longbow and arrows.

(i) Open season: October 1-31.

(ii) Bag limit: Four white-tailed deer, either sex, no more than two bucks.

(B) No person may take or possess more than one white-tailed buck deer per season from counties, in the aggregate, listed within this subparagraph.

(i) In Anderson, Austin, Borden, Brazoria, Brazos, Burleson, Callahan, Camp, Chambers, Colorado, Comanche, Delta, DeWitt, Eastland, Erath, Falls, Fayette, Fisher, Fort Bend, Franklin, Freestone, Gonzales, Gray, Grayson (only on the Hagerman National Wildlife Refuge), Gregg, Grimes, Guadalupe, Harris, Haskell, Hemphill, Hood, Hopkins, Houston (west of State Highway 19), Howard, Hutchinson, Jack, Jefferson, Kames, Kent, Lamar, Lavaca, Lee, Leon, Limestone, McLennan, Madison, Milam, Morris, Navarro, Orange, Palo Pinto, Parker, Red River, Roberts, Robertson, Scurry, Shackelford, Smith, Somervell, Stephens, Taylor, Throckmorton, Titus, Upshur, Van Zandt, Wheeler, Wilson, Wise, Wood, and Young Counties, there is an open season during which white-tailed deer may be taken only with longbow and arrows.

(I) Open season: October 1-31.

(II) Bag limit: Three white-tailed deer, no more than one buck and no more than two antlerless deer.

(ii) In Archer, Armstrong, Bastrop, Baylor, Briscoe, Caldwell, Carson, Childress, Clay, Collingsworth, Cooke, Cottle, Crane, Crosby, Denton, Dickens, Donley, Ector, Ellis, Fannin, Floyd, Foard, Garza, Grayson (except on Hagerman National Wildlife Refuge), Hall, Hardeman, Hartley, Hill, Hunt, Johnson, Jones, Kaufman, King, Knox, Lipscomb, Loving, Midland, Montague, Moore, Motley, Ochiltree, Oldham, Potter, Rains, Randall, Stonewall, Swisher, Tarrant, Upton, Waller, Ward, Washington, Wichita, and Wilbarger Counties, there is an open season during which white-tailed buck deer may be taken only with longbow and arrows.

(I) Open season: October 1-31.

(II) Bag limit: One white-tailed buck deer.

(C) In Andrews, Bailey, Castro, Cochran, Collin, Dallam, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hansford, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Sherman, Terry, Winkler, and Yoakum Counties, there is no archery only open season for white-tailed deer.

(D) The archery only season bag limit is not in addition to the general open season bag limits for white-tailed deer.

(3) Mule deer: general open season, bag, and possession limit shall be as follows.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Garza, Gray, Hall, Hartley, Hemphill, Hutchinson, Kent, King, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher Counties, there is an open season for mule deer.

(i) Open season: Saturday before Thanksgiving for 16 consecutive days.

(ii) Bag limit: Two mule deer, no more than one buck, antlerless by permit only.

(B) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler Counties, there is an open season for mule deer.

(i) Open season: Last Saturday in November for 16 consecutive days.

(ii) Bag limit: Two mule deer, no more than one buck, antlerless by permit only.

(C) In all other counties, there is no general open season for mule deer.

(4) Mule deer: archery only open seasons, bag, and possession limits shall be as follows.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Cottle, Crane, Crockett, Crosby, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Garza, Gray, Hall, Hartley, Hemphill, Hutchinson, Jeff Davis, Kent, King, Loving, Midland, Moore, Motley,



Ochiltree, Oldham, Potter, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler Counties, there is an open season during which mule deer may be taken only with longbow and arrows.

(i) Open season: October 1-31.

(ii) Bag limit: One buck mule deer.

(B) In Brewster, Culberson, Hudspeth, Pecos, Presidio, and Terrell Counties, there is an open season during which mule deer may be taken only with longbow and arrows.

(i) Open season: October 1-31.

(ii) Bag limit: Two mule deer, either sex, no more than one buck.

(C) In all other counties, there is no archery only open season for mule deer.

(D) The archery only season bag limit is not in addition to the general open season bag limits for mule deer.

(5) White-tailed Deer: national wildlife refuges. Hunting season dates may further be restricted in compliance with regulations promulgated by the United States Fish and Wildlife Service and published in the Federal Register.

(A) On the Aransas National Wildlife Refuge in Aransas County a metal box-car type seal issued by the Parks and Wildlife Department must be attached to the deer carcass at the Aransas National Wildlife Refuge's deer checking station.

(B) On the Laguna Atascosa National Wildlife Refuge in Cameron County, a metal box-car type seal issued by the Parks and Wildlife Department must be attached to the deer carcass at the Laguna Atascosa National Wildlife Refuge's deer checking station.

(C) On the Hagerman National Wildlife Refuge in Grayson County, a metal box-car type seal issued by the Parks and Wildlife Department must be attached to the white-tailed deer carcass at the Hagerman National Wildlife Refuge's deer checking station.

**§65.42. Javelina: Open Seasons and Bag Limits.**

(a) In Andrews, Blanco, Caldwell, Calhoun, Coke, Comal, Concho, Crane, DeWitt, Ector, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Hays, Howard, Irion, Llano, Loving, McCulloch,

Martin, Mason, Midland, Mitchell, Nolan, Reagan, Refugio, Runnels, San Saba, Sterling, Taylor, Tom Green, Upton, Victoria, Ward, and Winkler Counties, there is an open season on javelina.

(1) Open season: First Saturday in October through the last Sunday in February.

(2) Bag limit: Two javelina per season.

(3) Possession limit: Two javelina.

(b) In Aransas, Atascosa, Bandera, Bee, Bexar, Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Menard, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Schleicher, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Wilson, Zapata, and Zavala Counties, there is no closed season on javelina.

(1) Bag limit: Two javelina per season.

(2) Possession limit: Two javelina.

(c) In all other counties, there is no open season for javelina.

**§65.44. Squirrel: Open Seasons, Bag, and Possession Limits.**

(a) In Austin, Brazos, Burleson, Collin, Colorado, Dallas, Ellis, Falls, Fayette, Grayson, Grimes, Jackson, Kaufman, Lavaca, Lee, Madison, Matagorda, Milam, Rockwall, Waller, Washington, and Wharton Counties, there is no closed season for squirrel.

(1) Bag limit: 10 squirrels per day.

(2) Possession limit: 20 squirrels.

(b) In Anderson, Angelina, Bowie, Brazoria, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Fort Bend, Franklin, Freestone, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Lamar, Leon, Liberty, Limestone, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood Counties, there is an open season for squirrel.

(1) Open season: May 1 - May 31 and October 1 - January 15.

(2) Bag limit: 10 squirrels per day.

(3) Possession limit: 20 squirrels.

(c) In Andrews, Bailey, Borden, Brewster, Briscoe, Carson, Castro, Cochran, Crane, Culberson, Dallam, Dawson, Deaf Smith, Ector, El Paso, Floyd, Gaines, Glasscock, Hale, Hansford, Hartley, Hockley, Howard, Hudspeth, Hutchinson, Jeff Davis, Lamb, Loving, Lubbock, Lynn, Martin, Midland, Moore, Oldham, Parmer, Potter, Presidio, Reagan, Reeves, Sherman, Swisher, Terry, Upton, Ward, Winkler, and Yoakum Counties, there is no open season on squirrel.

(d) In all other counties, there is no closed season, and no bag limit on squirrels.

**§65.46. Desert Bighorn Sheep: Open Seasons and Bag Limits.** The season on desert bighorn sheep is closed in all counties.

**§65.48. Elk: Open Seasons and Bag Limits.** Elk may be taken in Brewster, Culberson, Dallam, Deaf Smith, El Paso, Hartley, Hudspeth, Jeff Davis, Moore, Oldham, Pecos, Potter, Presidio, Reeves, and Terrell Counties, by permit only. There is no closed season on elk and the bag limit is one.

**§65.50. Aoudad Sheep: Open Seasons and Bag Limits.** In Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher Counties, there is an open season for aoudad sheep.

(1) Open season: First Saturday in November through the third Sunday in January.

(2) Bag limit: One aoudad sheep.

(3) Possession limit: One aoudad sheep.

**§65.52. Game Birds: Open Seasons and Bag Limits.** It is unlawful to hunt a game bird at any time other than during the open seasons provided in this section; §65.54 of this title (relating to Prairie Chicken: Open Seasons, Bag, and Possession Limits); §65.60 of this title (relating to Quail: Open Seasons, Bag, and Possession Limits); §65.62 of this title (relating to Turkey); and §65.64 of this title (relating to Chachalacas); and §65.66 of this title (relating to Migratory Game Birds), or to take more than the daily bag limits, or to have in possession a game bird taken at any time other than during the open seasons.

**§65.54. Prairie Chicken: Open Seasons, Bag and Possession Limits.**

(a) In Cochran, Hemphill, Hockley, Lipscomb, Ochiltree, Terry, Wheeler, and Yoakum Counties, there is an open season on prairie chicken.

(1) Open season: Third Saturday in October for two consecutive days.

(2) Bag limit: Two prairie chickens per day.

(3) Possession limit: Four prairie chickens after the first day.

(4) Special requirement: A permit, issued free of charge, must be possessed by any person hunting prairie chickens during the open season. Permits are issued upon request with no limitation on the number of permits that may be issued.

(b) In all other counties, there is no open season on prairie chicken.

*§65.56. Partridge: Open Seasons and Bag Limits.* The season on partridge is closed in all counties.

*§65.58. Pheasant: Open Seasons, Bag, and Possession Limits.*

(a) In Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger Counties, there is an open season for pheasants.

(1) Open season: Second Saturday of December for 16 consecutive days.

(2) Bag limit: Two cock pheasants per day.

(3) Possession limit: Four cock pheasants after the first day.

(4) Special requirement: One foot must remain attached to the pheasant carcass until it reaches its final destination.

(b) In Brazoria, Chambers, Fort Bend, Jefferson, Liberty, Matagorda, and Wharton Counties, there is an open season for pheasants.

(1) Open season: Saturday nearest November 1 through the last Sunday in February.

(2) Bag limit: Three cock pheasants per day.

(3) Possession limit: Six cock pheasants after the first day.

(4) Special requirement: One foot must remain attached to the pheasant carcass until it reaches its final destination.

(c) In all other counties, there is no open season on pheasants.

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

(a) In all counties there is an open season for quail beginning the Saturday nearest November 1 through the last Sunday in February.

(b) Bag limit: 15 quail per day.

(c) Possession limit: 45 quail in possession.

(d) There is no open season on Meams' quail commonly called fool's quail.

*§65.62. Turkey.*

(a) No person may take more than three turkeys per season.

(b) General open season, archery only season, and bag limit. In Archer, Bandera, Bell, Bexar, Blanco, Bosque, Burnet, Calhoun, Clay, Comal, Comanche, Coryell, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hood, Jack, Karnes, Kendall, Kerr, Kinney (only north of U.S. Highway 90), Lampasas, Llano, McLennan, Medina (only north of U.S. Highway 90), Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Uvalde (only north of U.S. Highway 90), Wichita, Williamson, Wilson, and Young Counties, there are open seasons for turkey.

(1) Open seasons.

(A) General open season: First Saturday in November through the first Sunday in January.

(B) Archery only season: First Saturday in October for 30 consecutive days during which turkeys may be taken only with longbow and arrows.

(2) Bag limit: Two turkeys, gobblers, or bearded hens.

(c) General (South Texas) open season, archery only season, and bag limit. In Aransas, Atascosa, Bee, Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney (only south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina (only south of U.S. Highway 90), Nueces, Refugio, San Patricio, Uvalde (only south of U.S. Highway 90), Webb, Willacy, and Zavala Counties, there are open seasons for turkey.

(1) Open seasons.

(A) General open season: Second Saturday in November through the second Sunday in January.

(B) Archery only season: First Saturday in October for 30 consecutive days during which turkeys may be taken only with long bow and arrows.

(2) Bag limit: Two turkeys, gobblers or bearded hens.

(d) Exceptions to general open season, archery only season, or bag limits.

(1) In Anderson, Andrews, Angelina, Austin, Bailey, Bastrop, Bowie, Brazoria, Brazos, Brewster, Burleson,

Caldwell, Cameron, Camp, Cass, Castro, Chambers, Cherokee, Cochran, Collin, Colorado, Cooke, Culberson, Dallam, <sup>and</sup> Dallas, Deaf Smith, Delta, Denton, DeWitt, Ellis, El Paso, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Gaines, Galveston, Grayson, Gregg, Grimes, Guadalupe, Hale, Hansford, Hardin, Harris, Harrison, Henderson, Hidalgo, Hill, Hockley, Hopkins, Houston, Hudspeth, Hunt, Jackson, Jasper, Jeff Davis, Jefferson, Johnson, Kaufman, Lamar, Lamb, Lavaca, Lee, Leon, Liberty, Limestone, Loving, Lubbock, Madison, Marion, Matagorda, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Parmer, Polk, Presidio, Rains, Red River, Reeves, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Sherman, Smith, Starr, Tarrant, Terry, Titus, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Winkler, Wise, Wood, Yoakum, and Zapata Counties, there is no general or archery only season on turkey.

(2) In Armstrong, Baylor, Borden, Briscoe, Brown, Callahan, Carson, Childress, Coke, Coleman, Collingworth, Concho, Cottle, Crane, Crockett, Crosby, Dawson, Dickens, Donley, Eastland, Ector, Edwards, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hardeman, Hartley, Haskell, Hemphill, Howard, Hutchinson, Irion, Jones, Kent, Kimble, King, Knox, Lipscomb, Lynn, McCulloch, Martin, Mason, Menard, Midland, Mills, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Pecos, Potter, Randall, Reagan, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Throckmorton, Tom Green, Upton, Val Verde, Ward, Wheeler, and Wilbarger Counties, there are open seasons for turkey.

(A) Open seasons.

(i) General open season: First Saturday in November through the first Sunday in January.

(ii) Archery only open season: First Saturday in October for 30 consecutive days during which turkeys may be taken only with longbow and arrows.

(B) Bag limit: Two turkeys, either sex.

(e) Spring turkey gobbler season.

(1) In Aransas, Archer, Armstrong, Atascosa, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burnet, Caldwell, Calhoun, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard,

Frio, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Guadalupe, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lampasas, LaSalle, Lavaca, Lipscomb, Live Oak, Llano, Lynn, McCulloch, McLennan, McMullen, Martin, Mason, Matagorda, Maverick, Medina, Menard, Midland, Mills, Milam, Mitchell, Montague, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Refugio, Roberts, Runnels, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Victoria, Ward, Webb, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Young, and Zavala Counties, there is a spring season on turkey gobblers.

(A) Spring season: First Saturday in April through the first Sunday in May.

(B) Bag limit: Two turkey gobblers.

(2) In Jasper, Newton, Polk, and Tyler Counties, there is a spring season on turkey gobblers.

(A) Spring season: First Saturday in April for 16 consecutive days only in northern Polk, northern Tyler, northern Jasper, and northern Newton Counties, that area lying within boundaries beginning at the Neches River bridge on U.S. Highway 59 in Polk County, thence southeasterly along the Neches River to the Angelina-Jasper County line, thence easterly along the Angelina-Jasper, San Augustine-Jasper, Sabine-Jasper, Sabine-Newton County Lines to the junction of the Sabine River, thence southerly along the Sabine River to the junction of State Highway 63, thence westerly along State Highway 63 to the junction of U.S. Highway 190 in Jasper, thence westerly along U.S. Highway 190 to the junction of F.M. Road 256 in Tyler County, thence northwesterly along F.M. Road 256 to Colmesneil, thence southeasterly along F.M. Road 256 to the junction of U.S. Highway 287, thence northwesterly along U.S. Highway 287 to the junction of U.S. Highway 59 in Corrigan, then northerly along U.S. Highway 59 to the Neches River bridge.

(B) Bag limit: One turkey gobbler.

(3) In Newton County, there is an additional area where one turkey gobbler may be taken during the spring season.

(A) Spring season: First Saturday in April for 16 consecutive days only in that area lying within boundaries beginning at the junction of Big Cow Creek and the Sabine River, thence southerly along the Sabine River to the junction of Big Cypress Creek, thence westerly along Big Cypress Creek to the junction of State Highway 87, thence northerly along State Highway 87 to the junction of F.M. Road 1416, thence easterly along F.M. Road 1416 to the junction with Big Cow Creek, thence southeasterly along Big Cow Creek to the junction of the Sabine River.

(B) Bag limit: One turkey gobbler.

(4) In Angelina, Houston, and Trinity Counties, there is a spring season on turkey gobblers.

(A) Spring season: First Saturday in April for 16 consecutive days only that area lying within boundaries beginning at the junction of State Highway 94 and FM Road 2501 in Trinity County, thence northerly on FM Road 2501 and U.S. Forest Service Road 511 to the junction of State Highway 7 in Houston County, thence easterly on State Highway 7 to the junction with FM Road 706 in Angelina County, thence south on FM Road 706 to the junction with State Highway 94, thence west on State Highway 94 to the junction with FM Road 2501 in Trinity County.

(B) Bag limit: One turkey gobbler.

(5) In Houston, Polk, and Trinity Counties, there is an additional area where one turkey gobbler may be taken during the spring season.

(A) Spring season: First Saturday in April for 16 consecutive days only in that area lying within boundaries beginning at the junction of U.S. Highway 287 and U.S. Highway 59 in Corrigan, thence southerly along U.S. Highway 59 to the junction of F.M. Road 350, thence westerly and southerly along F.M. Road 350 to the junction of F.M. Road 3152, thence southwestwardly along F.M. Road 3152 to the junction of U.S. Highway 190, thence westerly along U.S. Highway 190 to the junction of F.M. Road 356, thence northwesterly along F.M. Road 356 to the junction of State Highway 19 in Trinity, thence northerly to the junction of F.M. Road 1280 in Lovelady, thence easterly along F.M. 1280 to the junction of U.S. Highway 287, thence southeasterly along U.S. Highway 287 to the junction of U.S. Highway 59 in Corrigan.

(B) Bag limit: One turkey gobbler.

§65.64. *Chachalacas*. In Cameron, Hidalgo, Starr, and Willacy Counties, there is an open season for chachalacas.

(1) Open season: Saturday nearest November 1 through the last Sunday in February.

(2) Bag Limit: Five chachalacas per day.

(3) Possession limit: Ten chachalacas.

§65.66. *Migratory Game Birds*. The regulations for hunting migratory game birds are prescribed in the migratory game bird rules issued under the authority of Texas Parks and Wildlife Code, Chapter 64, Subchapter C.

§65.68. *Fur-bearing Animals*. Fur-bearing animal regulations are prescribed under the authority of Texas Parks and Wildlife Code, Chapter 71.

§65.70. *Alligators*. Alligator regulations are prescribed under the authority of Texas Parks and Wildlife Code, Chapter 65.

§65.72. *Fish*.

(a) General rules.

(1) It is unlawful to take or attempt to take, or possess fish within a protected length limit, in greater numbers, by other means, or at any time or place, other than as permitted under these rules.

(2) It is unlawful for any person to use game fish or any part thereof as bait.

(3) It is unlawful for any person to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water that has the head or tail removed until such person has reached his final destination.

(4) Under these rules there are no public waters closed to the taking or retaining of fish, except that: at the Toledo Bend Reservoir Dam in Newton County, the area within 500 feet of the power plant water intake is closed to fishing from July 1 through September 30 of each year.

(5) These rules apply to fish caught in the Exclusive Economic Zone (EEZ) and landed in this state, under the authority of the Texas Parks and Wildlife Code, §47.019 (Federal Law also regulates fish managed under a Federal Fishery Management Plan).

(b) Bag, possession, and length limits.

(1) It is unlawful for any person while fishing on public waters to have in his possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters.

(2) The possession limit does not apply to fish stored at or in the possession of:

(A) a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or an invoice;

(B) a cold storage plant if the fish or container holding the fish are tagged

with the owner's name, address, numbers of fish by species, and the date placed in storage (Texas Parks and Wildlife Code, 62.029); or

(C) fish stored at a person's permanent residence for personal consumption.

(3) It is unlawful for the captain and/or crew of a vessel that is licensed or

required to be licensed as a commercial fish boat to possess on board or land billfish, except swordfish.

(4) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) Statewide daily bag, possession, and length limits shall be as follows:

Species	Daily Bag	Possession	Minimum Length (Inches)	Maximum Length (Inches)
Bass: largemouth, smallmouth, spotted, and Guadalupe bass, their hybrids, and subspecies.	5 (in aggregate)	10 (in aggregate)	14	No Limit
Bass, striped, its hybrids, and subspecies.	5 (in aggregate)	15 (in aggregate)	18	No limit
Bass, white and yellow bass.	25 (in aggregate)	50 (in aggregate)	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in aggregate)	50 (in aggregate)	9	No limit
Catfish, flathead.	5	10	9	No limit
Catfish, gafftopsail.	No limit	No limit	14	No limit
Cobia.	No limit	No limit	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in aggregate)	50 (in aggregate)	10	No limit
Drum, black.	5	10	14	30
Drum, red.	3	6	20	28
Flounder: all species, their hybrids, and subspecies.	20	40	12	No limit
Mackerel, king.	2	2	14	No limit
Mackerel, Spanish.	3	3	14	No limit

Species	Daily Bag	Possession	Minimum Length (Inches)	Maximum Length (Inches)
Marlin, blue.	No limit	No limit	114	No limit
Marlin, white.	No limit	No limit	81	No limit
Pompano, Florida.	No limit	No limit	9	No limit
Sailfish.	No limit	No limit	76	No limit
Seatrout, spotted.	10	20	15	No limit
Shark: all species, their hybrids, and subspecies.	5 (in aggregate)	5 (in aggregate)	No limit	No limit
Sheepshead.	5	10	12	No limit
Snapper, red.	No limit	No limit	13	No limit
Snook.	3	6	20	28
Tarpon.	1	1	48	No limit
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in aggregate)	10 (in aggregate)	No limit	No limit
Walleye.	5	10	16	No limit

(B) Exceptions to Statewide daily bag, possession, and length limits shall be as follows:

(i) for licensed chartered vessels the bag and possession limit is two king mackerel per person per trip for all persons on board, or three king mackerel

per angler per trip exclusive of captain and crew, whichever is greater;

(ii)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
Lakes Toledo Bend (Newton, Sabine and Shelby) and Caddo (Marion and Harrison).	10 (in aggregate)	12	
Lakes Fairfield (Freestone), Pinkston (Shelby), Joe Pool (Dallas, Ellis, and Tarrant), Bastrop (Bastrop), San Augustine City (San Augustine), Ray Roberts (Denton, Cooke, and Grayson), Calaveras (Bexar), O.H. Ivie (Coleman, Concho, and Runnels), and Raven (Walker).	3 (in aggregate)	18	
Lake Braunig (Bexar).	2 (in aggregate)	21	
Purtis Creek State Park Lake (Henderson and Van Zandt), Calliham State Park Lake (McMullen), and in all waters in the Lost Maples State Natural Area (Bandera).	0 (in aggregate)	No Limit	Catch and release only.
Lakes Fayette County (Fayette), Houston County (Houston), Nacogdoches (Nacogdoches), Fork (Wood, Rains and Hopkins), Monticello (Titus), and Gibbons Creek (Grimes).	3 (in aggregate)	14-21 Inch Slot Limit	It is unlawful to retain black bass between 14 and 21 inches in length. Black bass less than 14 inches or greater than 21 inches in length may be retained.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass, striped, its hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5 (in aggregate)	No Limit	No more than 2 over 30 inches in length may be retained each day.
Lake Texoma (Cooke and Grayson).	15 (in aggregate)	No Limit	No more than 1 over 20 inches in length may be retained each day. Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Bastrop (Bastrop) and in reservoirs lying totally within the boundaries of a state park.	5 (in aggregate)	14	
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in aggregate)	9	The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.



Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Catfish: flathead.	5	24	
Lake Texoma (Cooke and Grayson) and Lake Bastrop (Bastrop).			
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Colorado City (Mitchell), Fairfield (Freestone), Nasworthy (Tom Green), and Trading-house Creek (McClennan).	3	20	No maximum size limit

(iii) Bag and possession limits for black drum, sheepshead and flounder do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(c) Freshwater devices, means and methods.

(1) It is unlawful for any person to fish with more than 100 hooks on all devices combined.

(2) It is unlawful for any person to take, attempt to take, or possess fish caught by any device, means, or method other than as authorized in these rules.

(A) Pole and line (includes rod and reel). Game and nongame fish may be taken by pole and line, except that in the Guadalupe River in Comal County between the first concrete dam (weir) below the east-most State Highway 306 bridge and the Little Ponderosa bridge, freshwater trout may not be retained when taken by any method except fly fishing. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(B) Trotline. Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline. It is unlawful for any person to use a trotline:

(i) with a mainline length exceeding 600 feet.

(ii) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid only for 30 days after the date set out;

(iii) with the hook interval less than three horizontal feet;

(iv) with metallic stakes;

(v) with the main fishing line and attached hooks and stagings above the water's surface;

(vi) with more than 50 hooks;

(vii) in Gibbons Creek Reservoir in Grimes County, Bastrop Reservoir in Bastrop County, Fayette power project cooling pond in Fayette County, Pinkston Reservoir in Shelby County, or in reservoirs 500 acres or less lying totally within boundaries of a state park.

(C) Jugline. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful for any person to use a jugline in Bastrop Reservoir in Bastrop County.

(D) Throwline. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline. It is unlawful for any person to use a throwline in Bastrop Reservoir in Bastrop County.

(E) Shad trawl. Non-game fish only, to be used for bait only, may be taken with a shad trawl. It is unlawful for any person to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter. A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(F) Seine. Non-game fish only, to be used for bait only may be taken with a seine except that carp, buffalo, freshwater drum and tilapia may be taken for any purpose. It is unlawful for any person to use a seine:

(i) which exceeds 20 feet in length;

(ii) with mesh exceeding 1/2 inch square;

(iii) which is not manually operated.

(G) Dip net. It is unlawful for any person to use a dip net except:

(i) to aid in the landing of fish caught on other legal devices; or

(ii) to take non-game fish with a dip net not exceeding 210 square inches within the frame, a bag depth not exceeding four inches, or with mesh exceeding 1/8-inch square.

(H) Cast net. Non-game fish only, to be used for bait only, may be taken with a cast net except that carp, buffalo, freshwater drum, and tilapia may be taken for any purpose. It is unlawful for any person to use a cast net exceeding 14 feet in diameter.

(I) Minnow trap. Non-game fish only, to be used for bait only, may be taken with a minnow trap. It is unlawful for any person to use a minnow trap exceeding 24 inches in length or with a throat larger than one by three inches.

(J) Gig. Non-game fish only may be taken with a gig.

(K) Umbrella net. Non-game fish only, to be used for bait only, may be taken with an umbrella net. It is unlawful for any person to use an umbrella net with the area within the frame exceeding 16 square feet.

(L) Speargun and spear or bow and arrow. Non-game fish only may be taken with a speargun and spear or bow and arrow.

(M) Gaff. It is unlawful for any person to use a gaff except to aid in landing fish caught on other legal devices, means or methods. Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(N) Gill nets, trammel nets, and hoop nets.

(i) It is unlawful for any person to use gill nets, trammel nets, or hoop nets in the freshwaters of this state except that:

(I) non-game fish only may be taken in the following rivers and streams, exclusive of tributaries:

(-a-) the Angelina River from U.S. Highway 84 in Rusk County to the Texas Eastern Transmission Company pipeline above Sam Rayburn Reservoir;

(-b-) the Attoyac River (Bayou) from U.S. Highway 84 in Rusk County to Cottonham Crossing above Sam Rayburn Reservoir;

(-c-) the Brazos River from State Highway 7 in Falls County to IH 10 in Austin County;

(-d-) the Navasota River from State Highway 7 in Robertson County to its confluence with the Brazos River;

(-e-) the Neches River from State Highway 294 in Cherokee County to U.S. Highway 69 in Jasper County and from F.M. Road 1013 in Jasper County to IH 10 in Jefferson County;

(-f-) the Sabine River from Lake Tawakoni Dam to U.S. Highway 80 in Van Zandt County and from State Highway 63 in Newton County to Sabine Lake;

(-g-) the San Antonio River and Coletto Creek (exclusive of Coletto Creek Reservoir) in Goliad and Victoria Counties;

(-h-) the San Bernard River between Austin and Colorado Counties; and

(-i-) Yegua Creek from Somerville Dam to its confluence with the Brazos River;

(II) non-game fish only may be taken in all freshwaters of Dimmit, Gillespie, Liberty, and Zavala Counties and in all fresh waters of Jefferson and Orange Counties, except those eastward of State Highway 347 and southward of IH 10.

(ii) It is unlawful for any person:

(I) while using a gill net, trammel net or hoop net to have in his possession fish, other than those species permitted for that device.

(II) to use gill nets or trammel nets exceeding 1,800 feet in length, in any one operation;

(III) to use gill nets, trammel nets or hoop nets without valid gear tags attached within three feet of each end of the net;

(IV) to use gill nets or hoop nets with mesh less than three inches square;

(V) to use trammel nets with mesh on any wall less than three inches square.

(d) Saltwater devices, means, and methods.

(1) It is unlawful to take or attempt to take fish by any means and methods other than specifically allowed in this section.

(2) Only the following means and methods may be used for taking fish.

(A) Devices.

(i) Pole and line (includes rod and reel), artificial and natural baits, trotline with the main fishing line and attached hooks and stagings under the water's surface, sail line, spear gun and spear, bow and arrow, perch trap, and gig may be used for taking fish. It is unlawful to take game fish on any gear except pole and line or rod and reel, except that red drum and spotted seatrout may be taken by sail line. Cast nets not exceeding 14 feet in diameter and 20-foot minnow seines may be used for taking bait. Dip nets and gaffs may be used only in aiding to land fish caught on other legal devices except that gaffs may not be used to land fish below the minimum or above the maximum size limits. Snagging or jerking fish (see §65.6 of this title relating to Definitions) is illegal.

(ii) purse seine may be used only for taking menhaden from the waters of the Gulf of Mexico within the gulfward boundary lines of Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, and Willacy Counties from the coastline of the Gulf to the gulfward limit of the territorial seas from the third Monday in April through the Friday following the second Tuesday in October each year. The purse seine, not including the bag, shall not be less than three-fourths inch square mesh. Purse seine may not be used in any bay, river, pass, or tributary thereto, nor within one mile of any jetty or pass, nor within one-half mile offshore in the Gulf of Mexico.

(iii) Non-game fish taken incidental to legal shrimping operations may be retained, except that red drum and spotted seatrout may not be retained as provided under Texas Parks and Wildlife Code, §77.0191. The term "legal shrimping operations" is defined as the use of a legal trawl in places, at times, and in manners as authorized by the department. A person taking shrimp with a trawl may not retain a catch of finfish exceeding 50% of the total trawl catch by weight of aquatic products including shrimp on a shrimping vessel.

(iv) No person may use a shrimp trawl for the purpose of taking fish in any of the following waters of Galveston County at any time:

(I) Swan Lake;

(II) Moses Lake;

(III) Dollar Bay;

(IV) Clear Lake;

(V) Dickinson Bayou or Bay west of a line from Miller's Point to April Fool Point;

(VI) water lying northwest of a line from Kemah in Galveston County to Mesquite Knoll in Chambers County;

(VII) water of East Bay lying north and east of a line from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut where East Bay intersects with the north bank of the Intracoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which cut is between Elm Grove Point and Baffle Point, both points being on the north shore of Bolivar Peninsula; and

(VIII) water of West Bay lying south and west of the Galveston

Causeway (Interstate Highway 45), including all adjacent bays, streams, bayous, and canals.

(B) Nets and seines.

(i) It is unlawful for any person to use any net or seine except cast nets or 20-foot minnow seines for taking bait only in the coastal waters of this state.

(ii) Any area closed to the use of nets or seines prior to September 1, 1988, remains closed.

(iii) No person may retain or possess red drum or spotted seatrout caught in any net or seine.

(C) Trotlines.

(i) Throwlines and sail lines are types of trotlines and all trotline regulations apply to each type of trotline except where noted.

(ii) It is unlawful for any person to use a trotline in or on the waters of the Gulf of Mexico within the jurisdiction of this state.

(iii) No person may retain or possess red drum or spotted seatrout caught on a trotline other than a sail line.

(iv) Trotline (except sail line) ends shall be marked with yellow flagging attached to stakes or with a yellow floating buoy not less than six inches in height and six inches in width, or with a yellow plastic bottle of not less than one gallon size attached to end fixtures. All trotline floats must be yellow.

(v) Metallic stakes are prohibited under the authority of the Texas Parks and Wildlife Code, §66.206(b).

(vi) No trotline (except sail lines) shall exceed 600 feet in length.

(vii) No trotline or portions thereof shall be placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface.

(viii) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1 p.m. on Friday through 1 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause.

(ix) No person may use any bait other than natural bait on trotlines. Sail lines are excluded from the restrictions imposed by this clause.

(x) The minimum hook interval for trotlines (except sail lines) is three horizontal feet.

(xi) All trotlines, except sail lines, must be identified by gear tags.

(xii) All hooks used on trotlines shall be a circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause.

(xiii) It is unlawful to place a trotline in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(xiv) No person may use a trotline except sail lines within coastal waters during the period beginning Saturday of Memorial Day weekend and extending through Labor Day.

(xv) Sail lines.

(I) Line length shall not exceed 1,800 feet from the reel to the sail.

(II) The sail and most shoreward float must be a highly visible orange or red color.

(III) No float on the line may be more than 200 feet from the sail.

(IV) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(V) Reflectors of not less than two square inches shall be affixed to the sail and floats and be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(VI) There is no hook spacing requirement for sail lines.

(VII) No more than one sail line may be used per fisherman.

(VIII) Sail lines may not be used by the holder of a commercial fishing license.

(IX) Sail lines must be attended at all times the line is fishing.

(X) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(D) Perch traps.

(i) Perch traps may be used for taking only bait.

(ii) Perch traps may not exceed 18 cubic feet.

(iii) Perch traps must be marked with a white floating visible buoy not less than six inches in height and six inches in width, or with a white plastic bottle of not less than one gallon in size. The buoy must have a gear tag attached.

(e) Prohibited acts in all public waters.

(1) In addition to any prohibition or provision of these rules it is unlawful for any person to take or attempt to take fish by:

(A) snagging or jerking;

(B) the use of a hand-operated device held under water, other than a spear gun and spear;

(C) the use of yo-yos and other spring loaded reeling devices;

(D) grabbling;

(E) the use of a noodling pole;

(F) the use of explosives, poisons or other substances or things deleterious to fish as prohibited under the authority of the Texas Parks and Wildlife Code, §66.003;

(G) the use of any device that uses or produces electricity or sound to stun or kill fish;

(H) the use of airboats or jet driven devices to pursue and harass or harrass fish.

(2) It is unlawful for any person to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish. It is unlawful to have in possession while on or fishing in the public waters any device designed or adapted to receive a signal from a substance or device implanted or attached to a fish.

(3) It is unlawful for a person to catch or possess fish listed as exotic harmful or potentially harmful without a permit if the intestines of the fish are not removed.

**§65.78. Crabs.**

(a) Bag, Possession, and Size Limits.

<u>Species</u>	<u>Hard Shell</u>	<u>Claw</u>
Blue crab	5 inches	No Limit
Stone crab	No Retention	2-1/2 inches

(3) Blue crabs less than five inches in width shall be returned to the waters from which taken except that not more than 5.0% by number of undersized crabs may be possessed if placed in a separate container at the time of taking.

(4) Only one claw may be removed from a stone crab and the crab must be returned immediately to the waters where taken.

(5) No person may buy or sell a female crab that has its abdominal apron detached as prescribed in Texas Parks and Wildlife Code, §78.102.

(b) Seasons. There are no closed seasons for the taking of crabs, except as listed within this subsection.

(c) Places. There are no places closed for the taking of crabs in saltwater, except as listed within this subsection.

(d) Devices, Manners, and Methods.

(1) It is unlawful to take or attempt to take crabs caught by any means and method other than specifically allowed in this section.

(2) Crabs caught in the devices legally used for taking saltwater fish or shrimp and operated in places and at times when allowed under §65.72(d) of this title (relating to Saltwater Fish) and the Texas Parks and Wildlife Code, Chapter 77, may be retained.

(3) Crabs caught in crab traps, umbrella nets with the area within the frame not exceeding 16 square feet, and on crab lines may be retained.

(4) Crab trap restrictions.

(A) No person may fish more than 300 crab traps.

(B) No crab trap may be placed within 200 feet of a marked navigable channel in Aransas County or in Little Bay in Aransas County and the water area of Aransas Bay within one-half mile of the

line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island and including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(C) No person may possess, use, or place more than three crab traps in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County.

(D) Crab traps may not exceed 18 cubic feet.

(E) Crab traps may be used only in the coastal waters of the state.

(F) Each crab trap must be marked with an orange floating buoy not less than six inches in height and six inches in width or with an orange plastic bottle of not less than one gallon size.

(G) Each crab trap buoy must have a gear tag attached. Gear tags are valid only for 30 days after date set out.

**§65.82. Other Aquatic Life.**

(a) It is unlawful for a person to knowingly take, kill, or disturb sea turtles or sea turtle eggs in or from the waters of the State of Texas.

(b) There is no open season on porpoises, dolphins (mammals), and whales.

(c) Any other aquatic life not addressed in the rules may be taken only with the devices defined as lawful for taking fish, crabs, oysters, or shrimp in places and at times as provided by these rules and the Parks and Wildlife Code.

(1) It is unlawful to possess egg-bearing (sponge) crabs or stone crabs.

(2) Minimum size limits (measurements as defined in §65.6 of this title (relating to Definitions)) for possession of crabs are as follows.

**§65.91. Penalty for Violation.** The penalties for violation of this subchapter are prescribed by the Texas Parks and Wildlife Code.

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 16, 1990.

TRD-9003826

Boyd M. Johnson  
General Council  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: May 21, 1990

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

◆ ◆ ◆  
**Subchapter N. Early Season Migratory**

**• 31 TAC §65.313, §65.315**

The Texas Parks and Wildlife Commission proposes amendments to §65.313, and §65.315, concerning the early season for migratory game birds. The proposed amendments would add text concerning importation of migratory game birds, reinstate the nine-day September Teal season, and move six days from the end of the fall Mourning Dove season to the end of the January Mourning Dove season in the Central and South zones.

The commission is responsible for establishing seasons, bag limits, means, methods, and devices for taking and possessing migratory game birds. Regulations for hunting migratory game birds may be set by the state only within a framework established by the United States Fish and Wildlife Service. The general framework issued by the Fish and Wildlife Service allows states within major flyway systems to adjust seasons and bag limits to take into consideration their localized circumstances.

Although a September Teal season and a special White-winged Dove season (similar to last year) are currently proposed, these seasons could be closed or otherwise restricted by the United States Fish and Wildlife Service due to weather-related breeding habitat problems for these species.

The proposals for migratory species are based upon the most current data available. The seasons, bag limits, means, and methods are tentative and subject to modification. The proposed sections may be modified by Parks and Wildlife Commission action as a result of changes in migratory game bird populations as determined by annual surveys, public hearings held by the Parks and Wildlife Commission, actions by the United States Fish and Wildlife Service, and comments solicited from this proposal.

Robin Riechers, staff economist, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Pursuant to Texas Civil Statutes, Article 6252-13a, §4A, the department requested a local employment impact statement from the Texas Employment Commission. That agency indicated that the available evidence did not permit identification of any local economic impact.

Mr. Riechers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the taking of migratory wildlife resources consistent with their populations and the clarification of the migratory game bird rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Ronnie R. George, Program Leader, Migratory Shore and Upland Game Birds, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4778 or 1-(800)-792-1112, ext. 4778.

The amendments are proposed under the Texas Parks and Wildlife Code, Chapter 64, Subchapter C, which provides the commission with authority to regulate seasons, means, methods, and devices for taking and possessing migratory game bird wildlife resources.

*§65.313. Open Seasons, Shooting Hours, Bag and Possession Limits.*

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

(g) Every migratory game bird wounded by hunting and retrieved by the hunter shall be immediately killed and become a part of the daily bag limit.

(1) (No change.)

(2) Mourning doves.

(A) (No change.)

(B) Central zone: that portion of the state east of a line beginning at the junction of the Texas-Arkansas state line and Interstate Highway 30; thence southwest along Interstate Highway 30 to Interstate Highway 20 at Fort Worth; thence southwest along Interstate Highway 20 to Interstate Highway 10; thence west on Interstate Highway 10 to U.S. Highway 90 at

Van Horn; thence southeast along U.S. Highway 90 to Interstate Highway 10 at San Antonio; thence east along Interstate Highway 10 to the Texas-Louisiana state line.

(i) Dates: September 1-October 24 [30] and beginning on the first Saturday in January for 16 [10] consecutive days.

(ii)-(iii) (No change.)

(C) South zone: that portion of the state south and west of a line beginning at the International Bridge south of Fort Hancock; thence north along FM 1088 to State Highway 20; thence west along State Highway 20 to State Highway 148; thence north along State Highway 148 to Interstate Highway 10 at Fort Hancock; thence east along Interstate Highway 10 to U.S. Highway 90 at Van Horn; thence southeast along U.S. Highway 90 to Interstate Highway 10 at San Antonio; thence east along Interstate Highway 10 to the Texas-Louisiana state line.

(i) Dates: beginning on September 20, for 54 [60] consecutive days (50 [56] consecutive days in the special white-winged dove area) and beginning on the first Saturday in January, for 16 [10] consecutive days.

(ii)-(iii) (No change.)

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

(5) Teal ducks. (blue-winged, green-winged, and cinnamon). Statewide: [No open season.]

(A) dates: beginning on the third Saturday in September, for nine consecutive days;

(B) shooting hours: from sunrise to sunset;

(C) bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(6)-(7) (No change.)

*§65.315. Extended Falconry Season.*

(a) (No change.)

(b) It is lawful to take migratory game birds by means of falconry during the following prescribed open seasons.

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

(5) Teal ducks: beginning on the third Saturday in September, for nine consecutive days, from sunrise to sunset.

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

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

Issued in Austin, Texas on April 16, 1990.

TRD-9003828

Boyd Johnson  
General Counsel  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 389-4778 or 1-800-792-1112, ext. 4778

◆ ◆ ◆  
Subchapter U. Type II Wildlife Management Area-Public Hunting Lands

• 31 TAC §§65.701-65.707

The Texas Parks and Wildlife Commission proposes the repeal of §§65.701-65.707, concerning the Type II Wildlife Management Area-Public Hunting Lands Proclamation. Simultaneously with the proposed repeals, the commission is proposing new sections concerning the Type II Wildlife Management Area-Public Hunting Lands Proclamation. The proposed repeals will simplify and clarify the existing text.

Robin Riechers, staff economist has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Pursuant to Texas Civil Statutes, Article 6252-13a, §4A, the department requested a local employment impact statement from the Texas Employment Commission. That agency indicated that the available evidence did not permit identification of any local economic impact.

Mr. Riechers also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to permit the optimum taking of wildlife resources. There will be no effect on small businesses as a result of enforcing the repeals. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, ext. 4974 or (512) 389-4974.

The repeals are proposed under Texas Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Texas Parks and Wildlife Commission with authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas.

*§65.701. Application.*

*§65.702. Definitions.*

*§65.703. Open Seasons, Bag and Possession Limits, and Means and Methods.*

*§65.704. Exceptions.*

§65.705. *Permit Required.*

§65.706. *Permit Revocation.*

§65.707. *Penalties.*

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 16, 1990.

TRD-9003901 Boyd M. Johnson  
General Counsel  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: May 21, 1990

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

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The Texas Parks and Wildlife Commission proposes new §§65.701- 65.707, concerning the Type II Wildlife Management Area—Public Hunting Lands Proclamation. The new sections will clarify a definition, prohibit the taking of other wild fauna, clarifies that Type II users may only access lands designated by Type II boundary signs, clarifies by using text beginning with "it is unlawful", prohibits loaded firearms in designated campsites, wildlife resource harvest quotas may be established, clarifies use of nontoxic shot, prohibits loaded firearms in designated campsites, prohibits the taking of turkey, clarifies which species may be taken on Panhandle lands, removes motor boat restriction on Lake Ray Roberts, delays the opening of gun deer season on two additional units, prohibits the taking of fur-bearing animals on Black Gap and Matador units, clarifies that only buck deer may be taken on the Black Gap and Matador units, and prohibits riding stock and closes the gun deer season on the north side of Richland Creek after November 30.

The new sections represent required findings of fact. These findings are based upon scientific studies and surveys which track trends of relative abundance of the different fish and wildlife resources so as to insure management along sound biological lines.

Robin Riechers, staff economist, has determined that the first five-years the new sections are in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections.

Mr. Riechers, also has determined that for each year of the first five-years the new rules as proposed are in effect The public benefits anticipated as a result of enforcing the new sections will permit the optimum taking of wildlife resources. It is anticipated that there will be minimal economic cost to persons who are required to comply with the new sections.

Pursuant to Texas Civil Statutes, Article 6252-13a, §4A the department requested a local employment impact statement from the Texas Employment Commission. That agency indicated that the available evidence did not permit identification of any local economic impact.

Comments on the new sections may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, ext. 4974 or 512-389-4974.

The new sections are proposed under Texas Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Texas Parks and Wildlife Commission with authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas.

§65.701. *Application.*

(a) This subchapter applies to the entering, hunting, and taking of wildlife resources and other activities under commission regulations established for land designated by the department by Type II boundary markers as a Type II Wildlife Management Area. Type II Wildlife Management Areas are so designated by lease, management agreements, and purchase. Records of such designation are on file at the department's central repository. The executive director is authorized by the Parks and Wildlife Commission to execute lease and management agreements for Type II Wildlife Management Areas.

(b) On United States Forest Service Lands, Corps of Engineers Lands, and Units 107, 140, and 141 in Sabine and San Augustine Counties, designated as Type II Wildlife Management Areas, persons other than hunters are exempt from these rules.

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

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

Designated campsite—An area identified by signs for camping and camping activities.

Designated road—A constructed road that may be negotiated by a conventional four-wheeled motor vehicle and not identified as a closed road by sign, gate, or blocked at entrance, but does not include county or state roads or highways.

Disabled person—A paraplegic or a person who has a physician's statement in their immediate possession certifying that they fit the criteria for ambulatory disability as defined in Texas Civil Statutes, Article 6675a-5e.1, referenced in "Application for Disabled Persons—Special Identifying Registration Insignia" and who's disability is permanent.

Executive Director—The Executive Director of the Texas Parks and Wildlife Department.

Exotic mammals—Nonindigenous wild mammals and includes, but is not limited to, feral goats, feral hogs, European wild hogs, and crosses thereof.

Immediate supervision—Control of

the actions of a person less than 17 years of age by the parent or guardian by the use of verbal instructions in a normal voice level.

Loaded firearm—A firearm containing a live round of ammunition within the chamber and/or magazine, or if muzzleloading, one which has a cap on the nipple or a priming charge in the pan.

Predatory animals—Bobcats, coyotes, and mountain lions.

Self registration—The completion of a self registration permit prior to initiating any activity that requires self registration and before departing the area leaving the completed self registration permit at the designated check station.

Special permit—A department permit issued to an applicant as the result of a random computer selection procedure or public drawing which allows the taking of a designated wildlife resource.

Type II permit—An annual permit, valid from September 1 or issuance date, whichever is later, through the following August 31, issued to an individual to allow the hunting, and taking of wildlife resources and other activities on land designated as a Type II Wildlife Management Area in accordance with commission adopted regulations for the county where the Type II Wildlife Management Area is located.

Type II wildlife management area—Land designated as a Type II Wildlife Management Area under the authority of a proclamation issued by the commission.

Wildlife resources—Game animals, game birds, fur-bearing animals, alligators, frogs, exotic mammals, predatory animals, fish, crayfish, rabbits, and hares.

§65.703. *Open Seasons, Bag and Possession Limits, and Means and Methods.*

(a) The open seasons, bag limits, possession limits, means, methods, and other rules that apply to Type II Wildlife Management Area—Public Hunting Lands are the same for the species as those commission adopted regulations for the county where the Type II Area lies, except as provided by §65.704 of this title (relating to Exceptions).

(b) It is unlawful for a person while on a Type II area to take or possess species of wildlife other than those defined as wildlife resources, see §65.702 of this title (relating to Definitions).

(c) It is unlawful for a person while hunting waterfowl on a Type II area located within a nontoxic shot zone, to use or possess any shot shells or loose shot for muzzleloading firearms other than nontoxic (steel) shot.

(d) The executive director may close a Type II Wildlife Management Area or a portion of an area to protect wildlife resources if evidence is available to support the closure. In addition to closure of an area, the executive director may establish harvest quotas for given species of animals

on specific units of Type II WMA's within an established season prior to closure. Upon reaching the established quota, the executive director is authorized to cancel hunts for that species for the remainder of that season.

(e) The executive director may close to public use a portion of an area to protect sensitive areas.

(f) The public use of lands administered by the Type II program is permitted under the Type II permit and authorizes use of lands only within those areas designated as a Type II Wildlife Management Area by boundary signs.

**§65.704. Exceptions.** The exceptions to commission adopted regulations provided by this section apply to Type II Wildlife Management Areas.

(1) It is unlawful to use a dog or dogs for hunting except for the hunting of fur-bearing animals, bobcats, coyotes, rabbits and hares, squirrels, and game birds.

(2) Except on national grasslands and General Land Office lands designated as Type II areas, it is unlawful to use a dog or dogs to hunt, pursue, or take bobcats, coyotes, and fur-bearing animals during the period of 30 minutes before sunrise through 30 minutes after sunset.

(3) It is unlawful to possess a loaded firearm within or on a motor vehicle or designated campsites.

(4) It is unlawful to hunt from a vehicle, except disabled persons may hunt from a stationary vehicle provided the hunting is not conducted on a designated road. Disabled persons are exempt from the restrictions of paragraph (6) of this subsection, to the extent that they may drive directly to the hunting place and hunt from a stationary vehicle.

(5) It is unlawful to use hunt or place any device capable of capturing or injuring any animal or bird on a designated road, see §65.702 of this title (relating to Definitions).

(6) It is unlawful to use motor vehicles including all-terrain vehicles, three-wheelers, four-wheelers, and dirt bikes except on designated roads, see §65.702 of this title (relating to Definitions)

(7) It is unlawful for persons less than 17 years of age to hunt except under the immediate supervision of a parent or guardian who possesses a Type II Wildlife Management Area Permit.

(8) It is unlawful to construct permanent hunting blinds, stands, towers, or platforms. The use of temporary hunting blinds, stands, towers, or platforms is permitted only if such structures not be nailed to timber, be emplaced no longer than 72 hours, and it is unlawful to fail to remove

all materials from the area upon completion of the hunt.

(9) It is unlawful to place a hunting blind, stand, tower, or platform within fifty yards of any road or marked boundary.

(10) It is unlawful for a person to fail to wear a minimum of 400 square inches of visible hunter orange material with 144 square inches appearing on both the chest and back on a Type II Wildlife Management Area during times when the taking of deer is permitted, except that persons hunting fur-bearing animals and coyotes at night, sandhill cranes, waterfowl, and persons within vehicles or designated campsites, and authorized department and landowner employees are exempt from this requirement.

(11) It is unlawful to take exotic mammals except during the period one-half hour before sunrise until one-half hour after sunset.

(12) It is unlawful to discharge firearms on or across a designated road.

(13) The executive director may establish additional restrictions on camping consistent with the type of hunting season and the environmental protection of the area.

(14) It is unlawful to camp or start a camp fire except in areas identified as a designated camp site, see §65.702 of this title (relating to Definitions).

(15) It is unlawful to discharge a firearm, muzzle loading weapon, or bow and arrow in designated campsites.

(16) It is unlawful for any person to not obey posted regulations, fail to comply with instructions on special permits and self registration permits, area leaflets, or refuse to follow directions given by department personnel in the discharge of official duties.

(17) It is unlawful to leave or strew refuse, litter, trash, or garbage.

(18) It is unlawful to allow dogs that are not confined or leashed in designated campsites.

(19) It is unlawful for a person to cause, create or contribute to excessive or disturbing sounds beyond the person's immediate campsite between the hours of 10 p.m. and 6 a.m.

(20) Department personnel may collect parts from hunter harvested wildlife resources for scientific investigation.

(21) It is unlawful to disturb or remove plants, rocks, artifacts, or other objects from Type II Wildlife Management Areas.

(22) It is unlawful to possess buckshot on a Type II Wildlife Management Area.

(23) It is unlawful to take turkey on any Type II Wildlife Management Area.

(24) It is unlawful for a person who does not possess a special permit to enter into a Type II Wildlife Management Area during the specific time period when the hunting of a wildlife resource is authorized by special permit only.

(25) It is unlawful to take antlerless white-tailed deer on Type II Wildlife Management Areas, except antlerless deer may be taken during the archery only season on:

(A) Alabama Creek;

(B) Bannister;

(C) Moore Plantation;

(D) North Toledo Bend;

(E) Richland Creek;

(F) Unit 107 in San Augustine County; and

(G) Units 140 and 141 in Sabine County.

(26) The restrictions listed in this subsection apply only to specific areas.

(A) On General Land Office lands in Hudspeth County, designated as Type II Wildlife Management Areas, It is unlawful to use enter, hunt, or take wildlife resources at any time except as provided in these rules beginning on September 1 and ending on the last Sunday in following February, and overnight camping is prohibited.

(B) The season on mule deer is closed on General Land Office Lands.

(C) Panhandle lands.

(i) On the Gabel tracts (Units 610, 611, 612, 613, 614, and 623 located in Castro and Deaf Smith Counties and Formby tract (Unit 602) located in Hale County), it is unlawful to take any wildlife resource except mourning dove, pheasant, ducks, geese, and sandhill cranes or take the species at a time or in numbers except as authorized by lawful open seasons and bag limits adopted by the commission for these species in the county where the area is located. Rabbits and hares in unlimited numbers may be taken only during dove, pheasant, duck, goose, and sandhill crane seasons.

(ii) On the Borth (Unit 620) located in Sherman County. Cleavinger (Unit 617) located in Castro



County, and Summerour (Unit 618) located in Dallam County, it is unlawful to take any wildlife resource except pheasants, or to take pheasants at any time or in numbers other than those authorized by commission adopted seasons and bag limits for pheasants in the county where the area is located. Rabbits and hares in unlimited numbers may be taken only during pheasant season.

(iii) On the Barkley (Unit 621) and Christian (Unit 622) tracts located in Sherman County and Gonser (Unit 619) tract located in Parmer County, it is unlawful to take any wildlife resource except mourning dove and pheasant or to take mourning dove or pheasant at a time or in numbers other than as authorized by commission adopted seasons and bag limits for dove and pheasant in the county where the area is located. Rabbits and hares in unlimited numbers may be taken only during dove and pheasant seasons.

(iv) On the Wall (Unit 608) tract located in Dallam County, it is unlawful to take any wildlife resource except pheasants, duck, and geese or to take pheasant, duck, and geese at a time or in numbers other than as authorized by commission adopted seasons and bag limits for pheasant, ducks, and geese for Dallam County. Rabbits and hares in unlimited numbers may be taken only during pheasant, duck, and goose seasons.

(v) On the Dixon (Unit 601) tract located in Parmer County, it is unlawful to take any wildlife resource except dove, quail, and pheasant or to take dove, quail or pheasant at a time or in numbers other than as authorized by commission adopted seasons and bag limits for dove, quail, and pheasant for Parmer County. Coyotes, rabbits, and hares in unlimited numbers may be taken only during dove, quail, and pheasant seasons.

(D) It is unlawful to possess any device other than shotguns and bow and arrow for hunting on that portion of the Richland Creek Wildlife Management Area located north of U.S. Highway 287.

(E) Lake Ray Roberts: special exceptions. It is unlawful to:

(i) possess firearms other than shotguns with shot;

(ii) discharge firearms except while hunting;

(iii) hunt or take fur-bearing animals;

(iv) camp overnight;

(v) hunt except during the period of September 1 through the last Sunday in February;

(vi) hunt waterfowl in that area of Lake Ray Roberts north of FM Road 3002 designated as a waterfowl sanctuary; or

(vii) hunt on the land or water within 100 yards of State Park boundaries.

(F) Hunting and fishing regulations for wildlife resources on North Toledo Bend, Richland Creek, Black Gap, Alabama Creek, Bannister, Moore Plantation, Caddo, Unit 120 in Anderson County and Matador Type II Wildlife Management Areas are as follows.

(i) A hunter commits an offense of that hunter fails to self-register when entering Type II Wildlife Management Areas listed in this section except that persons entering North Toledo Bend and Richland Creek Wildlife Management Areas are not required to self-register.

(ii) On the Black Gap Wildlife Management Area, it is unlawful for persons except those entering by boat to fail to self-register at area headquarters immediately upon arrival.

(iii) Regular seasons, bag and possession limits apply except as specifically provided in this subparagraph.

(-a-) On Black Gap and Matador Wildlife Management Areas, exotic mammals and predatory animals may be taken only by persons authorized to hunt deer or by holders of permits to take exotic mammals and predatory animals. It is unlawful to take fur-bearing animals or to use traps, snares, and deadfalls.

(-b-) It is unlawful to take mule deer or white-tailed deer without a special permit during the general season on the Black Gap and Matador Wildlife Management Areas. Mule deer or white-tailed deer may be taken during the archery only season without a special permit by hunters who have self-registered. It is unlawful to take any deer except buck deer during the general season and archery only seasons on the Black Gap and Matador Wildlife Management Areas. It is unlawful to bring onto or use horses, mules, riding stock, or pack animals on the Black Gap or Matador Wildlife Management Areas except by written authorization of the department.

(-c-) On Alabama Creek, Bannister, Caddo, and Moore Plantation, it is unlawful to hunt white-tailed deer except during the archery only season and from the Thursday after Thanksgiving through the first Sunday in January.

(-d-) On Unit 120 in Anderson County, it is unlawful to hunt white-tailed deer at any time except during the deer archery only season and from the Monday following the first Saturday in November through the first Sunday in January.

(-e-) On Richland Creek Wildlife Management Area, it is

unlawful to hunt white-tailed deer at any time except during the archery only season and from the Monday following the first Saturday in November through the first Sunday in January; and on that portion of the area which lies north of U.S. Highway 287, it is unlawful to use firearms in hunting deer at any time except during the period from the Monday following the first Saturday in November through November 30.

(-f-) On the Black Gap Wildlife Management Area it is unlawful to hunt javelina at any time except from the second Saturday in January through the last Sunday in February and the bag limit is one per season.

(-g-) On Black Gap and Matador Wildlife Management Areas, it is unlawful to hunt rabbits and hares at any time except during open seasons for javelina, quail, and mourning dove.

(-h-) During seasons other than the Early Teal Season, it is unlawful to hunt waterfowl at any time except on Wednesday, Saturday, and Sunday and only during legal shooting hours in the A.M. until noon each week during the regular seasons.

(-i-) Black gap: Impoundments are closed to fishing and fishermen shall be required to use Maravillas Canyon and Horse Canyon Roads only while going to and from the Rio Grande on the Black Gap Wildlife Management Area. From the point where the Maravillas Canyon Road enters the Rio Grande Valley downstream to the area boundary, a fishermen commits an offense if the fisherman does not stay within the area between the road and the river or within 300 yards of the river from the same point.

#### *§65.705. Permit Required and Fees.*

(a) Except as provided in subsection (b) of this section, it is unlawful for a person 13 years of age or older to enter or hunt on a Type II Wildlife Management Area without having in his or her possession a Type II Wildlife Management Area-Public Hunting Lands Permit.

(b) Persons possessing a Limited Use Type II Wildlife Management Area Permit may enter any Type II Wildlife Management Area but may not hunt or fish.

(c) The Type II permit required by subsection (a) and (b) of this section is not valid unless the signature of the holder appears on the front of the permit.

(d) The permits required under subsection (a) and (b) of this section are not required for:

(1) persons who enter on United States Forest Service System lands designated as a Type II area, including

Caddo National Grassland, and Units 107, 140 and 141 in Sabine and San Augustine Counties for any purpose other than hunting white-tailed deer with firearms;

(2) persons who enter on United States Army Corps of Engineers lands designated as a Type II Area for purposes other than hunting;

(3) persons who are authorized by, and acting in an official capacity for the department or the landowners of the Type II Areas;

(4) persons participating in scheduled activities sponsored or sanctioned by the department with written approval;

(5) persons owning or leasing land within the boundaries of a Type II Area while traveling to or from their property; and

(6) fishing access on the Black Gap Wildlife Management Area.

(e) A person, by this signature on the permit, waives all liability towards the landowner (licensor) and Texas Parks and Wildlife Department (licensee). The text of the disclaimer of liability being: "This permit allows entry upon lands owned by licensor and licensed to Texas Parks and Wildlife Department. Neither licensor nor the Texas Parks and Wildlife Department know what type of conditions exist upon any of such lands, nor the number or proficiency of other participating hunters, and they specifically do not make any warranty or representation of any type, kind or character, whatsoever, as to existing conditions upon said lands or as to the suitability or nonsuitability of such lands for hunting purposes. Any persons entering upon such lands enters at his or her own risk, impliedly accepts such lands in the existing conditions, and recognize that all hunting is potentially dangerous because of the use of firearms by hunters of varying degrees of proficiency, and in consideration of being permitted to participate in this public hunting program, I, and as parent or guardian of any accompanying minor, unconditionally release and holds harmless licensor and licensee against and for all liability, cost, expenses, claims and damages for which licensor and licensee might otherwise become liable by reason of any accidents, or injuries to or death of any persons, or damage to property, or both, in any manner arising or resulting from, caused by, connected with or related to the presence of any such person upon such land and premises, regardless of how, where, or when such injury, death or damage occurs even if caused by the negligence of licensor and licensee, its agents, servants or employees, or due to conditions on or defects in the premises. I, the permittee, have read this release and understand all its terms. I execute it voluntarily with full knowledge of its significance."

(f) The fee for the Type II Wildlife Management Area-Public Hunting Lands permit is: \$35 and entitles the possessor to

enter, hunt, fish, and take all wildlife resources during open seasons as provided by commission adopted regulations and engage in other activities. The fee for a duplicate (lost) permit is \$10.

(g) The fee for the Limited Use Type II Wildlife Management Area Permit is \$10 and entitles the possessor to enter Type II Wildlife Management Areas and engage in activities as provided by commission adopted regulations. The Limited Use Type II Permit does not authorize a person to hunt or fish. The fee for a duplicate (lost) Limited Use permit is \$5.00.

**§65.706. Permit Revocation.** Any person violating this subchapter (relating to Type II Wildlife Management Area-Public Hunting Lands) is subject to having their Type II Wildlife Management Area permit revoked under the authority of Texas Parks and Wildlife Code, Chapter 12, Subchapter F.

**§65.707. Penalties.** The penalties for violation of this subchapter are prescribed by Texas Parks and Wildlife Code, §81.007.

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 16, 1990.

TRD-9003827 Boyd M. Johnson  
General Counsel  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: May 21, 1990

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

◆ ◆ ◆  
**TITLE 37. PUBLIC  
SAFETY AND CORREC-  
TIONS**

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

**Chapter 23. Vehicle Inspection  
Inspection Items, Procedures,  
and Requirements**

• **37 TAC §23.41**

The Texas Department of Public Safety proposes an amendment to §23.41, concerning inspection items, procedures, and requirements. This proposed amendment revises the inspection chart to add the requirement to inspect window tinting/glass coatings and deletes subsection (c) which designates that the Rules and Regulations Manual are on file with the county clerk. This section references the Rules and Regulations Manual for official vehicle inspection stations and certified inspectors. This manual contains the vehicle inspection requirements which are being amended to eliminate headlight aim as an inspection item. Consequently, station

owners will no longer need to purchase headlamp testing equipment nor will the owners be required to use their current headlamp testing equipment as a part of the vehicle inspection. The manual is available for review at the Department of Public Safety, 5805 North Lamar Boulevard, Austin.

Melvin C. Peoples, assistant chief of fiscal affairs, 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.

H. N. Goodson, director, economic research and analysis, has determined that although it appears the section might affect employment to some degree in certain areas of the state, at this time the Texas Employment Commission foresees no significant impact on overall employment in Texas cities and counties which would result from the section changes.

Virgil Walsmith, captain, traffic law enforcement, 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 less initial equipment costs to be a licensed inspection station. There is a potential, but undetermined, loss for those station owners still paying for headlamp testing equipment as they will be unable to recoup their costs from headlamp adjustments required as a result of inspections.

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 amendment is proposed under Texas Civil Statutes, Article 6701d, Article XV, §§140-142, which provide the Texas Department of Public Safety with authority to adopt rules necessary for the administration of this Act.

**§23.41. Inspection Items.**

(a) Section 1. The chart, contained in the "Rules and Procedures Manual for Official Vehicle Inspection Stations and Certified Inspectors", §23.78 of this title (relating to Instructions and Guidelines) as most recently amended [in January 1982], lists the vehicle equipment required to be inspected according to the classification of the vehicle.

(b) (No change.)

[(c) Section 3. The chart is contained in the Rules and Regulations Manual, which is on file in the county clerk's office in every country in the state and in every vehicle inspection station.]

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 6, 1990.

TRD-9003773 Joe E. Milner  
Director  
Texas Department of  
Public Safety

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 465-2000

◆ ◆ ◆  
**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

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

**Chapter 9. Refugee Social Services**

The Texas Department of Human Services (DHS) proposes amendments to §9.101 and §9.204, concerning program purpose and client information, in its Refugee Social Services chapter. The purpose of the amendments is to comply with federal language in sections concerning English as a second language and food stamp recipient status.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Raiford 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 clear language concerning refugee social services. 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.

Questions about the content of this proposal may be directed to Nancy Hill at (512) 450-4152 in DHS's Program Implementation Department. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-179, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

**Subchapter A. Program Purpose and Scope**

• 40 TAC §9.101

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

*§9.101. Refugee Social Services Program Purpose and Scope.*

(a) (No change.)

(b) The refugee social services program:

(1) furnishes job development and placement assistance [to employable adult refugees according] to the client priority groups specified in §9.204 of this title (relating to Client Priority Groups);

(2) (No change.)

(3) teaches English as a second language (ESL) in order to increase employability and assist in cultural adjustment;

(4)-(5) (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 11, 1990.

TRD-9003697

Cathy Rossberg  
Agency Liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: July 1, 1990

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

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**Subchapter B. Client Information**

• 40 TAC §9.204

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

*§9.204. Client Priority Groups.* Clients are assigned priority for refugee social services in the following order:

(1) clients [refugees] receiving aid to families with dependent children (AFDC) [AFDC] or refugee cash assistance;

(2) food stamp recipients referred by the Texas Employment Commission;

(3)[(2)] clients [refugees] who arrived in the United States within the last 12 months;

(4)[(3)] clients [refugees] who have been in the United States for more than one year but less than three years;

(5)[(4)] clients [refugees] who have lived in the United States three years or longer.

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 11, 1990.

TRD-9003698

Cathy Rossberg  
Agency Liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: July 1, 1990

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

**Chapter 27. Intermediate Care Facilities for Mentally Retarded**

**Subchapter UUUU. Support Documents**

• 40 TAC §27.9801

The Texas Department of Human Services (DHS) proposes an amendment to §27.9801, concerning the Intermediate Care Facility for Mentally Retarded (ICF-MR) Case Mix Pilot Project in its section about reimbursement methodology for ICF-MR facilities. The purpose of the amendment is to extend the pilot project to December 31, 1991. The extension will allow DHS time to study the existing case mix methodology and to research and develop a new methodology.

Burton F. Raiford, chief financial officer, 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 governments as a result of enforcing or administering the section.

Mr. Raiford 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 additional time for the department to develop a new ICF-MR case mix methodology. 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 proposed section.

Questions about the content of this proposal may be directed to Barbara Stegall at (512) 450-3111 in DHS's long term care department. Comments on the proposal may be submitted to Cathy Rossberg, Agency Liaison, Policy Communication Services-211, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

*§27.9801. Reimbursement Methodology for Intermediate Care Facilities for the Mentally Retarded.*

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

(g) Rate setting methodology.

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

(4) Experimental class. DHS may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless the Texas Board of Human Services and the Health Care Financing Administration (HCFA) approve the experimental methodology.

(A) Case mix payment pilot project. TDHS is conducting a pilot project in cooperation with the Texas Department of Mental Health and Mental Retardation (TDMHMR) from January 1, 1988, through December 31, 1991 [June 30, 1990]. This pilot project tests a case-mix reimbursement methodology in selected ICF-MR facilities for two and a half years. Phase one of the pilot began on January 1, 1988 in six selected facilities.

(B)-(O) (No change.)

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

(h) (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 16, 1990.

TRD-9003835

Cathy Rossberg  
Agency Liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: July 1, 1990

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

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Chapter 48. Community Care  
for Aged and Disabled

[Model] Waiver Program for  
Medically Dependent Children

• 40 TAC §48.2501

The Texas Department of Human Services (DHS) proposes an amendment to §48.2501, concerning the waiver program for medically dependent children, in its Community Care for Aged and Disabled chapter. The purpose of the amendments is to apply the requirements of the Texas Medicaid Program to the eligibility criteria for certain clients of the Medically Dependent Children Waiver Program (MDCP). DHS is changing the undesignated head, Model Waiver Program, to Waiver Program for Medically Dependent Children to clarify the intent of the program.

Burton F. Raiford, chief financial officer, 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 governments as a result of enforcing or administering the section.

Mr. Raiford 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 eligibility requirements that conform to federal requirements, and clearer guidelines for determining exceptions to the cost ceiling. 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 proposed section.

Questions about the content of this proposal may be directed to Doran Teague at (512) 450-3228 in DHS's long term care division. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services - 194, Texas Department of Human Services 454-W, P.O. Box 149037, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.2501. Client Eligibility Criteria.

(a) To be eligible for the Medically Dependent Children Waiver Program, an applicant or participant must:

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

(6) have an approved plan of care for which the projected annual cost for nursing-care and other Medicaid home- and community-based services authorized by Texas Department of Human Services (DHS) staff does not exceed the amount the department would have expended under Title XIX regulations had the individual been institutionalized. [; and] The following policies apply to the plan of care and its cost ceiling.

(A) The plan of care must show that at least 50% of the cost of providing needed in-home Medicaid services is for licensed nurse services.

(B) The department may grant an exception to the allowable cost ceiling on a temporary basis when extenuating circumstances preclude the development or implementation of a plan of care. Justification for granting an exception to the cost ceiling is based on clear and sufficient evidence which meets the following criteria:

(i) likelihood that the existing extenuating circumstances will be resolved within six months;

(ii) cost for requested, additional waiver services does not exceed 75% of the allowable cost ceiling amount; and

(iii) no other family, volunteer, or community resources are available to provide the additional services requested;

(7) meet the requirements of either subparagraph (A) or (B) of this paragraph.

(A) (No change.)

(B) The applicant or participant must meet the criteria established:

(i) by the Social Security Administration for denial of eligibility for SSI benefits in the home or community

setting based on the deeming rules for parental income and/or resources; or both; [or spousal income as determined by the Social Security Administration and be therefore ineligible for Medicaid benefits. In this event, the applicant or participant must also meet the following requirements.]

(ii) for disability, using SSI disability criteria, as documented on the appropriate DHS forms; and

(iii) for the Texas Medicaid Program, if the applicant or participant is institutionalized, in regard to his own income and/or resources.

[(i) the parent's or spouse's annual net taxable income, as defined by United States Internal Revenue Services, is less than \$75,000 and total countable resources, determined according to SSI guidelines, are less than \$45,000;

[(ii) the applicant's or participant's own income and resources meet the requirements for assistance from the Texas Medicaid Program based on requirements of the SSI Program; and

[(iii) the applicant or participant meets the criteria for disability, using SSI disability criteria, as documented on the appropriate DHS forms.]

(8) provide information to satisfy the following.

(A) After eligibility has been established, income and resources of waiver clients whose income is in excess of the SSI standards will be calculated by deducting the following:

(i) an amount for the maintenance needs of the individual, a spouse, or a family, if applicable; and

(ii) amounts for incurred medical or remedial care which are necessary but are not covered by Medicare, other health insurance premiums, deductibles, coinsurance charges, or the Texas Medicaid State Plan.

(B) Allowable expenses for determining the client's cost-sharing liability include the following:

(i) cost of the client's maintenance needs, which is equivalent to the institutional income limit specified for eligibility under the Texas Medicaid Program;

(ii) cost of the maintenance needs of a spouse, if the spouse is the only dependent of the recipient. This amount is equal to the SSI benefit rate and will be reduced by the amount of the spouse's income;

(iii) cost of the maintenance needs of the client's dependent children. This amount is equivalent to the AFDC basic monthly requirement

grant for children or a spouse with children, using the AFDC amount for basic requirements with shelter and utilities;

(iv) the actual costs incurred for health and medical insurance.

(C) After all allowable expenses have been deducted, 75% of the remaining income will be applied to the cost of home- and community-based services which are specified in the client's plan of care and which are not covered under the Texas Medicaid State Plan. Clients are liable for payment toward the cost of their services and will pay the cost-sharing amount to the provider with whom the department has contracted to deliver authorized services.

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

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

Issued in Austin, Texas, on April 11, 1990.

TRD-9003699 Cathy Rossberg  
Agency Liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: July 1, 1990

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

### Client-managed Attendant Services [Shared Attendant Demonstration Project]

The Texas Department of Human Services (DHS) proposes amendments to §§48.2601-48.2605, 48.2611, and 48.9302, concerning client-managed attendant services and minimum standards for agencies contracted to provide special services for handicapped adults, in its Community Care for Aged and Disabled chapter. The purpose of the amendments is to clarify the conditions under which health-related tasks may be provided by attendants under standing physician's orders, to increase the monthly income deduction for consistency with other programs with copayments, and to clarify contractors' responsibilities. DHS is changing the title of the undesignated head for §§48.2601-48.2612, Shared Attendant Demonstration Project, to Client-Managed Attendant Services to more clearly reflect the intent of the program.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the standard provision of health-related tasks which will enable physically disabled people to remain

in the community. 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.

Questions about the content of this proposal may be directed to German Valtierra at (512) 450-3136 in DHS's Community Care Section. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services- 203, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §§48.2601-48.2605, 48.2611

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

#### §48.2601. Program Services.

(a) Eligible clients are entitled to the following attendant services.

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

(3) Personal care. Personal care services include assistance with activities related to the care of the client's physical health, such as the following:

(A)-(H) (No change.)

(I) toileting; [or]

(J) (No change.)

(K) changing an external catheter;

(L) inserting a nonprescribed suppository into a normal rectum to cause a bowel movement;

(M) using external manual manipulation to cause bowel movement;

(N) changing a sanitary napkin;

(O) inserting and removing a tampon;

(P) providing ileostomy care (removing and disposing old bag and reapplying the new bag); or

(Q) providing colostomy care (removing and disposing old bag and reapplying the new bag).

(4) Health-related services requiring physician's orders. Health-related services requiring standing physician's orders authorizing the client's specific attendant(s) to perform

specific delegated tasks are the following:

(A) internal catheter care, including insertion, irrigation, and changing;

(B) administration of oral or external medications;

(C) bowel program, including insertion of prescribed suppository, cleansing enema;

(D) decubiti care, stages I and II; and

(E) changing sterile dressings.

(b) (No change.)

§48.2602. Client Eligibility Criteria. To be determined eligible for participation in the client-managed attendant services program [shared attendant care demonstration project], the applicant must:

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

(3) not receive primary home care, family care, residential care (supervised living services and emergency care), foster care, or special services to the handicapped--attendant services [supervised living, foster care, emergency care, or residential health care] while receiving client-managed attendant [care] services;

(4)-(6) (No change.)

(7) reside in one of the contract areas established as part of a procurement for client managed attendant services. [reside in of the following contract areas:

[(A) Bexar County;

[(B) Hidalgo, Bee, Live Oak, Refugio, Kleburg, Jim Wells, or Willacy County;

[(C) Orange, Jefferson, Hardin, Newton, or Jasper County; or

[(D) City of Nacogdoches. ]

§48.2603. Contractor Responsibilities. The contractor has the following responsibilities after interviewing the applicant:

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

(5) verifying that there are standing physician's orders in accordance with the Texas Medical Practices Act and all related state and federal statutes and regulations if the attendant(s) provides the client any of the

health-related services specified in §48.2601(a)(4) of this title (relating to Program Services). The contractor must maintain a copy of the standing physician's orders in the client's file.

§48.2604. *Applicant/Client Responsibilities.* The applicant/client is responsible for:

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

(9) obtaining standing physician's orders when any of the health related services specified in §48.2601(a)(4) of this title (relating to Program Services) are authorized in the service plan. Standing physician's orders are orders from the client's physician specifying the following:

(A) the delegated health care tasks;

(B) the attendant(s) to whom the procedures are delegated; and

(C) the patient's name.

§48.2605. *Suspension of Services.*

(a) (No change.)

(b) Suspension may occur for one of the following reasons.

(1) (No change.)

(2) the client receives primary home care, family care, residential care (supervised living services and emergency care), foster care, or special services to the handicapped-attendant services [supervised living services, foster care, emergency care, or residential health care];

(3)-(6) (No change.)

(c) (No change.)

§48.2611. *Allowable Monthly Deductions.* Allowable monthly deductions from the applicant's/client's monthly total income include the following:

(1) (No change.)

(2) \$93 [\$75] dollars deducted from the applicant/client, spouse, and each dependent supported by the applicant/client and spouse;

(3) (No change.)

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

Issued in Austin, Texas, on April 11, 1990.

TRD-9003700

Cathy Rossberg  
Agency Liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: July 1, 1990

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

◆ ◆ ◆  
**Minimum Standards for  
Agencies Contracted to  
Provide Special Services for  
Handicapped Adults**

• 40 TAC §48.9302

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.9302. *Additional Standards Applicable to Contracted Agencies Providing Services in a 24-Hour Attendant Service Setting or Day Care Facility.*

(a) Twenty-four-hour attendant service setting. The contracted agency must:

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

(7) verify that there are standing physician's orders in accordance with the Texas Medical Practices Act and all state and federal statutes and regulations if the attendant(s) provides the client certain health-related services. Standing physician's orders are orders from the client's physician specifying the delegated health care tasks, the attendant(s) to whom the procedures are delegated, and the patient's name. The contractor must maintain a copy of the standing physician's orders in the client's file.

(A) Health-related services requiring standing physician's orders are the following:

(i) internal catheter care, including insertion, irrigation, and changing;

(ii) administration of oral or external medications;

(iii) bowel program, including insertion of prescribed suppository, cleansing enema;

(iv) decubiti care, Stages I and II; and

(v) changing of sterile dressings.

(B) Health-related services that do not require standing physician's orders include, but are not limited to, the following:

(i) assisting with self-administered medication;

(ii) changing an external catheter;

(iii) inserting a non-

prescribed suppository into a normal rectum to cause a bowel movement;

(iv) using external manual manipulation to cause bowel movement;

(v) changing a sanitary napkin;

(vi) inserting and removing a tampon;

(vii) ileostomy care (removing and disposing old bag and reapplying the new bag); or

(viii) colostomy care (removing and disposing old bag and reapplying the new bag).

(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 11, 1990.

TRD-9003701

Cathy Rossberg  
Agency Liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Proposed date of adoption: July 1, 1990

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

◆ ◆ ◆  
**TITLE 43.  
TRANSPORTATION  
Part IV. Texas High-Speed  
Rail Authority  
Chapter 81. Administrative  
Procedures**

**Subchapter A. Board Practices**

• 43 TAC §§81.1, 81.11, 81.21,  
81.31, 81.41, 81.51, 81.61

The Texas High-Speed Rail Authority (authority) proposes new §§81.1, 81.11, 81.21, 81.31, 81.41, 81.51, 81.61, 81.100, 81.110, 81.120, 81.130, 81.140, 81.150, and 81.160, concerning the administration of the authority. These sections establish definitions of terms used in the sections, detail operating procedures for the board of directors for the authority and for the authority staff, and explain the application procedures for a franchise to plan, construct, lease, operate, or maintain part or all of a high-speed facility. These sections are proposed to establish clearly defined administrative procedures for the authority and to outline the process by which the authority will meet its statutory responsibilities in the solicitation, application, and award of a franchise for a high-speed rail facility between Houston, Dallas, and Fort Worth.

Allan Rutter, director of administration for the authority, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state

government as a result of enforcing or administering the sections. Authority revenues will increase as a result of these sections by a multiple of \$500,000 for every high-speed rail franchise application received by the authority under the terms of these sections. Receipt of authority revenues would permit the eventual reimbursement of expenditures made by the authority from state general revenue appropriations made to the authority in Senate Bill 222, 71st Legislature, 1989. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Bob Neely, executive director for the authority, 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, as stated in Texas Civil Statutes, Article 6674v.2, §2(a)(3) (legislation creating the authority), to promote the public good and to serve public purposes including the development and diversification of the economy of the state and the expansion of transportation in this state. There will be no effect on small businesses as a result of enforcing the sections. Franchise applicants will be required to submit \$500,000 application fees, in addition to the production costs of the application itself.

Comments may be submitted to Bob Neely, Executive Director, Texas High-Speed Rail Authority, 823 Congress, Suite 1502, Austin, Texas 78701.

The new sections are proposed under Texas Civil Statutes, Article 6674v.2, §17(a)(2), which provide for the promulgation of rules to govern the operation of the authority, and under Texas Civil Statutes, Article 6674v.2, §23(a), which require the authority to adopt rules governing the solicitation of applications or proposals for a franchise.

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

**Advisor**—An independent professional consultant, advisor, or counsel to the authority, including an engineer, architect, attorney, accountant, construction manager, investment banker, financial advisor, marketing service, or other person determined by the board to be an advisor for the purposes of the authority.

**Applicant**—A corporation or consortium of corporations wishing to apply for a franchise.

**Authority**—The Texas High-Speed Rail Authority.

**Board**—The board of directors of the authority.

**Director**—A member of the board of directors.

**Franchise**—A license approved by the authority that authorizes the holder to plan, construct, lease, operate, or maintain part or all of a high-speed rail facility.

**Franchisee**—Individual or nongovernmental entity that holds a franchise issued by the authority.

**High-speed rail**—Rail technology that permits the operation of rolling stock between scheduled stops at speeds in excess of 150 miles per hour.

**High-speed rail facility**—Any real, personal, or mixed property or any interest, right, or power in that property that is determined by the board to be necessary or convenient for the provision of an intercity rail transportation system in the State of Texas and all property or interests necessary for the financing, refinancing, acquiring, purchasing, condemning, constructing, planning, designing, engineering, enlarging, reconstructing, remodeling, repairing, renovating, extending, improving, bettering, furnishing, maintaining, using or equipping of the system, including right-of-way, earthworks and structures, trackwork, electrification facilities, train controls, traction power systems, rail stations, rolling stock, ancillary facilities, environmental facilities, and maintenance facilities.

**§81.11. Board of Directors.** The authority is governed by a board of directors composed of nine members who occupy places on the board as defined in the Texas High-Speed Rail Act, Article 6674v.2, Part 1, §4, Texas Civil Statutes.

**§81.21. Board Officers.** The officers of the board of directors shall be a chairman, vice-chairman, and secretary-treasurer. The secretary-treasurer need not be a member of the board.

(1) Each officer shall serve a two-year term of office, and an election shall be conducted at a board meeting to be held during July of each even-numbered year. If a meeting is not called in July, previously elected officers shall continue to serve until the next board meeting. Initial terms of office begin July 1, 1990.

(2) If an officer shall cease to serve as a director for any reason, the board shall elect a successor for that office at the next called meeting of the board.

**§81.31. Compensation.** Directors serve without compensation for service on the board, but are entitled to reimbursement for actual and necessary expenses incurred in performance of official duties.

**§81.41. Board Meetings.** The board may meet at the call of the chair.

(1) The chairman may establish a quarterly calendar, listing the meeting dates of the authority during the subsequent three months.

(2) This calendar shall be adopted by resolution of the board for each subsequent three-month period.

**§81.51. Board Subcommittees.** The chairman may delegate specific responsibilities of the board to a subcommittee of directors of the board.

(1) Subcommittee members and the tasks of the subcommittee may be

proposed by the chairman or by any other director.

(2) The official delegation of authority and the formation of a subcommittee is made only by resolution of the board at an open meeting.

**§81.61. Conduct of Board Meetings.** The chairman of the Texas High-Speed Rail Authority (the authority) shall preside at all meetings of the authority.

(1) During the absence or disability of the chairman, the vice-chairman shall perform the duties and exercise the powers of the chairman.

(2) Board meetings will be conducted according to Roberts Rules of Order, with the authority counsel serving as parliamentarian.

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 12, 1990.

TRD-9003829

Allan Rutter  
Director of Administration  
Texas High-Speed Rail  
Authority

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 478-5484

◆ ◆ ◆  
**Subchapter B. Texas High-Speed Rail Authority Practices**

• 43 TAC §§81.100, 81.110, 81.120, 81.130, 81.140, 81.150, 81.160

The new sections are proposed under Texas Civil Statutes, Article 6674v.2, §17(a)(2), which provide for the promulgation of rules to govern the operation of the authority, and under Texas Civil Statutes, Article 6674v.2, §23(a), which require the authority to adopt rules governing the solicitation of applications or proposals for a franchise.

**§81.100. Texas High-Speed Rail Authority Employees.** The board may employ any persons considered necessary by the board for the conduct of the Texas High-Speed Rail Authority (the authority), including, but not limited to, the positions listed in this section.

(1) The board may hire an executive director and may delegate the control of the daily operations of the authority to the executive director, including the hiring and management of other employees of the authority. The executive director is authorized to administer board policies and directives.

(2) The board may employ a director of administration and may delegate to the director of administration the power



to expend or obligate the expenditure of authority funds, and manage other administrative affairs of the authority.

**§81.110. Fiscal Year.** The Texas High-Speed Rail Authority's fiscal year begins on September 1 of each year and ends on August 31 of the following year.

**§81.120. Texas High-Speed Rail Authority Budget.** The Texas High-Speed Rail Authority (the authority) will adopt a budget for each fiscal year before the beginning of the fiscal year, and expenditures may not exceed budgeted amounts without authorization by the board.

(1) The board may create a standing budget subcommittee, chaired by the secretary-treasurer, and including two other directors. This subcommittee may be delegated the task of working with the authority staff to develop the authority annual budget.

(2) The budget will be presented and discussed at a board meeting at least one month before the beginning of the fiscal year. The board's budget will be effective on a two-thirds vote of the board's members present at the time a motion is made to adopt the budget.

**§81.130. Principal Domicile.** The domicile and principal office of the Texas High-Speed Rail Authority shall be at Austin, Travis County.

**§81.140. Official Seal.** The official seal of the Texas High-Speed Rail Authority shall consist of the embossed impression of a circular disk containing the outer rim the words "TEXAS HIGH-SPEED RAIL AUTHORITY", and in the center the Great Seal of the State of Texas.

**§81.150. Texas High-Speed Rail Authority Advisors.** The board shall secure the services of general counsel, financial auditors and advisors, engineers, or other advisors whom the board deems necessary. Contractors are to be advertised and awarded according to board rules and procedures.

**§81.160. Depository Institution.** The board will designate a depository institution to hold all authority funds received from fees set forth in the Texas High-Speed Rail Act.

(1) Amounts held in a depository institution will be secured in the manner provided by law for the security of the funds for a county.

(2) The secretary-treasurer of the Texas High-Speed Rail Authority (the authority) will oversee the selection of a depository bank for the authority.

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 12, 1990

TRD-9003830

Allan Rutter  
Director of Administration  
Texas High-Speed Rail  
Authority

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 478-5484

## Chapter 83. Franchise Application and Award Procedures

### Subchapter A. Application Procedures

The Texas High-Speed Rail Authority (authority) proposes new §§83.1, 83.11, 83.21, 83.31, 83.100, 83.110, and 83.120, concerning the administration of the authority. These sections explain the application procedures for a franchise to plan, construct, lease, operate, or maintain part or all of a high-speed facility. These sections are proposed to establish clearly defined administrative procedures for the authority and to outline the process by which the authority will meet its statutory responsibilities in the solicitation, application, and award of a franchise for a high-speed rail facility between Houston, Dallas, and Fort Worth.

Allan Rutter, director of administration for the authority, 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. Authority revenues will increase as a result of these sections by a multiple of \$500,000 for every high-speed rail franchise application received by the authority under the terms of these sections. Receipt of authority revenues would permit the eventual reimbursement of expenditures made by the authority from state general revenue appropriations made to the authority in Senate Bill 222, 71st Legislature, 1989. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Bob Neely, executive director for the authority, 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, as stated in Texas Civil Statutes, Article 6674v.2, §2(a)(3) (legislation creating the authority), to promote the public good and to serve public purposes including the development and diversification of the economy of the state and the expansion of transportation in this state. There will be no effect on small businesses as a result of enforcing the sections. Franchise applicants will be required to submit \$500,000 application fees, in addition to the production costs of the application itself.

Comments may be submitted to Bob Neely, Executive Director, Texas High-Speed Rail Authority, 823 Congress, Suite 1502, Austin, Texas 78701.

## • 43 TAC §§83.1, 83.11, 83.21, 83.31

The new sections are proposed under Texas Civil Statutes, Article 6674v.2, §17(a)(2), which provide for the promulgation of rules to govern the operation of the authority, and under Texas Civil Statutes, Article 6674v.2, §23(a), which require the authority to adopt rules governing the solicitation of applications or proposals for a franchise.

**§83.1. Letter of Intent.** The board will publish a solicitation of a letter of intent in the *Texas Register* within 10 days of the final adoption of the board's administrative rules.

(1) A letter of intent may be filed by potential franchise applicants.

(2) The letter of intent shall be hand-delivered to the authority within 20 days of its date of publication in the *Texas Register*.

(3) The letter of intent may be filed by an applicant who intends to apply for a franchise to design, construct, finance, and manage the operation of a high-speed rail facility from Houston to Dallas and Fort Worth. No letters will be accepted from contractors or subcontractors who do not intend to compete for the franchise as defined in the sections in this chapter.

(4) The letter of intent shall be accompanied by a certified cashiers check payable to the Texas High-Speed Rail Authority (the authority) in the amount of \$100,000, or by submission of certified copy of electronic funds transfer into the authority's fee account at the depository institution for the authority.

(5) The authority will provide a notice of receipt to the applicant at the time of delivery of the letter of intent, officially confirming the time of delivery and receipt of the application fee.

(6) The letter of intent will list the principal corporation or corporations participating in the franchise application. The letter will indicate the principal representative of the applicant as a point of contact for future correspondence with the authority. The letter will also indicate the person who will serve as the applicant's participant in the Request for Proposal Advisory Committee.

**§83.11. Request for Proposal Advisory Committee.** The board will create a Request for Proposal Advisory Committee, hereinafter referred to as the RFPAC, which shall be authorized to participate in the development of the request for proposal for the franchise.

(1) The RFPAC will be chaired by the executive director of the authority. Any other members of the staff of the authority or authority advisors may attend and participate in RFPAC meetings.



(2) The board may name up to three directors as ex-officio members of the RFPAC. Directors not so named are authorized to participate in meetings of the RFPAC.

(3) Only persons indicated in the letter of intent as RFPAC representatives are authorized to participate in RFPAC meetings. Representatives of applicants other than the designated representative may attend, but not directly participate in RFPAC meetings.

(4) The RFPAC will, no later than 10 days after the deadline for the delivery of the letters of intent, meet to discuss the general elements to be included in the RFP for the franchise.

(5) No later than 30 days after the first meeting of the RFPAC, the authority staff will submit a draft request for proposal (RFP) to RFPAC members by certified mail. RFPAC member will have the opportunity to submit comments on the proposed RFP within 20 days of receipt of the proposed RFP, as signified by certified mail receipt.

**§83.21. Request for Proposal.** The Texas High-Speed Rail Authority staff will submit a request for proposal (RFP) to the board for adoption and approval for publication within 120 days of the final adoption of board rules and procedures.

(1) Concurrently with the publication of the RFP, the board will also publish rules which describe the criteria by which the proposals will be considered, including the weighting factors applied to the various criteria.

(2) The complete RFP publication will be available to any interested parties for the price of publication. Applicants having submitted a letter of intent will receive up to 15 copies of the RFP free of charge.

**§83.31. Franchise Applications.** Applications for the franchise for the Texas High-Speed Rail facility between Houston, Dallas, and Fort Worth are to be hand-delivered to the authority offices no later than 180 days after the formal adoption of authority rules and procedures.

(1) An application for a franchise may be filed by an applicant who intends to design, construct, finance, and manage the operation of a high-speed rail facility from Houston to Dallas and Fort Worth. No applications will be accepted from any firm who does not intend to perform the full scope of efforts as defined in the request for proposal.

(2) An application may be filed by an applicant regardless of whether the applicant submitted a letter of intent according to the provisions of §83.1 of this title (relating to Letter of Intent).

(3) The application shall be accompanied by a certified cashiers check payable to the Texas High-Speed Rail Authority (the authority) in the amount of \$500,000, or by submission of certified copy of electronic funds transfer into the authority's fee account at the depository institution for the authority. Applicants having submitted the \$100,000 fee accompanying a letter of intent shall only be required to submit a certified cashiers check in the amount of \$400,000.

(4) The authority will provide a notice of receipt to the applicant at the time of delivery of the application, officially confirming the time of delivery and receipt of the application fee.

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 12, 1990.

TRD-9003831

Allan Rutter  
Director of Administration  
Texas High-Speed Rail  
Authority

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 478-5484

◆ ◆ ◆  
**Subchapter B. Application  
Review and Franchise  
Award**

◆ ◆ ◆  
**• 43 TAC §§83.100, 83.110, 83.120**

The new sections are proposed under Texas Civil Statutes, Article 6674v.2, §17(a)(2), which provide for the promulgation of rules to govern the operation of the authority, and under Texas Civil Statutes, Article 6674v.2, §23(a), which require the authority to adopt rules governing the solicitation of applications or proposals for a franchise.

**§83.100. Franchise Application Review.** Applicants will forward their applications for the high-speed rail franchise to the Texas High-Speed Rail Authority's (the authority) advisors, in accordance with the provisions of the request for proposal. The advisors will report back to the authority within 60 days of the franchise application deadline. The advisory reports will score the respective applications based on the criteria published by the authority, as described in §83.21(1) of this title (relating to Request for Proposal).

(1) Franchise applicants are directed to fully comply with any request for information about an application from the authority's advisors.

(2) Any applicant's failure to respond with requested information on a timely basis shall be reported by the advisors to the board chairman. This

information shall be forwarded to members of the board at the time of final application consideration.

**§83.110. Public Hearings.** The board will conduct public hearings on the franchise applications.

(1) Each applicant will be given four hours to present a summary of its application before the board in a public hearing.

(2) Public testimony will be received on the application following the applicant's presentation, limited to a total of four hours.

(3) A public meeting will be held on the day following the applicant's presentation and public testimony on the application. The purpose of this meeting is allow directors an opportunity to ask questions of the applicants. Members of the Texas High-Speed Rail Authority (the authority) staff and staff of the authority's advisors may also participate in this meeting.

(4) These meetings will be held on each franchise application, and all meetings will be concluded by 60 days after the application deadline. Meetings will be conducted according to the rules of the board, although a quorum of the board need not be present at all times during the conduct of these meetings.

**§83.120. Franchise Award.** Prior to the 270th day following the final adoption of board rules and procedures, the board will meet to announce a decision on the applications received for a high-speed rail franchise.

(1) The board will first determine if the award of a franchise is would be for the public convenience and necessity. A franchise cannot be awarded without an such an affirmation by the board.

(2) Upon determining that a franchise award would be for the public convenience and necessity, the board may award the franchise to one of the applicants.

(3) The board will publish the award of the franchise in the *Texas Register*.

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 12, 1990.

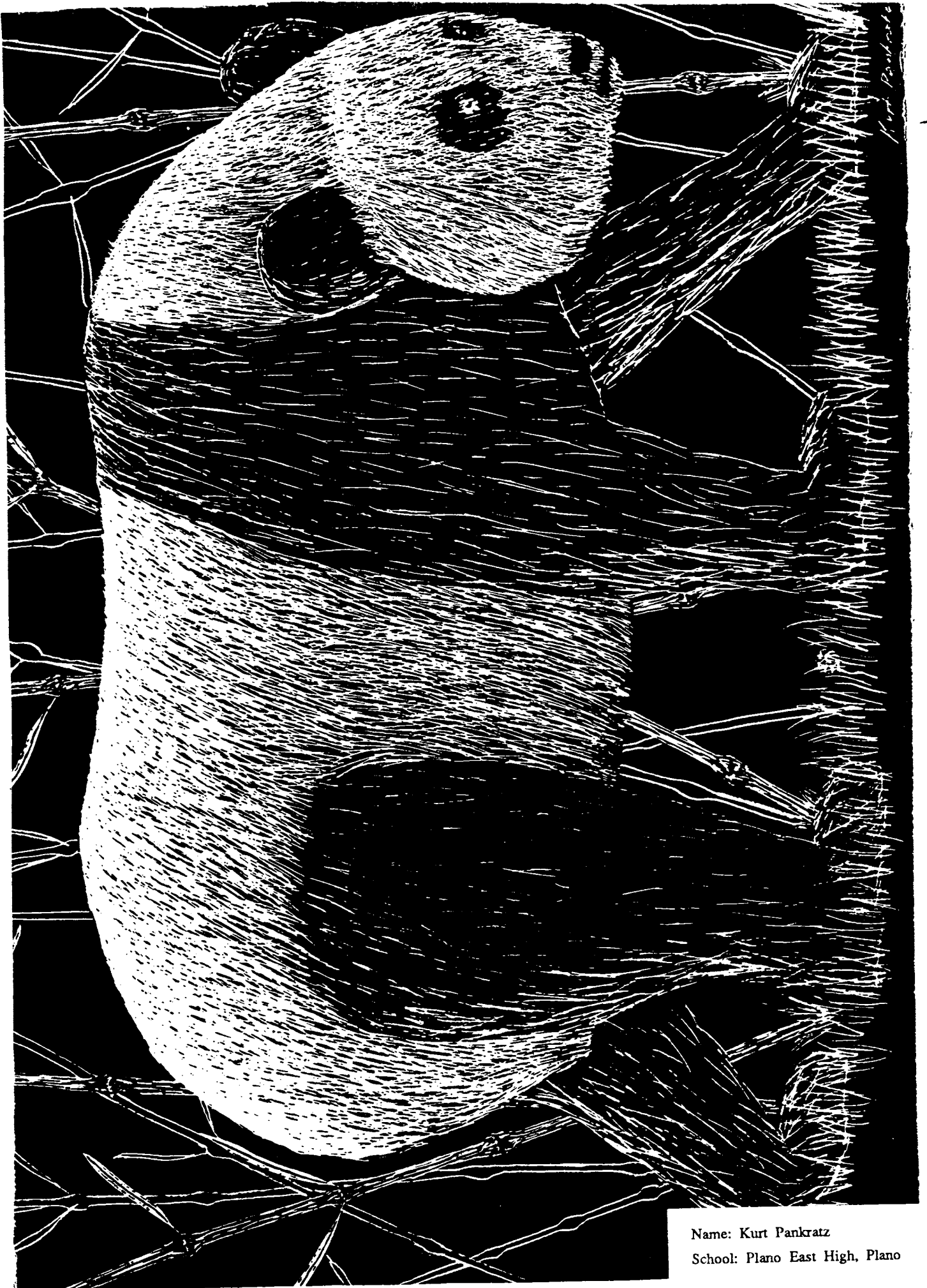
TRD-9003832

Allan Rutter  
Director of Administration  
Texas High-Speed Rail  
Authority

Earliest possible date of adoption: May 21, 1990

For further information, please call: (512) 478-5484





Name: Kurt Pankratz

School: Plano East High, Plano

# Withdrawn Sections

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

## TITLE 16. ECONOMIC REGULATION

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

#### Chapter 70. Industrialized Housing and Buildings

- 16 TAC §§70.1, 70.10,  
70.20-70.23, 70.30, 70.50, 70.51,  
70.60-70.67, 70.70-70.77, 70.80,  
70.90-70.92, 70.100-70.103

The Texas Department of Licensing and Regulation has withdrawn the emergency effectiveness of new §§70.1, 70.10, 70.20, 70.23, 70.30, 70.50, 70.51, 70.60-70.67, 70.70-70.77, 70.80, 70.90-70.92, 70.100-70.103, concerning the industrialized housing and buildings. The text of the emergency new sections appeared in the January 12, 1990, issue of the *Texas Register* (15 TexReg 161). The effective date of this withdrawal is April 13, 1990.

Issued in Austin, Texas, on April 13, 1990.

TRD-9003779      Elvis Schulze  
                         General Counsel  
                         Texas Department of  
                         Licensing and  
                         Regulation

Effective date: April 13, 1990

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



#### Chapter 79. Vehicle Storage Facilities

- 16 TAC §79.17

The Texas Department of Licensing and Regulation has withdrawn the emergency effectiveness of repeal to §79.17, concerning the vehicle storage facilities. The text of the emergency repeal appeared in the March 13, 1990, issue of the *Texas Register* (15 TexReg 1340). The effective date of this withdrawal is May 4, 1990.

Issued in Austin, Texas, on April 13, 1990.

TRD-9003781      Elvis G. Schulze  
                         General Counsel  
                         Texas Department of  
                         Licensing and  
                         Regulation

Effective date: May 4, 1990

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





Name: J. Thomas

School: Plano East High, Plano

# 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 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 27. Fish Farm Regulations

#### • 4 TAC §§27.1-27.6, 27.12-27.16, 27.21, 27.22, 27.102

The Texas Department of Agriculture (the department) adopts new §§27.1-27.6, 27.12-27.16, 27.21, 27.22, and 27.102, without changes to the proposed text as published in the March 2, 1990, issue of the *Texas Register* (15 TexReg 1137).

In the last Regular Legislative Session, the authority for regulation of fish farmers, fish farm vehicles, and cultured fish processing plants was transferred from the Texas Parks and Wildlife Department to the department. The adoption of the new sections is necessary to clarify licensing requirements for fish farmers and the fish farm industry, and to allow for the issuance of new licenses by the department. Existing regulations, which were adopted by the department on an emergency basis, and temporary licenses issued under those emergency regulations, are scheduled to expire on May 1, 1990.

The new sections are adopted under the Texas Agriculture Code, Chapter 134, and establish procedures and fees required for the issuance of fish farmer, fish farm vehicle, and cultured fish farm processing plant licenses; provide for certain records to be kept by licensees; authorize department inspection of facilities operated by licensees; and define key terms to be used in Chapter 27. While the adopted sections do include some provisions found in Chapter 134, they do not restate all provisions in Chapter 134, and should be read in conjunction with Chapter 134 to understand all rights and responsibilities of licensees created by Chapter 134.

A public hearing was held on March 23, 1990 in Austin, to take public comment on the proposed regulations. A total of sixteen individuals attended the hearing, with three making oral comments. Comments presented at the public hearing were generally in favor of the proposed regulations. One concern that was raised was that it would not be possible to make an accurate count of fish being kept or transported, as is required by the recordkeeping provisions in the regulations. The department understands that in some cases an accurate count is not possible, and does not believe that the recordkeeping provisions require a fish farmer to keep records of a more exact count than is reasonably possible.

In addition to the comments presented at the public hearing, written comments were submitted by the Texas Parks and Wildlife Department (TPWD) primarily regarding §27.22, but also requesting clarification of §27.21 and inclusion of penalty provisions. In regards to §27.22, the TPWD is concerned that the department's proposed deletion of specific requirements for invoicing, packaging, and labeling of shipments of cultured redbfish and speckled seatrout which are now found in TPWD regulations will jeopardize the TPWD's ability to continue to protect the state's wild stocks of those species. The TPWD requests that its regulations pertaining to cultured redbfish and speckled seatrout be incorporated verbatim into proposed §27.22. In addition, the TPWD believes that the department's rules should require fish dealers and restaurant operators to have documents, specifically invoices, verifying that the red drum or spotted seatrout they are selling came from a lawful source, as is also required by TPWD regulation. Finally, the TPWD believes that the department rules should also address any other fish species that is protected from commercial fishing activity and require documentation when farm raised fish are sold for consumption.

The Texas Aquaculture Association presented comments in favor of the proposed sections. The Texas Parks and Wildlife Department submitted comments against the proposed sections in part.

The department agrees that regulations regarding redbfish and speckled seatrout should be consistent in order to protect the recreational fishing industry. The department does intend to act on the recommendations made by the TPWD and to work with the TPWD in developing regulations to meet the needs and concerns of both agencies. However, the department believes the immediate need at this time is to have licensing regulations in place by the expiration date of the existing regulations in place by the expiration date of the existing regulations, and that the recommendations made by the TPWD should be dealt with in a separate submission from these proposed sections. The inclusion of the TPWD request at this time would be a substantive change and would require the republication of the proposed sections. In regards to the TPWD's recommendation that the penalty provisions for violation of the proposed sections are included in Chapter 134, and the department did not feel it necessary to repeat the provisions in these regulations. As noted previously, the adopted sections should be read in conjunction with Chapter 134 to understand all rights and responsibilities of licensees.

The new sections are adopted under Texas Agriculture Code, §134.005, which provides the Texas Department of Agriculture with the

authority to adopt rules for administration of the fish farm program; §134.014, which authorizes the department to set a fee for fish farmer and fish farm vehicle licenses, and §134.034, which authorizes the department to adopt rules for the licensing of cultured fish processing plants.

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 11, 1990.

TRD-9003731

Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of  
Agriculture

Effective date: May 2, 1990

Proposal publication date: March 2, 1990

For further information, please call: (512) 463-7583

## TITLE 7. BANKING AND SECURITIES

### Part VII. State Securities Board

#### Chapter 131. Guidelines for Confidentiality of Information

#### • 7 TAC §131.2

The State Securities Board adopts an amendment to §131.2, without changes to the proposed text as published in the November 17, 1989, issue of the *Texas Register* (14 TexReg 6065).

The amendment will give the authority needed to share necessary information with the Internal Revenue Service.

The amendment provides specific authorization for sharing information with the Internal Revenue Service in appropriate cases.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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 10, 1990.

TRD-9003668 Richard D. Latham  
Securities Commissioner  
State Securities Board

Effective date: May 1, 1990

Proposal publication date: November 17, 1989

For further information, please call: (512) 474-2233

## TITLE 16. ECONOMIC REGULATION

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

#### Chapter 61. Boxing

##### • 16 TAC §§61.1-61.10

The Texas Department of Licensing and Regulation adopts the repeal of §§61.1-61.10, without changes to the proposed text as published in the March 13, 1990, issue of the *Texas Register* (15 TexReg 1357).

The repeals are necessary in order to allow for the adoption of new rules that comply with the changes of House Bill 863.

The repeals allow for the renumbering and reorganization of the department's rules and provide for clearer and more concise rules for the persons regulated by the department under the Boxing Program.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 8501-1 and Article 9100, which provide the commissioner with the authority to adopt rules to regulate the Boxing 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 13, 1990.

TRD-9003778 Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: May 4, 1990

Proposal publication date: March 13, 1990

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

##### • 16 TAC §§61.1, 61.10, 61.20, 61.21, 61.22, 61.40, 61.50, 61.60, 61.61, 61.70-61.73, 61.80, 61.90-61.94, 61.100-61.109

The Texas Department of Licensing and Regulation adopts new §§61.1, 61.10, 61.20, 61.21, 61.22, 61.40, 61.50, 61.60, 61.61, 61.70-61.73, 61.80, 61.90-61.94, and 61.100-61.109, without changes to the

proposed text as published in the March 13, 1990, issue of the *Texas Register* (15 TexReg 1357).

The new sections are necessary in order to comply with House Bill 863 and the department's new numbering system and reorganization.

The new sections will allow for a more concise and clearer understanding of the department's and the licensees' responsibilities for the enforcement of the statute and rules.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 8501-1 and Article 9100, which provide the commissioner with the authority to adopt rules to administer the Boxing 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 13, 1990.

TRD-9003777 Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: May 4, 1990

Proposal publication date: March 13, 1990

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

#### Chapter 62. Career Counseling

##### • 16 TAC §§62.1-62.10

The Texas Department of Licensing and Regulation adopts the repeal of §§62.1-62.10, without changes to the proposed text as published in the March 13, 1990, issue of the *Texas Register* (15 TexReg 1367).

The repeals are necessary in order to allow for new rules to be adopted to comply with House Bill 863 and the department's new generic numbering system.

The repeals will allow for the enforcement and regulation of the career counseling services.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5221a-8 and Article 9100, which provide the commissioner with the authority to adopt rules to regulate the career counseling 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 13, 1990.

TRD-9003784 Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: May 4, 1990

Proposal publication date: March 13, 1990

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

#### Chapter 62. Career Counseling Services

##### • 16 TAC §§62.1, 62.10, 62.20, 62.21, 62.30, 62.40, 62.60, 62.70, 62.80-62.82, 62.90-62.92, 62.94

The Texas Department of Licensing and Regulation adopts new §§62.1, 62.10, 62.20, 62.21, 62.30, 62.40, 62.60, 62.70, 62.80-62.82, 62.90-62.92, and 62.94. Sections 62.20, 62.30, 62.40, 62.60, 62.70, 62.90, 62.91, and 62.94 are adopted with changes to the proposed text as published in the January 12, 1990, issue of the *Texas Register* (15 TexReg 180). Sections 62.1, 62.10, 62.21, 62.80-62.82, and 62.92 are adopted without changes and will not be republished.

The new sections are adopted to allow for the enforcement of the Career Counseling Act, Texas Civil Statutes, Article 5221a-8, pursuant to the changes due to House Bill 863, and Texas Civil Statutes, Article 9100. These sections comply with the department's numbering system and reorganization.

The new sections will allow for more concise and clearer rules for persons regulated by the department as career counseling services and comply with the generic numbering system and reorganization of all department rules.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Articles 5221a-8, and 9100, which provide the commissioner of the Texas Department of Licensing and Regulation with the authority to adopt rules to administer the career counseling program.

##### *§62.20. Certificate of Authority Requirements.*

(a) Each career counseling service location must have a certificate of authority. A certificate of authority is not assignable or transferable.

(b) A certificate of authority is valid for one year from the date issued and must be renewed annually.

(c) A certificate of authority allows a career counseling service to be operated for compensation in the State of Texas.

(d) The certificate of authority shall be displayed in a prominent place in the principal location of the career counseling service.

(e) In order to operate a career counseling service in this state a person must hold a certificate of authority issued under the Career Counseling Services Act.

*§62.30. Exemptions.* The Career Counseling Services Act (the Act) and these sections do not apply to:

(1) a person or personnel service regulated by the Texas Personnel Employment services Act, Texas Civil Statutes, Article 5221a-7;

(2) a governmental entity as defined by the Act, §2(a)(1);

(3) a professional counselor as defined by the Act; or

(4) a nonprofit organization as defined by the Act, providing a service as part of its charitable purposes.

#### §62.40. Security Requirements.

(a) Before a certificate of authority is issued, the owner must obtain and file with the department a surety bond in the amount of \$10,000, issued by a company authorized to do business in the State of Texas, on a form provided by the department, and payable to the State of Texas.

(b) The bond shall be continuous and shall provide for the issuing company to give the department 30 days written notice prior to cancellation.

(c) A separate bond must be filed for each business location.

(d) An owner may deposit a cash performance alternative of \$10,000 for each business location in lieu of the bond. The cash performance alternative shall be an irrevocable assignment of security issued by a national or state bank, or savings and loan association, subject to the express approval of the commissioner. Each assignment or cash deposit shall remain in effect for a period of two years after expiration, cancellation, or revocation of the certificate of authority. Forms for filing an assignment of security shall be provided by the department upon request.

(f) The surety bond or assignment of security shall be maintained in full during the entire time the certificate of authority is in effect and for an additional two years thereafter. Failure to do so will be cause for the commissioner to call an administrative hearing to suspend or revoke the career counseling service's certificate of authority.

#### §62.60. Responsibilities of the Department.

(a) All career counseling services holding a certificate of authority shall receive notice from the department regarding renewal no later than 30 days prior to the expiration of their current certificate of authority.

(b) The department shall issue a certificate of authority to all applicants who comply with all provisions of the Career Counseling Services Act (the Act) and department rules.

(c) Any person may file a complaint with the commissioner by sworn

affidavit alleging a violation of the Act. The commissioner shall investigate the alleged violation upon receipt of the complaint.

(d) The commissioner shall enforce the Act pursuant to §11 and §12 and/or Texas Civil Statutes, Article 9100, §17, and may investigate any career counseling service as necessary.

#### §62.70. Responsibilities of the Certificate Holder.

(a) Each career counseling service owner must notify the department of and changes in information regarding the location or ownership of the career counseling service. The notification must be received by the department no later than 30 days after the change occurs.

(b) If any of the information that appears on the face of the career counseling service's certificate of authority changes, the career counseling service must obtain a duplicate certificate of authority showing the correct information.

(c) Each career counseling service shall provide service recipients with access to the name, mailing address, and telephone number of the department for purposes of directing complaints to the department. A rubber stamp or sticker may be used to convey the information. The notification shall be included on:

(1) a sign prominently displayed in each place of business;

(2) any written contract for services; or

(3) any bill for services.

(d) Each career counseling service shall provide upon request by a consumer the credentials of consultants employed by the career counseling service accompanied by the number of consultants available through the service in the immediate area.

(e) The certificate holder must allow the department, as part of an inspection or investigation, to enter the business premises during regular business hours and examine and copy any records that relate directly or indirectly to the inspection or investigation being conducted. The department may inspect all records, books, and documents, whether paper or electronic, pertaining to the business operation.

(f) Each career counseling service must comply with the contract requirements as set forth in the Career Counseling Services Act.

#### §62.90. Sanctions—Administrative Sanctions.

(a) If a person violates the Career Counseling Service Act (the Act), or a rule or order adopted or issued by the commissioner relating to the Act, the

commissioner may enforce the Act or Texas Civil Statutes, Article 9100, at his discretion, in compliance With the Administrative Procedure and Texas Register Act, by the following:

(1) issue a written reprimand to the person that specifies the violation;

(2) revoke or suspend the person's license;

(3) award a complainant damages in a amount equal to the fee charged by the service;

(4) impose a penalty on the service equal to twice the amount of the fee charged by the service; or

(5) place on probation a person whose license has been suspended.

(b) If a suspension is probated, the commissioner may require the person to:

(1) report regularly to the commissioner on matters that are the basis of the probation; or

(2) limit practice to the areas prescribed by the commissioner.

(c) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner shall issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative sanction be imposed on the person charged, and recommending the precise nature and conditions, if any, of that proposed sanction. The commissioner shall base the recommended sanction, and any accompanying conditions, on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) Not later than the 14th day after the day on which the preliminary report is issued, the department shall give written notice of the violation to the person charged. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the proposed sanction, and any accompanying conditions; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the sanction and any terms thereof.

(e) Not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under this section, including the recommended sanction and all accompanying conditions, or make a written request for a hearing on that determination.

(f) If the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the recommended sanction and accompanying conditions be imposed upon that person.

(g) If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearing examiner to conduct the hearing.

(h) If an administrative hearing is held, and the person wishes to dispute the administrative sanction imposed, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §16(c), the person charged shall file a petition for judicial review contesting the fact of the violation and/or the administrative sanction. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §19.

(i) A motion for rehearing is a prerequisite for an appeal.

#### §62.91. *Sanctions—Administrative Penalty/Fine.*

(a) If a person violates the Texas Career Counseling Act (the Act), or a rule or order adopted or issued by the commissioner relating to the Act, the commission may, in addition to or in lieu of a sanction imposed under §62.90 of this title (relating to Sanctions—Administrative sanctions), assess an administrative penalty in an amount not to exceed \$1,000 for each violation.

(b) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(c) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner may issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty not to exceed \$1,000 for each violation be imposed on the person charged,

and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) Not later than the 14th day after the day on which the preliminary report is issued, the commissioner shall give written notice of the violation to the person charged. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the amount of the penalty recommended; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the amount of the penalty.

(e) Not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(f) If the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(g) If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearing examiner to conduct the hearing.

(h) If an administrative hearing is held, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §16(c), the person charged shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review contesting the fact of the violation and/or the administrative penalty/fine. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article

6252-13a, §19. If this petition for judicial review is filed, the person must forward the amount of the administrative penalty/fine to the department for deposit in an escrow account, or post a supersedeas bond with the department in the amount of the penalty/fine, until judicial review is final.

(i) A person charged with a penalty who is financially unable to comply with subsection (h)(2) of this section is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(j) Except as provided by subsection (i) of this section, failure to forward the amount assessed or post the bond with the department, in the manner and within the period prescribed by the department, results in a waiver of legal rights to judicial review. If the person charged fails to forward the amount assessed or post the bond, the department or the attorney general may bring an action for the collection of the penalty.

(k) A motion for rehearing is a prerequisite for an appeal.

#### §62.94. *Sanctions—Revocation or Suspension because of a Criminal Conviction.*

(a) Pursuant to Texas Civil Statutes, Article 6252-13c, the commissioner, after a hearing, may suspend or revoke an existing certificate of registration, or disqualify a person from receiving a certificate of registration, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in operating a career counseling service. The commissioner may also, after hearing, suspend, revoke or deny a certificate of authority because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

(b) In determining whether a criminal conviction directly relates to the operation of a career counseling service, the commissioner shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the safe operation and insuring of a career counseling service;

(3) the extent to which a certificate of authority might offer an opportunity to engage in further criminal activity of the same type as that in which the person was previously involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of operating a career counseling service.



(c) In determining the present fitness of a person who has been convicted of a crime, the commissioner shall also consider:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(d) It shall be the responsibility of the applicant, to the extent possible, to secure and provide the department the recommendations of the prosecution, law enforcement, and correctional authorities as required.

(e) The applicant shall also furnish proof, in such form as may be required by the department, that he has maintained a record of steady employment, has supported his dependents per court order, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he has been convicted.

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 13, 1990.

TRD-9003785      Larry E. Kosta  
Executive Director  
Department of Licensing  
and Regulation

Effective date: May 4, 1990

Proposal publication date: January 12, 1990

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

## Chapter 79. Vehicle Storage Facilities

### • 16 TAC §79.17

The Texas Department of Licensing and Regulation adopts the repeal of §79.17, without changes to the proposed text as published in the March 5, 1990, issue of the *Texas Register* (15 TexReg 1367).

The repeal is necessary because the section was reworded and renumbered in new administrative rules adopted by the Texas Department of Licensing and Regulation.

The repeal allows for new administrative rules that comply with House Bill 863 and the department's new numbering system and reorganization.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 6687-9a and Article 9100, which provide the commissioner with the authority to adopt rules to regulate the vehicle storage facility 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 13, 1990.

TRD-9003780      Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: May 4, 1990

Proposal publication date: March 5, 1990

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

## TITLE 22. EXAMINING BOARDS

### Part XI. Board of Nurse Examiners

#### Chapter 211. Bylaws

##### • 22 TAC §211.6

The Board of Nurse Examiners adopts an amendment to §211.6, without changes to the proposed text as published in the January 16, 1990, issue of the *Texas Register* (15 TexReg 252).

The amendment to this section will help identify the changes made in the structure of the board's committees.

The amendment will enable the public to be better informed regarding the current structure of the committees of the Board of Nurse Examiners.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4514, §1 which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on April 6, 1990.

TRD-9003617      Louise Waddill, R.N., Ph.D.  
Executive Secretary  
Board of Nurse Examiners

Effective date: April 30, 1990

Proposal publication date: January 16, 1990

For further information, please call: (512) 835-8650

## Chapter 213. Practice and Procedure

### • 22 TAC §213.19, §213.20

The Board of Nurse Examiners adopts new §213.19 and §213.20, without changes to the proposed text as published in the January 16, 1990, issue of the *Texas Register* (15 TexReg 252).

The adoption of the sections will more clearly delineate the violations which can result in disciplinary action being taken against an applicant for licensure and provide additional information as to whether or not an applicant may apply for licensure based on hospitalization and/or treatment for mental illness and/or chemical dependence.

Applicants with either a criminal conviction or treatment for mental illness and/or chemical dependency will know what the board requires and what actions may be taken as a result of their conviction and/or treatment prior to them seeking licensure as a licensed professional nurse in Texas.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on April 6, 1990.

TRD-9003616      Louise Waddill, R.N., Ph.D.  
Executive Secretary  
Board of Nurse Examiners

Effective date: April 30, 1990

Proposal publication date: January 16, 1990

For further information, please call: (512) 835-8650

## Chapter 217. Licensure and Practice

### • 22 TAC §217.15

The Board of Nurse Examiners adopts the repeal of §217.15, without changes to the proposed text as published in the January 16, 1990, issue of the *Texas Register* (15 TexReg 254).

The repeal of this section will allow the adoption of a new section which more clearly delineates the violations which can result in disciplinary action being taken against an applicant for licensure.

The repeal allows the newly adopted section to more clearly define language for applicants who are seeking licensure in the State of

Texas to practice as a licensed professional nurse by outlining the requirements they must meet.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

This agency hereby certifies that the repeal 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 6, 1990.

TRD-9003615 Louise Waddill, R.N., Ph.D.  
Executive Secretary  
Board of Nurse Examiners

Effective date: April 30, 1990

Proposal publication date: January 16, 1990

For further information, please call: (512) 835-8650

## Chapter 223. Fees

### • 22 TAC §223.1

The Board of Nurse Examiners adopts an amendment to §223.1, without changes to the proposed text as published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 815).

The increase in examination fees is adopted as a direct result of an increase in the examination fee changed by the National Council of State Boards of Nursing. The fee increase affects RNs who are paying a delinquent re-registration fee as provided in Texas Civil Statutes, Article 4526. The increase in duplicate or substitute certificate and new initial credentialing charge for ANPs is necessary to cover the cost of providing these services.

The amendment will affect candidates taking the NCLEX-RN February 1991 and thereafter; RNs paying late re-registration fees; RNs applying for duplicate or substitute certificates; and RNs seeking approved to function in the advanced nurse practitioner category.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

This agency hereby certifies that the section 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 6, 1990.

TRD-9003614 Louise Waddill, R.N., Ph.D.  
Executive Secretary  
Board of Nurse Examiners

Effective date: April 30, 1990

Proposal publication date: February 16, 1990

For further information, please call: (512) 835-8650

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter O. State Sales and Use Tax

###### • 34 TAC §3.355

The Comptroller of Public Accounts adopts an amendment to §3.355, without changes to the proposed text as published in the February 20, 1990, issue of the *Texas Register* (15 TexReg 922).

The amendment clarifies the taxability of certain services performed for self-insured entities.

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 11, 1990.

TRD-90003716 Bob Bullock  
Comptroller of Public  
Accounts

Effective date: May 2, 1990

Proposal publication date: February 20, 1990

For further information, please call: (512) 463-4004

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 16. Intermediate Care Facilities/Skilled Nursing Facilities (ICF/SNF)

##### Compliance with State and Local Laws

###### • 40 TAC §16.1510

The Texas Department of Human Services (DHS) adopts an amendment to §16.1510,

without changes to the proposed text as published in the February 9, 1990, issue of the *Texas Register* (15 TexReg 692).

The justification for the amendment is to comply with requirements of the Omnibus Budget Reconciliation Act of 1987.

The purpose of the amendment is to update the sanctions that DHS and the Texas Department of Health (TDH) apply when TDH, as the state survey agency, cites a facility for deficiencies that pose an immediate and serious threat to recipient health and safety or for deficiencies that constitute health or safety hazards with a direct or immediate adverse effect on recipient health, safety, or security. The amendment replaces the term "immediate jeopardy" with the term "immediate and serious threat," and sets new requirements and time frames for DHS and TDH actions after TDH cites a facility for deficiencies that pose a threat or constitute a hazard to the health and safety of recipients.

During the 30-day comment period, the department received one comment on the proposed amendment. The comment was from the Texas Health Care Association (THCA). A summary of the comment and the department's response follows.

Comment: THCA was concerned that §16.1510(b)(2)(B) does not indicate how the public is notified when a facility found to be out of compliance with state standards is once again in compliance with standards.

Response: DHS agrees that this information should be included in this section and will propose an amendment in a forthcoming issue of the *Texas Register* to address this concern.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

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

Issued in Austin, Texas, on April 16, 1990.

TRD-9003836 Cathy Rossberg  
Agency liaison, Policy  
Communication  
Services  
Texas Department of  
Human Services

Effective date: May 19, 1990

Proposal publication date: February 9, 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 has amended the Texas Automobile Manual (hereafter called Manual), Rule 11, entitled Changes.

Board Order Number 55717, issued January 16, 1990, and effective May 1, 1990, establishes two new classifications, for utility vehicles. Rates for those new classifications developed under the above order and under Board Order 55942, issued February 13, 1990 (private passenger rate revision), apply to all new and renewal policies effective on and after 12:01 a.m., May 1, 1990. Those new classifications, being rating factors, necessitate the addition of a new paragraph to the exception appearing at the end of Rule 11 in the Manual. The action taken in the order is

implemented under the emergency procedure, because its effective date must coincide with the two previous board orders mentioned above, in order to give proper and complete instructions regarding rate calculation.

This amendment is effective on and after 12:01 a.m., May 1, 1990.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This agency hereby certifies that the 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 10, 1990.

TRD-9003718 Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: May 1, 1990

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



The State Board of Insurance in open meeting permanently adopted the amendments to the rules and regulations governing pool and servicing companies of assigned risks as related to loss control management in the same format as was adopted on an

emergency basis by Board Order Number 55472 effective December 1, 1989.

The amended rule requires the Texas Workers' Compensation Assigned Risk Pool in order to reduce losses, to establish a Loss Control Division staffed with qualified field safety representatives. The loss control staff will have the responsibility to work with the policyholders, servicing carriers, and the State Board of Insurance to identify the hazards, monitor corrective actions, present educational material, and enhance safety awareness. The amended rule adopted on a permanent basis is effective 12:01 a.m. May 15, 1990.

The board adopted the amended rule under the authority and jurisdiction of the Insurance Code, Articles 5.76 and 5.96.

This notification is filed pursuant to the Texas 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.

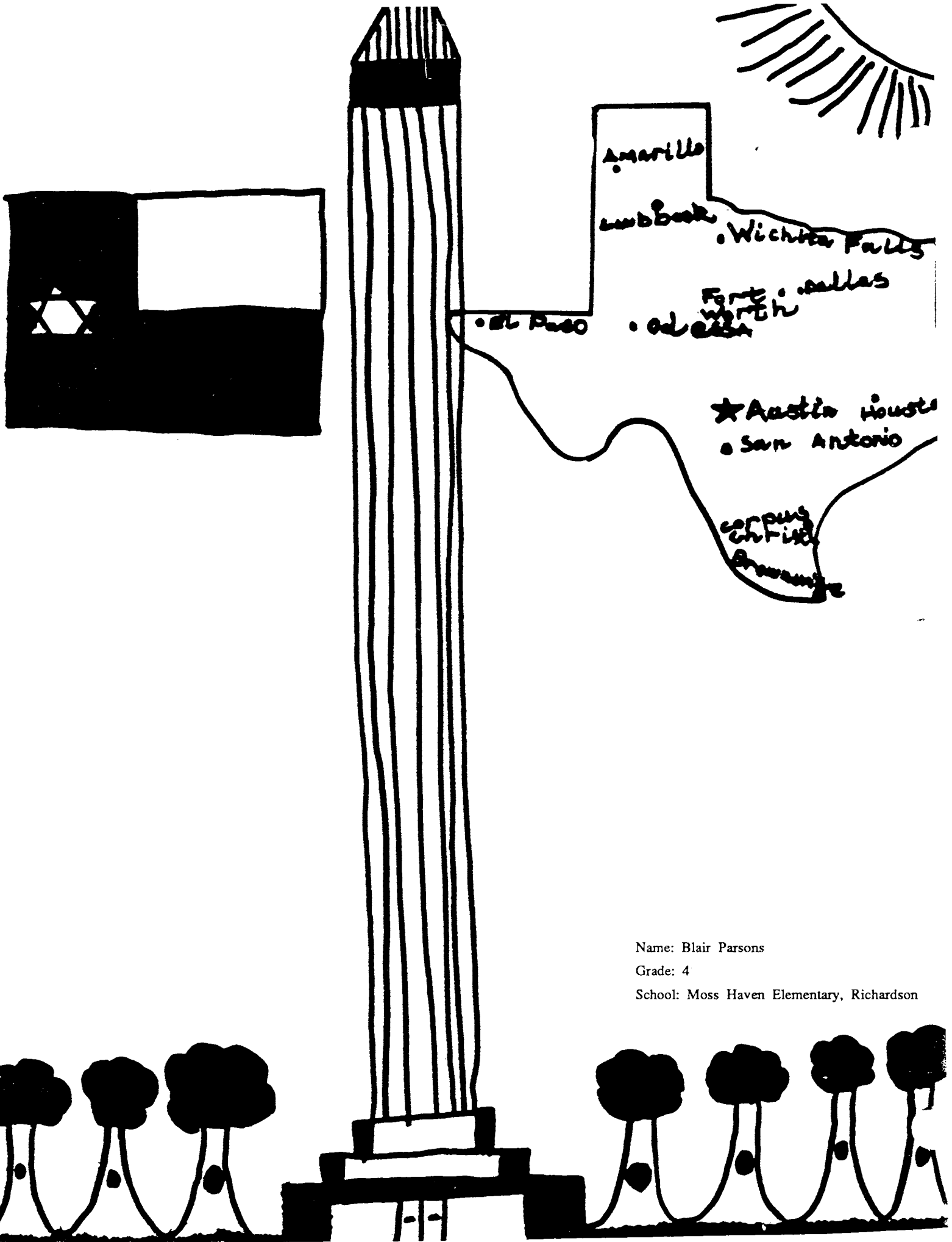
Issued in Austin, Texas, on April 10, 1990.

TRD-9003717 Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: May 15, 1990

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





Name: Blair Parsons  
Grade: 4  
School: Moss Haven Elementary, Richardson

# 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 Agriculture

**Monday, April 23, 1990, 10 a.m.** The Texas Department of Agriculture will meet at San Juan District Office, Expressway 83, Two Blocks West of Morningside Road, San Juan. According to the complete agenda, the department will receive public comment regarding: the Lower Rio Grande Valley boll weevil pest management zone cotton destruction date for the area to be changed from September 15 to September 1. Published in March 30, 1990, in the *Texas Register* (15 TexReg 1755).

**Contact:** David Davis, P.O. Box 12847, Austin, Texas 78711, (512) 463-7540.

**Filed:** April 12, 1990, 10:43 a.m.

TRD-9003751

**Tuesday, April 24, 1990, 10 a.m.** The Texas Department of Agriculture will meet at the District Office, 1801 North Lamar Boulevard, Suite 103, Dallas. According to the complete agenda, the department will conduct an administrative hearing to consider cancellation of commission merchant license held by Patricio Perez and Pat Perez Produce Company, Inc.

**Contact:** Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

**Filed:** April 11, 1990, 3:11 p.m.

TRD-9003732

**Tuesday, April 24, 1990, 2 p.m.** The Texas Department of Agriculture will meet at the District Office, 1801 North Lamar Boulevard, Suite 103, Austin. According to the complete agenda, the department will conduct an administrative hearing to show cause for cancellation of commission merchant license of Central Market, Inc.

**Contact:** Yvonne M. Williams, P.O. Box 12847, Austin, Texas 78711, (512) 463-7682.

**Filed:** April 11, 1990, 3:11 p.m.

TRD-9003733

**Friday, April 27, 1990, 8 a.m.** The Texas Grain Sorghum Producers Board of the

Texas Department of Agriculture will meet at Quality Inn, 3817 North Pan Am Expressway, San Antonio. According to the agenda summary, the board will discuss the minutes; financial report; office staff policy; building and grounds committee report; promotion; reports; and other business.

**Contact:** Jack Eberspacher, P.O. Box 530, Abernathy, Texas 79311-0530, (806) 298-2543.

**Filed:** April 16, 1990, 3:53 p.m.

TRD-9003865

## Texas Air Control Board

**Friday, April 20, 1990, 8:30 a.m.** The Regulation Development Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will review and consider to adopt proposed revisions to the general rules; discussion and consideration of regulatory element of the staff budget proposal.

**Contact:** Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 433.

**Filed:** April 10, 1990, 10:22 a.m.

TRD-9003658

**Friday, April 20, 1990, 9:30 a.m.** The Budget and Finance Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will discuss and consider proposed budget increases for fiscal years 1992-1993 concerning overhead and current services needs.

**Contact:** Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711.

**Filed:** April 10, 1990, 10:22 a.m.

TRD-9003657

**Friday, April 20, 1990, 10:30 a.m.** The Texas Air Control Board will meet at 6330 Highway 290 East, Auditorium, Austin. According to the agenda summary, the board will discuss approval of minutes of

March 9, 1990 meeting; presentation of plaques to Otto Kunze, Ph.D., P.E., and Hubert Oxford, III; announcement of Central Texas winner, poster contest sponsored by the STAPPA and ALAPCO; public testimony; reports; consideration and action of proposed rule; enforcement report; agreed enforcement orders; resolution authorizing signature on accounts; update on Federal Clean Air Act amendments; consideration and action on proposed resolution for earth day, April 22, 1990; and new business.

**Contact:** Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 433.

**Filed:** April 10, 1990, 10:22 a.m.

TRD-9003656

**Friday, April 20, 1990, 1 p.m.** The Monitoring and Research Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will discuss planning for fiscal year 1991 research: reviewing the state-of-the-science in ozone research proposing research objectives for fiscal year 1991; monitoring budget proposals for fiscal year 1992 and fiscal year 1993.

**Contact:** Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711.

**Filed:** April 10, 1990, 10:22 a.m.

TRD-9003655

**Friday, April 20, 1990, 2 p.m.** The Mobile Source Emissions Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will discuss staff proposal for mobile source activities.

**Contact:** Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 433.

**Filed:** April 10, 1990, 10:23 a.m.

TRD-9003654

**Friday, April 20, 1990, 2:45 p.m.** The Enforcement Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to

the complete agenda, the committee will discuss budget and staffing proposal for enforcement activities related to new program initiatives.

**Contact:** Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 433.

**Filed:** April 10, 1990, 10:23 a.m.

TRD-9003653

### Texas Council on Alzheimer's Disease and Related Disorders

**Thursday, May 10, 1990, 9 a.m.** The Texas Council on Alzheimer's Disease and Related Disorders will meet in Room T-607, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the council will consider Texas Hospital Association drug trials (French and Canadian studies); alzheimer's association 1990 annual public policy forum; alzheimer's legislation passed by Texas legislature; 1990 biannual report; recognition of outgoing officers; new business not requiring council action.

**Contact:** Morris H. Craig, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534.

**Filed:** April 16, 1990, 10:36 a.m.

TRD-9003848

### Anatomical Board of the State of Texas

**Friday, May 11, 1990, 10 a.m.** The Anatomical Board of the State of Texas will meet at Texas College of Osteopathic Medicine, Room 810, Medical Education Building #1/Camp Bowie Boulevard, Fort Worth. According to the agenda summary, the board will discuss approval of the agenda; 1989 meeting minutes; annual financial report for 1988-1989 and interim financial report for 1989-1990; 1988-1989 annual cadaver procurement and use report; report of requests for cadaver transfer; secretary/treasurer; request by College of Optometry-University of Houston; invitation for host of 1991 annual meeting; unfinished old business; new business; lunch; and inspection of Texas College of Osteopathic Medicine's anatomy facility.

**Contact:** Andrew F. Payer, University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-1166.

**Filed:** April 12, 1990, 3:54 p.m.

TRD-9003772

### State Bar of Texas

**Thursday, April 19, 1990, 10 a.m.** The Executive Committee of the State Bar of

Texas met in Room 102, Texas Law Center, 1414 Colorado Street, Austin. According to the agenda summary, the committee discussed reports of chairman, president, president-elect, TYLA president, executive director, general counsel, immediate past president, immediate past chairman, and supreme court liaison; consideration of reports from administrative advisory committee, and sunset review committee and request of section on women in the law; and report from personnel department.

**Contact:** Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

**Filed:** April 11, 1990, 3:31 p.m.

TRD-9003734

**Friday-Saturday, April 20-21, 1990, 9 a.m.** The Board of Directors of the State Bar of Texas met at the Barton Creek Conference Center, 8212 Barton Club Drive, Austin. According to the agenda summary, the board will hear reports of chairman, president, president elect, executive director, general counsel, immediate past president, immediate past chairman, TYLA president, supreme court liaison, criminal appeals liaison, federal judicial liaison, judicial section liaison; reports from committees: minorities in the profession, Texas Center for Legal Ethics and Professionalism, selection, compensation and tenure of state judges, CLE minority recruitment of speakers, court cost efficiency and delay, legal services to the poor, assistance to local bars and revisions to bylaws of James Watson Inn. Consideration of reports on: MCLE participants fees, sunset review, court costs efficiency and delay, lawyer advertising, women in the law, and board committees. Comments of public members.

**Contact:** Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

**Filed:** April 11, 1990, 3:32 p.m.

TRD-9003735

### Texas Commission for the Blind

**Thursday, May 3, 1990, 4 p.m.** The Lubbock District Office of the Texas Commission for the Blind will meet at 1306 Ninth Street, Mahon Library, Lubbock. According to the complete agenda, the office will conduct a public forum for the purpose of giving local consumers an opportunity of speaking to agency staff about services to blind and visually impaired Texans and commenting on the agency's state plan. Consumers will also have the opportunity of participating in a question and answer period about local agency services.

**Contact:** Cecilia Berrios, P.O. Box 12888, Austin, Texas 78711, (512) 459-2611.

**Filed:** April 16, 1990, 3:28 p.m.

TRD-9003892

### Texas Bond Review Board

**Friday, April 13, 1990, 10 a.m.** The Staff Planning Meeting of the Texas Bond Review Board met in the Sergeant's Committee Room, State Capitol, Austin. According to the emergency revised agenda summary, the board considered proposed issues: delete item C—Application of Texas National Research Laboratory; discussed other business: considered proposed amendments to the Public School Facilities Funding Act; and discussed upcoming revenue bond issue by the University of Texas System. The emergency status was necessary to resolve scheduling conflict and to allow timely notification of pending application.

**Contact:** Tom K. Pollard, 201 East 14th Street, Room 506, Austin, Texas 78701, (512) 463-1741.

**Filed:** April 11, 1990, 12:47 p.m.

TRD-9003722

**Thursday, April 19, 1990, 10 a.m.** The Texas Bond Review Board met in the Sergeant's Committee Room, State Capitol, Austin. According to the complete agenda, the board discussed the approval of minutes; considered proposed issues: treasury department—lease—purchase of application systems and super-minicomputer systems; University of Houston System—consolidated revenue refunding bonds, series 1990A; Texas Turnpike Authority—revenue bonds, series 1990; Texas Housing Agency—collateralized home mortgage revenue bonds, series 1990A and 1990B; other business—considered proposed amendments to the Public School Facilities Funding Act.

**Contact:** Tom K. Pollard, 201 East 14th Street, Room 506, Austin, Texas 78701, (512) 463-1741.

**Filed:** April 11, 1990, 12:48 p.m.

TRD-9003723

**Friday, April 20, 1990, 10 a.m.** The Called Staff Planning Meeting of the Texas Bond Review Board will meet in the Sergeant's Committee Room, State Capitol, Austin. According to the complete agenda, the board will consider proposed issue: Texas National Research Laboratory Commission—general obligation bonds, series 1990.

**Contact:** Tom K. Pollard, 201 East 14th Street, Room 506, Austin, Texas 78701, (512) 463-1741.

**Filed:** April 11, 1990, 12:50 p.m.

TRD-9003724

**Thursday, April 26, 1990, 10 a.m.** The Called Board Meeting of the Texas Bond

Review Board will meet in the Sergeant's Committee Room, State Capitol, Austin. According to the complete agenda, the board will consider proposed issue: Texas National Research Laboratory Commission—general obligation bonds, series 1990.

**Contact:** Tom K. Pollard, 201 East 14th Street, Room 506, Austin, Texas 78701, (512) 463-1741.

**Filed:** April 11, 1990, 12:50 p.m.

TRD-9003725

## Texas Cosmetology Commission

**Monday, April 30, 1990, 9 a.m.** The Texas Cosmetology Commission will meet at the Radisson Plaza Hotel, 700 San Jacinto Street, Austin. According to the complete agenda, the commission will discuss the minutes from previous meetings; exams; work permits; rule change requests; naming new building and building progress; and open meeting.

**Contact:** Laura Donges, 1111 Rio Grande, Austin, Texas 78701, (512) 463-3182.

**Filed:** April 12, 1990, 3:45 p.m.

TRD-9003761

## Credit Union Department

**Thursday, April 19, 1990, 3:15 p.m.** The Credit Union Commission of the Credit Union Department met at the San Antonio Convention Center, San Antonio. According to the complete agenda, the commission discussed public input for future consideration; received minutes of March 20, 1990 meeting, communications reported by the commissioner, heard report by legislative advisory committee and report by commissioner evaluation committee; considered proposed revisions of Rule 91.402 (permanent records); and conducted an executive session to confer with legal counsel regarding field of membership guidelines, and pending and contemplated litigation.

**Contact:** Harry L. Elliott, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

**Filed:** April 11, 1990, 2:07 p.m.

TRD-9003728

## Texas Department of Criminal Justice Board of Pardons and Paroles

**Monday-Friday, April 23-27, 1990, at 10 a.m.** The Texas Department of Criminal Justice Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard,

Austin. According to the agenda summary, a panel (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

**Contact:** Karin Armstrong, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

**Filed:** April 13, 1990, 10:45 a.m.

TRD-9003798

## Texas Commission for the Deaf

**Friday, April 20, 1990, 9 a.m.** The Board of Commissioners of the Texas Commission for the Deaf will hold an emergency meeting at SouthWest Collegiate Institute for the Deaf, Avenue C, Big Spring. According to the complete agenda, the board will discuss approval of minutes; subcommittee reports; direct services; fiscal affairs; BEI; rules and regulations; chairperson's report; executive director's report; old business; new business; and announcements. The emergency status was necessary because of the only time all parties could meet to discuss matters that must be decided to complete the ALR process.

**Contact:** Larry D. Evans, 510 South Congress, Suite 300, Austin, Texas 78704, (512) 469-9891.

**Filed:** April 13, 1990, 11:28 a.m.

TRD-9003804

## Texas Diabetes Council

**Wednesday, April 25, 1990, 10 a.m.** The Texas Diabetes Council will meet in Room M-418, 1100 West 49th Street, Austin. According to the agenda summary, the council will adopt minutes of previous meeting; consider appropriations requests; funding recommendation for September, 1990 conference on diabetes among Mexican Americans; centers for disease control federal budget support; possible intern from UT College of Communications; report on high risk insurance pool; progress report on state plan to control diabetes; set future meeting dates and locations.

**Contact:** Charlene Laramey, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534.

**Filed:** April 16, 1990, 4:18 p.m.

TRD-9003876

## Council on Disabilities

**Tuesday, April 24, 1990, 9 a.m.** The State Plan Task Force of the Council on

Disabilities will meet at the Department on Aging, Board Room, 1949 South IH 35, Austin. According to the agenda summary, the task force will review and approve new plan goals; discussion and approval of original plan review and revisions; develop recommendation for council board meeting; general discussion of revision process with time line.

**Contact:** Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4353.

**Filed:** April 12, 1990, 3:38 p.m.

TRD-9003758

**Friday, May 4, 1990, 10 a.m.** The Demographic Survey Task Force of the Council on Disabilities will meet in Room 550 1/2, 4900 North Lamar Boulevard, Brown-Heatly Building, Austin. According to the complete agenda, the task force will discuss proposal by Dr. Tutchings; question and answer; recommendation to be taken to the council board.

**Contact:** Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4353.

**Filed:** April 12, 1990, 3:38 p.m.

TRD-9003759

## Texas Employment Commission

**Tuesday, April 24, 1990, 8:30 a.m.** The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss prior meeting notes; executive session to discuss Chacko Pulpampil, M.D. v. Texas Employment Commission and Helen De Los Santos; actions, if any, resulting from executive session; discussion of proposed land acquisition in Brownsville; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Docket 17; and set date of next meeting.

**Contact:** Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

**Filed:** April 16, 1990, 1:06 p.m.

TRD-9003851

## Texas State Board of Registration for Professional Engineers

**Tuesday, April 24, 1990, 9 a.m.** The Ad Hoc Committee of the Texas State Board of Registration for Professional Engineers will meet at 1917 IH 35 South, Board Room, Austin. According to the complete agenda,

the committee will meet with representatives of the Board of Architectural Examiners to discuss current practices; board's interpretation of the Texas Engineering Practice Act as it applies to privately owned public utilities and cooperative utilities; and interpretation of Texas Instrument's questions.

**Contact:** Charles E. Nemir, 1917 IH 35 South, Austin, Texas 78741, (512) 440-7723.

**Filed:** April 13, 1990, 11:27 a.m.

TRD-9003801

**Wednesday-Thursday, April 25-26, 1990, 8:30 a.m.** The Texas State Board of Registration for Professional Engineers will meet at the Marriott Brookhollow Hotel, 3000 North Loop West, Houston. According to the agenda summary, the board will receive reports from board members and staff; interview applicants; take action on applications for registration; reading of communications; and any other business which comes before the board.

**Contact:** Charles E. Nemir, 1917 IH 35 South, Austin, Texas 78741, (512) 440-7723.

**Filed:** April 13, 1990, 11:28 a.m.

TRD-9003800

### State Finance Commission

**Friday, April 20, 1990, 9 a.m.** The State Finance Commission will meet at 2601 North Lamar Boulevard, State Finance Building, Austin. According to the agenda summary, the commission will review and approve minutes of previous meeting; committee reports; commission staff member; report from banking department; report from the savings and loan department; report from the consumer credit department; executive session to discuss supervisory, litigation, and personnel matters.

**Contact:** Ann Graham, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

**Filed:** April 10, 1990, 4:33 p.m.

TRD-9003693

### Interagency Council for Genetic Services

**Wednesday, May 2, 1990, 1 p.m.** The Interagency Council for Genetic Services will meet at the Texas Department of Health, Room G-107, 1100 West 49th Street, Austin. According to the agenda summary, the council will discuss and develop a resource allocation plan as required by Senate Bill 506, 71st legislature.

**Contact:** William E. Moore, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7321.

**Filed:** April 16, 1990, 10:37 a.m.

TRD-9003847

### Texas Department of Health

**Friday, April 27, 1990, 10 a.m.** The Ad Hoc Committee on Nurse Aides in Long Term Care of the Texas Department of Health will meet in Room G-107, 1100 West 49th Street, Austin. According to the agenda summary, the committee will approve minutes of previous meeting; review guidelines for voting eligibility; develop process for revising Texas Curriculum for nurse aides in long term care facilities and process for revising Texas nurse aide rules; develop emergency and proposed rules incorporating exemptions for competency evaluations; discuss federal rules and establish written comments to be submitted to the Health Care Financing Administration; consider items related to committee operations; and set next meeting date.

**Contact:** Barbara Cohen, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7229.

**Filed:** April 16, 1990, 10:38 a.m.

TRD-9003846

### Texas Health and Human Services Coordinating Council

**Friday, April 20, 1990, 9:30 a.m.** The Commission on Children, Youth, and Family Services of the Texas Health and Human Services Coordinating Council will meet at 1100 West 49th Street, Room M653, Austin. According to the complete agenda, the commission will introduce project coordinator; review and approve minutes; report of the policy coordination workgroup: discussion of the public hearing April 11, 1990, statewide philosophy for children, and children's bill of rights-adoption; report of the prevention/intervention workgroup: prevention, definition, request for agency prioritization of presentation in LARS; report of the child abuse program evaluation workgroup; report of the treatment and care workgroup: update on MOU, and update on statewide implementation; report-client services committee; old business and new business.

**Contact:** Beverly Jimmerson, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

**Filed:** April 12, 1990, 3:48 p.m.

TRD-9003762

### Texas Historical Commission

**Wednesday, April 25, 1990, 2 p.m.** The Executive Committee of the Texas Histori-

cal Commission will meet at the Embassy Suites Hotel, Royale Room, 4250 Ridgemont Drive, Abilene. According to the complete agenda, the committee will discuss approval of awards; Texas Preservation Trust Fund; and Old Nueces County Courthouse.

**Contact:** Cindy Dally, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

**Filed:** April 12, 1990, 10:20 p.m.

TRD-9003754

**Wednesday, April 25, 1990, 3 p.m.** The Texas Preservation Trust Fund Committee of the Texas Historical Commission will meet in the Royale Room, Embassy Suites Hotel, 4250 Ridgemont Drive, Abilene. According to the complete agenda, the committee will discuss update on recent activities; appointments to the advisory board and board of directors (board of trustees); publicity and fundraising; and other business.

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

**Filed:** April 10, 1990, 2:43 p.m.

TRD-9003661

**Thursday, April 26, 1990, 8:30 a.m.** The Architecture Committee of the Texas Historical Commission will meet in the Embassy Suites (Hotel) Dining Room, 4250 Ridgemont Drive, Abilene. According to the complete agenda, the committee will discuss quarterly report of activities; fiscal year 1990 Texas historic preservation grants-update and reallocations; Lower Rio Grande community heritage project; Texas preservation trust fund; federal legislation-update; and Nueces County Courthouse.

**Contact:** Curtis Tunnell, P.O. Box 12276, Austin, Texas 78701, (512) 463-6100.

**Filed:** April 10, 1990, 2:42 p.m.

TRD-9003662

**Thursday, April 26, 1990, 9:30 a.m.** The Quarterly Meeting of the Texas Historical Commission will meet at the Embassy Suites Hotel, Cancun Room, 4250 Ridgemont Drive, Abilene. According to the agenda summary, the commission will discuss chairman's report; national register programs committee report; publications committee report; state marker committee report; architecture committee report; archeological planning and review committee; Texas antiquities committee report; Main Street committee report; and CHC and museum services committee report.

**Contact:** Cindy Dally, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

**Filed:** April 12, 1990, 10:20 a.m.

TRD-9003753



## Texas Housing Agency

**Tuesday, April 17, 1990, 3:30 p.m.** The Personnel and Programs Committee of the Texas Housing Agency met at the THA Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the emergency revised agenda summary, the committee considered and acted on resolution authorizing the issuance, sale and delivery of Texas Housing Agency Collateralized Home Mortgage Revenue Bonds, Series 1990A and 1990B. The emergency status was necessary because the new item was needed to provide decent, safe and sanitary housing for Texans of low and moderate income.

**Contact:** Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

**Filed:** April 17, 1990, 9:29 a.m.

TRD-9003897

**Wednesday, April 18, 1990, 9 a.m.** The Audit Committee of the Texas Housing Agency met at THA Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the committee considered and/or acted on the following items: management letter presented by outside independent auditors, management letter presented by state auditors; report form staff regarding responses to request for proposals for outside independent auditor; and while in executive session pursuant to §2(e) and §2(g), Article 6252-17, Texas Civil Statutes, considered and acted on pending or contemplated litigation and duties, evaluation and discipline of employees. Acted on executive session items as required in open session. ]

**Contact:** Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

**Filed:** April 10, 1990, 3:42 p.m.

TRD-9003681

**Wednesday, April 18, 1990, 11 a.m.** The Board of Directors of the Texas Housing Agency met at the THA Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the board considered and/or acted on the following items; February 12, 1990 and February 21, 1990 board minutes; request for proposals for low income tax credit underwriter; low income tax credit state allocation plan and rules; request for proposals for financial advisor; extension of the \$142,000 permanent loan commitment period to the Association for Retarded Citizens, Texas; proposal regarding THA serving as a clearinghouse in partnership with the Resolution Trust Corporation (RTC); financing proposal between the Texas Housing Agency and RTC; master servicer for the 1990 THA series A&B mortgage revenue bond financing; agency personnel manual and employee handbook; development of a business/operational plan and executive administrator position; outside auditors management letter; state audi-

tor management letter; request for proposals for outside independent auditor; signature authority; and while in executive session considered and acted on litigation and personnel matters.

**Contact:** Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

**Filed:** April 10, 1990, 3:42 p.m.

TRD-9003682

## University of Houston

**Monday, April 16, 1990, 2 p.m.** The Animal Care Committee of the University of Houston met at S&R II, Room 201, University of Houston, 4800 Calhoun Boulevard, Houston. According to the agenda summary, the committee discussed and/or acted upon the following: minutes, research protocols, search for new animal care director, and B-virus infection potential.

**Contact:** Julie T. Norris, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 749-3412.

**Filed:** April 10, 1990, 10:05 a.m.

TRD-9003659

## Texas Department of Human Services

**Thursday-Friday, April 19-20, 1990, 1:30 p.m.** The Social Work Certification Advisory Council of the Texas Department of Human Services will meet at 701 West 51st Street, 4th Floor, West Tower, Conference Room 4W, Austin. According to the complete agenda, the council will introduce new members; read minutes; hear report from the director of licensing, review of by-laws; review of critical success factors for licensing; review of the procedures for the legislative appropriation requests; discussion of the plans for the ethics conferences; and election of officers.

**Contact:** Michael Doughty, P.O. Box 149030, Austin, Texas 78714-9030. (512) 450-3255.

**Filed:** April 11, 1990, 9:43 a.m.

TRD-9003710

**Friday, April 20, 1990, 8:30 a.m.** The Texas Council of Child Welfare Boards/CPS Advisory Committee of the Texas Department of Human Services will meet at the Driskill Hotel, Crystal Room, 604 Brazos Street, Austin. According to the complete agenda, the committee will discuss approval of minutes; overview of current TDHS budget problems; nominating committee; legal/LAR committee; issues committee report; lunch and regional sharing group; public information; education committee; program update; and update on resource outcome modeling project;

**Contact:** Melodye Fleming, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3412.

**Filed:** April 11, 1990, 9:43 a.m.

TRD-9003711

**Tuesday-Wednesday, April 24-25, 1990, 1 p.m.** The Advisory Committee on Child Care Administrators and Facilities of the Texas Department of Human Services will meet at 701 West 51st Street, Fourth Floor, West Tower, Conference Room 4W, Austin. According to the complete agenda, the committee will discuss approval of minutes; director's report; 1992-1993 LAR planning; discussion of federal legislation; plans for the revision of minimum standards for child placing agencies.

**Contact:** Doug Sanders, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3253.

**Filed:** April 16, 1990, 12:16 p.m.

TRD-9003849

## Department of Information Resources

**Friday, April 27, 1990, 9 a.m.** The Automated Information Telecommunications Council and Department of Information Resources Board of the Department of Information Resources will meet in Room 1-100, William B. Travis Building, Austin. According to the complete agenda, the council and board will discuss executive director's report; approval of January 26, 1990 board meeting minutes; DIR budget forecast; state strategic plan; legislative issues; report on the status of ASD; report on standards; network demonstration; and public testimony.

**Contact:** Molly Yates, 3307 Northland Drive, Suite 200, Austin, Texas 78731, (512) 371-1120.

**Filed:** April 17, 1990, 9:48 a.m.

TRD-9003899

## State Board of Insurance

**Wednesday, April 18, 1990, 9 a.m.** The Commissioner's Hearing Section of the State Board of Insurance met at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Bobby Joe Sims, Arlington, who holds a group I, legal reserve life insurance agent's license and a group II, insurance agent's license issued by the board. Docket Number 10776.

**Contact:** Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

**Filed:** April 10, 1990, 2:23 p.m.

TRD-9003688

Wednesday, April 18, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance met at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Michael Lee Ewers, Bedford, who holds a group I, legal reserve life insurance agent's license issued by the board. Docket Number 10730.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 10, 1990, 2:22 p.m.

TRD-9003684

Thursday, April 19, 1990, 10 a.m. The State Board of Insurance met in Room 414, 1110 San Jacinto Boulevard, Austin. According to the agenda summary, the board discussed extension of emergency effectiveness and permanent adoption of amendments to rules and regulations of the Texas Workers' Compensation Assigned Risk Pool and related matters. Final action on 28 TAC §3.129. Proposed action on 28 TAC §19.1001-19.1011. Amendment and possible assignment of contract with Educational Testing Service, Inc. Board orders on several different matters as itemized on the complete agenda; personnel matters; litigation solvency matters; appointment of member to managing general agents advisory committee; internal audit matters; agency policy on payment of professional dues and fees; and update on advisory committee on maintenance assessment tax and fees.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 11, 1990, 3:30 p.m.

TRD-9003738

Friday, April 20, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Rickie Lyn Herring, Lufkin, who holds a group I, legal reserve life insurance agent's license. Docket Number 10783.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 10, 1990, 2:22 p.m.

TRD-9003685

Friday, April 20, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the complete agenda, the section will conduct a public hearing to

consider the application of Aurelio G. Lozano, San Antonio, for a group I, legal reserve life insurance agent's license. Docket Number 10787.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 10, 1990, 2:21 p.m.

TRD-9003686

Monday, April 23, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for restatement with amendments to the Articles of Incorporation of National Security Life and Accident Insurance Company, Arlington, increasing the authorized capital and pertaining to the liability of directors.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 10, 1990, 2:20 p.m.

TRD-9003687

Thursday, April 26, 1990, 1:30 p.m. The State Board of Insurance will meet at 1110 San Jacinto Boulevard, Room 460, Austin. According to the complete agenda, the board will consider the appeal of Henry Paul Guillory from Commissioner's Order 88-1116.

Contact: Pat Wagner, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 11, 1990, 3:30 p.m.

TRD-9003737

Monday, April 30, 1990, 9:30 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will consider an appeal by Ferrell T. Riley of Commissioner's Order 89-1377.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 13, 1990, 8:54 a.m.

TRD-9003786

Monday, April 30, 1990, 2 p.m. The State Board of Insurance will meet in Room 460, 1110 San Jacinto Boulevard, Austin. According to the agenda summary, the board will hold a public hearing to consider subjects relating to general liability insurance and rules and regulatory responsibilities of the board concerning general liability insurance and general liability insurance policy forms.

Contact: Pat Wagner, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 463-6328.

TRD-9003736

## Joint Select Committee

Friday, April 20, 1990, 10 a.m. The Texas Task Force on State and Local Drug Control of the Joint Select Committee will meet at the Dallas City Council Chambers, Dallas. According to the agenda summary, the task force will discuss focus on law enforcement needs in Texas; committee business; invited testimony; public testimony; and other business.

Contact: Janna Bureson, State Capitol Building, Room G-35-B, Austin, Texas 78711, (512) 463-0102.

Filed: April 12, 1990, 11:11 a.m.

TRD-9003750

## Texas Juvenile Probation Commission

Wednesday, April 25, 1990, 10:30 a.m. The Selection Committee of the Texas Juvenile Probation Commission will meet at the (Compri) Hotel Casa de Palmas, McAllen. According to the complete agenda, the committee will conduct executive session to discuss the appointment of the TJPC executive director.

Contact: Bill Anderson, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: April 13, 1990, 10:20 a.m.

TRD-9003787

Thursday, April 26, 1990, 9 a.m. The Board of the Texas Juvenile Probation Commission will meet at the (Compri) Hotel Casa De Palmas, McAllen. According to the complete agenda, the board will discuss approval of the minutes of the February 23, 1990 meeting; public hearing; report by executive director; approve memorandum of Understanding for Service to Runaways for publication as a proposed rule. Approve increase in placement fees for community corrections diversion program; Hidalgo County's conference committee supplemental training grant; preliminary 1992-1993 biennial budget request; executive session to discuss appointment of the TJPC executive director; resume open meeting; and set date for next meeting.

Contact: Bill Anderson, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: April 13, 1990, 10:19 a.m.

TRD-9003788

## Board of Law Examiners

Sunday-Monday, April 22-23, 1990, 2 p.m. and 8 a.m. respectively. The Board of Law Examiners will meet Sunday, at Four Seasons Hotel, 99 San Jacinto, Austin, and Monday, Texas Law Center, 1414 Colorado Street, Austin. According to the complete agenda, the board will discuss the

minutes of February 1990 meeting; budget—current status fiscal year 1990; discuss July, 1990 bar exam; litigation re: Malloy case; litigation policy; questions relating to Sunset review; questions of eligibility and special requests; hearings on moral character and fitness.

Contact: Wayne E. Denton, 510 South Congress Avenue, Suite 116, Austin, Texas 78704, (512) 463-1621.

Filed: April 12, 1990, 3:23 p.m.

TRD-9003757

## Legislative Audit Committee

Friday, April 20, 1990, 9 a.m. The Legislative Audit Committee will meet in the Old Supreme Court Room of the State Capitol, Austin. According to the agenda summary, the committee will consider and/or act upon the advisory committee recommendation on the selection of a management firm to conduct a performance audit of the Central Education agency; and, consider an amendment to the State Auditor's budget to pay for the performance audit.

Contact: Lawrence F. Alwin, P.O. Box 12067, Austin, Texas 78711, (512) 479-4900

Filed: April 11, 1990, 10:31 a.m.

TRD-9003712

## Texas Department of Licensing and Regulation

Monday, April 23, 1990, 9 a.m. The Business and Occupational Programs, Talent Agencies of the Texas Department of Licensing and Regulation will hold an emergency meeting at 920 Colorado, E.O. Thompson Building, 10th Floor Conference Room, Austin. According to the complete agenda, the department will consider the assessment of an administrative penalty for violation of Texas Civil Statutes, Article 5221a-9, §2(a) and Article 9100, for Bedazzled Enterprises. The emergency status was necessary because of the need to discuss hearings that need immediate attention.

Contact: Imelda Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-3128.

Filed: April 16, 1990, 10:38 a.m.

TRD-9003843

Monday, April 23, 1990, 11 a.m. The Business and Occupational Programs, Talent Agencies of the Texas Department of Licensing and Regulation will hold an emergency meeting at 920 Colorado Street, E.O. Thompson Building, 10th Floor Conference Room, Austin. According to the complete agenda, the department will consider the assessment of an administrative

penalty for violation of Texas Civil Statutes, Article 5221a-9, §2(a) and Article 9100, for Harold Bock Agency. The emergency status was necessary because of hearings that need immediate attention.

Contact: Imelda Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-3128.

Filed: April 16, 1990, 10:37 a.m.

TRD-9003845

Monday, April 23, 1990, 1:30 p.m. The Business and Occupational Programs, Talent Agencies of the Texas Department of Licensing and Regulation will hold an emergency meeting at 920 Colorado Street, E.O. Thompson Building, 10th Floor Conference Room, Austin. According to the complete agenda, the department will consider the assessment of an administrative penalty for violation of Texas Civil Statutes, Article 5221a-9, §2(a) and Article 9100, for Diane Dick Modeling and Talent Agency. The emergency status was necessary because of hearings that need immediate attention.

Contact: Imelda Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-3128.

Filed: April 16, 1990, 10:38 a.m.

TRD-9003844

Wednesday, April 25, 1990, 9 a.m. The Business and Occupational Programs, Talent Agencies of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E.O. Thompson Building, Eighth Floor Conference Room, Austin. According to the complete agenda, the department will consider the assessment of an administrative penalty for violation of Texas Civil Statutes, Article 5221a-9, §2(a) and Article 9100, for J. Jean Dixon Agency.

Contact: Imelda Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-7332.

Filed: April 16, 1990, 4:07 p.m.

TRD-9003867

Wednesday, April 25, 1990, 11 a.m. The Business and Occupational Programs, Talent Agencies of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E.O. Thompson Building, Eighth Floor Conference Room, Austin. According to the complete agenda, the department will consider the assessment of an administrative penalty for violation of Texas Civil Statutes, Article 5221a-9, §2(a) and Article 9100, for Entourage Model and Talent.

Contact: Imelda Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-7332.

Filed: April 16, 1990, 4:07 p.m.

TRD-9003868

Wednesday, April 25, 1990, 1:30 p.m. The Business and Occupational Programs,

Talent Agencies of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E.O. Thompson Building, Eighth Floor Conference Room, Austin. According to the complete agenda, the department will consider the assessment of an administrative penalty for violation of Texas Civil Statutes, Article 5221a-9, §2(a) and Article 9100, for Hearts of Texas Talent.

Contact: Imelda Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-7332.

Filed: April 16, 1990, 4:07 p.m.

TRD-9003866

Thursday, April 26, 1990, 9 a.m. The Business and Occupational Programs, Talent Agencies of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E.O. Thompson Building, 10th Floor Conference Room, Austin. According to the complete agenda, the department will consider the assessment of an administrative penalty for violation of Texas Civil Statutes, Article 5221a-9, §2(a) and Article 9100, for Infinity Modeling Agency.

Contact: Imelda Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-7332.

Filed: April 16, 1990, 4:07 p.m.

TRD-9003871

Thursday, April 26, 1990, 9 a.m. The Business and Occupational Programs, Talent Agencies of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E.O. Thompson Building, 10th Floor Conference Room, Austin. According to the complete agenda, the department will consider the assessment of an administrative penalty for violation of Texas Civil Statutes, Article 5221a-9, §2(a) and Article 9100, for Interaction Professional.

Contact: Imelda Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-7332.

Filed: April 16, 1990, 4:07 p.m.

TRD-9003870

Thursday, April 26, 1990, 1:30 p.m. The Business and Occupational Programs, Talent Agencies of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E.O. Thompson Building, 10th Floor Conference Room, Austin. According to the complete agenda, the department will consider the assessment of an administrative penalty for violation of Texas Civil Statutes, Article 5221a-9, §2(a) and Article 9100, for Jones and Jones Agency.

Contact: Imelda Escobar, 920 Colorado Street, Austin, Texas 78701, (512) 463-7332.

Filed: April 16, 1990, 4:07 p.m.

TRD-9003869

## Texas State Board of Medical Examiners

Friday, April 20, 1990, 8 a.m. The Reciprocity Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will conduct executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion Attorney General 1974, Number H-484.

Contact: Jean Davis, Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: April 12, 1990, 4:07 p.m.

TRD-9003767

Friday, April 20, 1990, 8 a.m. The Examination Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will conduct executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion Attorney General 1974, Number H-484. Applicants.

Contact: Jean Davis, Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: April 12, 1990, 4:07 p.m.

TRD-9003768

Friday, April 20, 1990, 8 a.m. The Examination Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the emergency revised agenda summary, the committee will discuss in addition to previously posted agenda summary: fee increase; and national boards. The emergency status was necessary because of items of importance which committee should consider prior to next planned meeting.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: April 13, 1990, 11:16 a.m.

TRD-9003799

Friday, April 20, 1990, 11 a.m. The Disciplinary Process Review Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will conduct executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion Attorney General 1974, Number H-484. Minutes; file maintenance and health care entity reporting; enforcement budget; review of files and cases; analysis of cases.

Contact: Jean Davis, Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: April 12, 1990, 4:05 p.m.

TRD-9003769

Friday-Saturday, April 20-21, 1990, 10 a.m. The Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will conduct executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion Attorney General 1974, Number H-484. Probationers; amendment requests; agreed board orders; termination requests; executive director's report; board photo; reinstatement requests; rule chapter 191; national data bank; auditor's report; space progress report; minutes; committee meetings and reports; licensing; enforcement; personnel; computer; meetings; recognition of Attorney General representative; consultant.

Contact: Jean Davis, Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: April 12, 1990, 4:05 p.m.

TRD-9003770

Friday, April 20, 1990, 2 p.m. The Finance Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will conduct executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion Attorney General 1974, Number H-484. Budget projections; and financial reports.

Contact: Jean Davis, Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: April 12, 1990, 4:07 p.m.

TRD-9003764

Friday, April 20, 1990, 3 p.m. The Ad Hoc Committee on CME of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will conduct executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion Attorney General 1974, Number H-484. Continuing medical education/physician competence/quality assurance.

Contact: Jean Davis, Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: April 12, 1990, 4:07 p.m.

TRD-9003765

Saturday, April 21, 1990, 8:30 a.m. The Standing Orders Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will conduct executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion Attorney General 1974, Number H-484. Possible rulemaking re: emergency medical services; waiver; appointment of advisory committee.

Contact: Jean Davis, Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: April 12, 1990, 4:07 p.m.

TRD-9003766

## Texas National Research Laboratory Commission

Thursday, April 19, 1990, 1:30 p.m. The Texas National Research Laboratory Commission met at CRSS, Inc. Office Building, First Floor Conference Room, 1177 West Loop, South, Houston. According to the complete agenda, the commission will discuss approval of March 7, 1990, meeting minutes; chairman's report-Morton H. Meyerson; executive director's report-Edward C. Bingler; counselor's report-J. Fred Bucy; committee reports-budget and finance, land acquisition, and regional planning; commissioner reports; commission old business; and new business; and hear public comment.

Contact: Karen L. Chrestay, 1801 North Hampton Road, Suite 400, DeSoto, Texas 75115, (214) 709-6481.

Filed: April 10, 1990, 10:05 a.m.

TRD-9003660

## State Occupational Information Coordinating Committee

Wednesday, April 25, 1990, 9 a.m. The State Occupational Information Coordinating Committee will meet at the TEC Building, 15th Street and Congress Avenue, Room 644, Austin. According to the agenda summary, the committee will discuss current projects, past and current operating budgets, and the PY 1990 Basic Assistance Grant program plan. The committee will also meet in executive session to elect a chairman and discuss personnel matters.

Contact: Michael R. Fernandez, Room 644, 15th Street and Congress Avenue, Austin, Texas 78701, (512) 463-3031.

Filed: April 16, 1990, 9:29 a.m.

TRD-9003834

## Texas Parks and Wildlife Department

Tuesday, April 17, 1990, 6:30 p.m. The Operation Game Thief Committee of the Texas Parks and Wildlife Department met at the Y.O. Onion Creek Ranch (six miles west of Buda, F.M. 967), Buda. According to the agenda summary, the members of the committee had dinner, and although this function was primarily a social event and no formal action was planned, the commit-

tee discussed items on the public hearing agenda scheduled for 10 a.m., April 18, 1990.

Contact: Captain Wayne Chappell, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4626.

Filed: April 11, 1990, 2:03 p.m.

TRD-9003727

## State Preservation Board

Wednesday, April 18, 1990, 2 p.m. The Permanent Advisory Committee to the board of the State Preservation Board met in Room 314, Library and Archives Building, 1201 Brazos Street, Austin. According to the agenda summary, the committee discussed approval of minutes; old or unfinished business: recognition of Chevron, USA donation; new business: listing of change requests, capitol collection, general land office building, Texas capitol project.

Contact: M. Schneider, 201 East 14th Street, Suite 503, Austin, Texas 78711, (512) 463-5495.

Filed: April 10, 1990, 4:54 p.m.

TRD-9003694

Thursday, April 19, 1990, 2:30 p.m. The State Preservation Board met in Room 314, Library and Archives Building, 1201 Brazos Street, Austin. According to the agenda summary, the board discussed approval of minutes; old or unfinished business; recognition of Chevron, USA donation; new business: listing of change requests, capitol collection, general land office building, and Texas capitol project.

Contact: M. Schneider, 201 East 14th Street, Suite 503, Austin, Texas 78711, (512) 463-5495.

Filed: April 10, 1990, 4:53 p.m.

TRD-9003695

## Texas State Board of Public Accountancy

Wednesday, April 18, 1990, 9 a.m. The Behavioral Enforcement Committee of the Texas State Board of Public Accountancy met at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the committee discussed February and March status report; recommendations regarding specific complaints-licensed: complaint numbers 89-12-09L; 89-12-06L; 89-11-07L; 89-12-11L; 89-12-19L; 90-01-06L; 89-10-08L; 89-12-13L; 89-10-34L; 89-10-35L; 90-01-08L; 89-06-05L; 89-11-13L; 90-01-07L; 89-11-16L; 89-10-01L; 89-10-04L; and discussion items.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: April 10, 1990, 4:14 p.m.

TRD-9003692

Wednesday, April 18, 1990, 10 a.m. The Informal Conferences of the Texas State Board of Public Accountancy met at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the board conducted informal conferences on complaint numbers 88-07-13L; 88-11-05L; 89-09-02L; and 89-09-10L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: April 10, 1990, 4:14 p.m.

TRD-9003691

Tuesday, April 24, 1990, 9 a.m. The Panel Hearing of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the board will conduct a hearing on complaint number 90-03-01X.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: April 16, 1990, 1:52 p.m.

TRD-9003859

Wednesday, April 25, 1990, 1 p.m. The Public Hearing of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the board will conduct a hearing on complaint number 90-04-01X.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

Filed: April 16, 1990, 1:52 p.m.

TRD-9003860

## Texas Public Finance Authority

Wednesday, April 11, 1990, 3 p.m. The Texas Public Finance Authority held an emergency meeting at 1201 Brazos Street, Room 314, Austin. According to the complete agenda, the authority discussed possible re-sizing of the Texas Public Finance Authority's series 1990A general obligation bond issue. The emergency status was necessary to consider alternative actions to be taken by the TPF Board in the event agreement could not be reached on wording of certain bond documents. The documents had to be finalized before April 12, 1990.

Contact: Shannon Needham, 1201 Brazos Street, Room 313, Austin, Texas 78701, (512) 463-5544.

Filed: April 11, 1990, 10:52 a.m.

TRD-9003713

## Texas Department of Public Safety

Thursday, April 26, 1990, 10 a.m. The Public Safety Commission of the Texas Department of Public Safety will meet at DPS Headquarters (Commission Room), 5805 North Lamar Boulevard, Austin. According to the complete agenda, the commission will discuss approval of minutes; appeal hearing of discharged employee Johnny L. Whitley; budget matters; internal audit report; personnel matters; real estate matters; pending and contemplated litigation; miscellaneous and other unfinished business.

Contact: Joe E. Milner, 5805 North Lamar Boulevard, Austin, Texas 78773, (512) 465-2000, ext. 3700.

Filed: April 16, 1990, 3:26 p.m.

TRD-9003863

## Public Utility Commission of Texas

Wednesday, April 18, 1990, 9 a.m. The Public Utility Commission of Texas met at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the commission considered the following dockets: 9048, 9022, 4405, 8094, 6992, 9399, 9029, 9041, and 9127. The commissioners also considered new Substantive Rule §23.69-Continuity of Service (P9484).

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

Filed: April 10, 1990, 3:14 p.m.

TRD-9003664

Wednesday, April 18, 1990, 1 p.m. The Administrative Division of the Public Utility Commission of Texas met at 7800 Shoal Creek Boulevard, Suite 450N ("CHR"), Austin. According to the agenda summary, there was an administrative meeting to discuss: reports, discussion and action on budget and fiscal matters, special legislative appropriations request, consideration of PUC membership in the National Regulatory Research Institute, consideration of issues related to commission employment of outside contractor to audit natural gas contracts in connection with Docket Number 9300, Texas Utilities Electric Company, presentation of San Marcos Telephone Company management review, appointment of replacement member on Dual-Party Relay Service Advisory Committee, staff report on status of extended area service (EAS), staff report on telephone privacy issues, adjournment for executive session to consider litigation matters, reconvene for discussions considered in executive session, set time and place for next meeting, and final adjournment.

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

Filed: April 10, 1990, 3:13 p.m.

TRD-9003665

**Monday, April 23, 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 prehearing conference on Docket Number 9463: application of Sam Rayburn G & T Electric Cooperative, Inc. to revise tariff for economic development service.

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

Filed: April 12, 1990, 3:12 p.m.

TRD-9003755

**Tuesday, April 24, 1990, 1 p.m.** The Relay Service Advisory Committee of the Public Utility Commission of Texas will meet at the Criss Cole Rehabilitation Center Auditorium, 4800 North Lamar Boulevard, Austin. According to the complete agenda, the committee will consider issues concerning the implementation of a statewide dual-party telecommunications relay system for the hearing- and -speech-impaired. The advisory committee was appointed by the commission pursuant to House Bill 174, passed by the Seventy-First Texas Legislature. At this meeting the committee will discuss further issues of the dual-party relay service, including status of implementation of the service by Sprint Services, the carrier selected by the commission to provide relay service.

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

Filed: April 11, 1990, 4:13 p.m.

TRD-9003744

**Friday, April 27, 1990, 1:30 p.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 8329 (remand): application of Gulf States Utilities Company for approval of an amendment to schedule SUS.

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

Filed: April 11, 1990, 4:13 p.m.

TRD-9003745

**Thursday, May 3, 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 hold a telephone conference in Docket Number 9214: application of Panola-Harrison Electric Cooperative, Inc. for authority to change rates.

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

Filed: April 16, 1990, 3:09 p.m.

TRD-9003861

**Friday, May 4, 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 9214: application of Panola-Harrison Electric Cooperative, Inc. for authority to change rates.

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

Filed: April 16, 1990, 3:10 p.m.

TRD-9003862

**Thursday, May 17, 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 on Docket Number 9251, et al.: application of GTE Southwest, Inc. for approval of revisions to the Centranet Service Tariff; GTE Southwest, Inc. to establish Centranet rates for Exxon Chemical Company; GTE Southwest, Inc. to establish Centranet rates for Texas Instruments; GTE Southwest, Inc. for approval of Centranet service for Williamson County; and San Felipe Del Rio Consolidated Independent School District.

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

Filed: April 11, 1990, 4:14 p.m.

TRD-9003747

**Thursday, May 24, 1990, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a hearing on the merits in Docket Number 9368: application of GTE Southwest Incorporated for authority to maintain and locate certain records outside the State of Texas pursuant to Substantive Rule 23.14.

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

Filed: April 11, 1990, 4:14 p.m.

TRD-9003746

## State Purchasing and General Services Commission

**Tuesday, April 24, 1990, 9 a.m.** The State Purchasing and General Services Commission will meet at 1711 San Jacinto Street, Central Services Building Conference Room 402, Austin. According to the complete agenda, the commission will consider naming Unit C of the Supreme Court/Attorney General offices and the Price Daniel, Sr. building; monthly 3.09 report; monthly operating budget report; monthly construction project report; monthly division activity report; executive session to consider the status of the potential purchase of real property pursuant to the provisions of Texas Civil Statutes, Article 601b; executive session to receive a report from counsel concerning the status of all pending litigation.

Contact: John R. Neel, 1711 San Jacinto, Austin, Texas 78701, (512) 463-3446.

Filed: April 16, 1990, 9:47 a.m.

TRD-9003842

## Railroad Commission of Texas

**Monday, April 23, 1990, 9 a.m.** The Railroad Commission of Texas will meet in the 12th Floor Conference Room, Room 12-126, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the Administrative Services Division director's report on division administration, budget, procedure, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: April 13, 1990, 10:29 a.m.

TRD-9003797

The commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: April 13, 1990, 10:30 a.m.

TRD-9003794

The commission will consider and act on the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. Consider reorganization of various commission divisions; consolidation of positions; and appointment, reassignment and/or termination of various positions, including division directors. Consideration of reorga-

nization of the well plugging program. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

**Contact:** Cril Payne, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7274.

**Filed:** April 13, 1990, 10:29 a.m.

TRD-9003796

The commission will consider and act on the Investigation Division director's report on division administration, investigations, budget, and personnel matters.

**Contact:** Mary Anne Wiley, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6828.

**Filed:** April 13, 1990, 10:30 a.m.

TRD-9003792

The commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time of date. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session to receive legal advice regarding pending and/or contemplated litigation.

**Contact:** Cue D. Boykin, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

**Filed:** April 13, 1990, 10:31 a.m.

TRD-9003790

The commission will consider category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

**Contact:** Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

**Filed:** April 13, 1990, 10:29 a.m.

TRD-9003795

The commission will consider and act on the Personnel Division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline, and/or dismissal of personnel.

**Contact:** Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

**Filed:** April 13, 1990, 10:30 a.m.

TRD-9003793

The commission will consider and act on the OIS director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Brian W. Schaible, P.O. Drawer, 12967, Austin, Texas 78711, (512) 463-6710.

**Filed:** April 13, 1990, 10:31 a.m.

TRD-9003791

## Texas Rehabilitation Commission

**Thursday, April 26, 1990, 9:30 a.m.** The Board of the Texas Rehabilitation Commission will meet at the Brown Heatly Building, (Planning Facility) Room 7230, 4900 North Lamar Boulevard, Austin. According to the complete agenda, the board will hear commissioner's comments; and discuss overview of commission's financial management system.

**Contact:** Charles W. Schiesser, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 483-4050.

**Filed:** April 17, 1990, 9:12 a.m.

TRD-9003896

**Friday, April 27, 1990, 9:30 a.m.** The Board of the Texas Rehabilitation Commission will meet at the Brown-Heatly Building, Room 7230 (Planning Facility), 4900 North Lamar Boulevard, Austin. According to the complete agenda, the board will discuss approval of minutes: board meeting of March 30, 1990; hear commissioner's comments; continuation of overview of commission's financial management system, if needed; memorandum of understanding, Senate Bill 417; state auditor's report; and executive session.

**Contact:** Charles W. Schiesser, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 483-4050.

**Filed:** April 17, 1990 9:12 a.m.

TRD-9003895

## Stephen F. Austin State University

**Monday, April 23, 1990, 1:30 p.m.** The Board of Regents Committees of Stephen F. Austin State University will meet at the Campus, Room 307, Austin Building, Nacogdoches. According to the agenda summary, the committees will hold election of board officers; discuss approval of minutes of meeting of January 23, 1990; called meeting of February 18, 1990; called meeting of March 26, 1990; personnel-faculty and staff appointments for fiscal year 1989-1990; faculty and staff appointments for fiscal year 1990-1991; changes of status; leave of absence; faculty

development leaves; tenure; promotions; retirements; regents professorships for fiscal 1990-1991; academic and student affairs-faculty workload report; authority to award academic degrees at Coffield commencement; master of social work; bachelor of science in home economics with a major in hospitality administration; change from agricultural education to agricultural development; financial affairs-approval of budget adjustments for fiscal year 1990; approval of summer budget; approval of the annual budget for fiscal year 1991; financial certification; authorization to sign vouchers and checks; approval of bond sale; defeasance of 1968 student tuition fee revenue bonds; building and grounds-Boynton building renovation; budget for Boynton building renovation; artificial surface for Homer Bryce stadium; budget for artificial surface for Homer Bryce Stadium; library furnishings; approval of sanitary sewer easements for City of Nacogdoches; and executive session.

**Contact:** William R. Johnson, P.O. Box 6078, Nacogdoches, Texas 75962, (409) 568-2201.

**Filed:** April 11, 1990, 8:57 a.m.

TRD-9003720

**Monday, April 23, 1990, 1:30 p.m.** The Board of Regents Committees of the Stephen F. Austin State University will meet at the Campus, Room, 307, Austin Building, Nacogdoches. According to the revised agenda summary, the board will conduct election of board officers; amendments of rules and regulations of the board; approval of minutes-meeting of January 23, 1990; called meeting of February 18, 1990; called meeting of March 26, 1990; personnel-faculty and staff appointments for fiscal year 1989-1990; faculty and staff appointments for fiscal year 1990-1991; changes of status; leave of absence; faculty development leaves; tenure; promotions; retirements; regents professorships for fiscal year 1990-1991; academic and student affairs-faculty workload report; authority to award academic degrees at Coffield commencement; master of social work; bachelor of science in home economics with a major in hospitality administration; change from agricultural education to agricultural development; financial affairs-approval of budget adjustments for fiscal year 1990; approval of summer budget; approval of the annual budget for fiscal year 1991; financial certification; authorization to sign vouchers and checks; approval of bond sale; defeasance of 1968 student tuition fee revenue bonds; buildings and grounds-Boynton Building renovation; budget for Boynton Building renovation; artificial surface for Homer Bryce Stadium; budget for artificial surface for Homer Bryce Stadium; library furnishings; approval of sanitary sewer easements for City of Nacogdoches; and executive session.



Contact: William R. Johnson, P.O. Box 6078, Nacogdoches, Texas 75962, (409) 568-2201.

Filed: April 16, 1990, 3:34 p.m.

TRD-9003889

Tuesday, April 24, 1990, 9 a.m. The Board of Regents of the Stephen F. Austin State University will meet at the Campus, Room 307, Austin Building, Room 307, Nacogdoches. According to the agenda summary, the board will hold election of board officers; discuss approval of minutes-meeting of January 23, 1990; called meeting of February 18, 1990; called meeting of March 26, 1990; personnel-faculty and staff appointments for fiscal year 1989-1990; faculty and staff appointments for fiscal year 1990-1991; changes of status; leave of absence; faculty development leaves; tenure; promotions; retirements; regents professorships for fiscal year 1990-1991; academic and student affairs-faculty workload report; authority to award academic degrees at Coffield commencement; master of social work; bachelor of science in home economics with a major in hospitality administration; change from agricultural education to agricultural development; financial affairs-approval of budget adjustments for fiscal year 1990; approval of summer budget; approval of the annual budget for fiscal year 1991; financial certification; authorization to sign vouchers and checks; approval of bond sale; defeasance of 1968 student tuition fee revenue bonds; buildings and grounds-Boynton Building renovation; budget for Boynton Building renovation; artificial surface for Homer Bryce Stadium; budget for artificial surface for Homer Bryce Stadium; library furnishings; approval of sanitary sewer easements for City of Nacogdoches; and executive session.

Contact: William R. Johnson, P.O. Box 6078, Nacogdoches, Texas 75962, (409) 568-2201.

Filed: April 11, 1990, 8:57 a.m.

TRD-9003721

Tuesday, April 24, 1990, 9 a.m. The Board of Regents Committees of the Stephen F. Austin State University will meet at the Campus, Room, 307, Austin Building, Nacogdoches. According to the revised agenda summary, the board will conduct election of board officers; amendments of rules and regulations of the board; approval of minutes-meeting of January 23, 1990; called meeting of February 18, 1990; called meeting of March 26, 1990; personnel-faculty and staff appointments for fiscal year 1989-1990; faculty and staff appointments for fiscal year 1990-1991; changes of status; leave of absence; faculty development leaves; tenure; promotions; retirements; regents professorships for fiscal year 1990-1991; academic and student affairs-faculty

workload report; authority to award academic degrees at Coffield commencement; master of social work; bachelor of science in home economics with a major in hospitality administration; change from agricultural education to agricultural development; financial affairs-approval of budget adjustments for fiscal year 1990; approval of summer budget; approval of the annual budget for fiscal year 1991; financial certification; authorization to sign vouchers and checks; approval of bond sale; defeasance of 1968 student tuition fee revenue bonds; buildings and grounds-Boynton Building renovation; budget for Boynton Building renovation; artificial surface for Homer Bryce Stadium; budget for artificial surface for Homer Bryce Stadium; library furnishings; approval of sanitary sewer easements for City of Nacogdoches; and executive session.

Contact: William R. Johnson, P.O. Box 6078, Nacogdoches, Texas 75962, (409) 568-2201.

Filed: April 16, 1990, 3:34 p.m.

TRD-9003888

### The University of Texas at Austin

Wednesday, April 18, 1990, 2 p.m. The Council for Intercollegiate Athletics for Women of The University of Texas at Austin met at Bellmont Hall 606, 21st and San Jacinto Streets, Austin. According to the agenda summary, the council discussed approval of the minutes of the previous meeting (March 21, 1990); tour of new recreational sports building; announcements/information reports; old business; new business; and executive session.

Contact: Dr. Donna A. Lopiano, Bellmont Hall 718, University of Texas, Austin, Texas, (512) 471-7693.

Filed: April 10, 1990, 3:20 p.m.

TRD-9003667

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

Tuesday, April 17, 1990, 9 a.m. The Institutional Animal Care and Use Committee of the University of Texas System, M.D. Anderson Cancer Center met at the Conference Room AW 7.707, Seventh Floor, 1515 Holcombe Boulevard, Houston. According to the agenda summary, the committee reviewed protocols for animal care and use and modifications thereof.

Contact: Anthony Mastromarino, 1515 Holcombe Boulevard, Houston, Texas 77030, (713) 792-3391.

Filed: April 13, 1990, 8:28 a.m.

TRD-9003774

### Texas A&M University System, Board of Regents

Tuesday, May 8, 1990, 1 p.m. The Committee for Strategic Objectives of the Texas A&M University System, Board of Regents will meet at BOR Annex, Memorial Student Center, College Station. According to the complete agenda, the committee will receive reports from consultants.

Contact: Vickie Running, Texas A&M University System, College Station, Texas 77843-1122, (409) 845-9600.

Filed: April 12, 1990, 9:54 a.m.

TRD-9003749

### University Interscholastic League

Tuesday, April 17, 1990, 8 a.m. The Re-classification and Realignment Study Committee of the University Interscholastic League met at the Radisson Hotel, Eighth and San Jacinto Streets, Austin. According to the agenda summary, the committee heard proposal of changes to the reclassification and realignment procedures.

Contact: Dr. Bill Farney, P.O. Box 8028, University Station, Austin, 78713, (512) 471-5883.

Filed: April 11, 1990, 1:41 p.m.

TRD-9003726

### Texas Water Commission

Wednesday, April 25, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider various matters within the jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-8110.

Filed: April 11, 1990, 4:12 p.m.

TRD-9003741

Wednesday, April 25, 1990, 3 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the



commission will consider various matters within the jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-8110.

Filed: April 11, 1990, 4:12 p.m.

TRD-9003743

**Wednesday, May 23, 1990, 3 p.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will conduct a hearing on the adoption of standby fees for Greens Parkway Municipal Utility District.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 10, 1990, 3:37 p.m.

TRD-9003680

**Wednesday, June 20, 1990, 3 p.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the complete notice, the commission will consider application by Southeast Investment, Inc., application number 5289, to divert water from Rosillo Creek, tributary of Salada Creek, tributary of the San Antonio River, San Antonio River Basin in Bexar County approximately 14 miles southeast of San Antonio.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 371-6385.

Filed: April 12, 1990, 3:42 p.m.

TRD-9003763

**Wednesday, June 20, 1980, 3 p.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the complete agenda, the commission will consider application by Texas Department of Criminal Justice Institutional Division, Application Number 5290, to maintain two off-channel reservoirs and to divert 848 acre-feet of water per annum from Brazos River, Brazos River Basin, to the reservoirs for subsequent irrigation or directly to fields for irrigation of 424 acres of land in Grimes County.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 371-6386.

Filed: April 13, 1990, 12:28 p.m.

TRD-9003803



## Texas Water Development Board

**Wednesday, April 18, 1990, 4 p.m.** The Finance Committee of the Texas Water Development Board met at 1700 North Congress Avenue, Stephen F. Austin Building, Room 513, Austin. According to the complete agenda, the committee discussed approval of minutes of March 14, 1990; investment policy for the board was presented to the board for their approval April 19, 1990; agricultural trust fund investments—purchase of Ginnie Maes or other mortgaged-backed securities; review San Jacinto River Authority's request to adjust the terms of the master agreement provision for the repurchase of storage; current status of Lavaca-Navidad River Authority's purchase of the board's interest in the Palmetto Bend Reservoir project; items on April 19, 1990 board meeting; board investments and future bond sales; and briefing on ability to pay report.

Contact: G. E. Kretzschmar, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: April 10, 1990, 2:13 p.m.

TRD-9003689

**Thursday, April 19, 1990, 9 a.m.** The Texas Water Development Board met in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the board considered minutes of March 15, 1990; election of a vice-chairman; development fund manager's report; adoption of an investment policy; extension of commitment for Hungerford MUD # 1 and Falls County WC&ID #1; requests for financial assistance from Zapata County WC&ID and the City of Woodville; briefing on fiscal year 1990 SRF demand and transfer of funds from the water quality enhancement account to the SRF; status of fiscal year 1989 SRF applications and establish lending rate scale for SRF loans from series 1990A bonds; transferring for use in fiscal year 1990, \$6,937 of research and planning funds reserved for fiscal year 1991; \$58,000 regional water supply planning grant from Lavaca-Navidad River Authority; economically distressed areas program briefing; briefing and discussion on pending water sales from Lake Texana and matters relating to any sale of board interest in Lake Texana.

Contact: G. E. Kretzschmar, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: April 11, 1990, 4:11 p.m.

TRD-9003740



## Texas Workers' Compensation Commission

**Monday, April 16, 1990, 9:30 a.m.** The Texas Workers' Compensation Commission met at 118 Stephen F. Austin Building, 17th Street and Congress Avenue, Austin. According to the agenda summary, the commission discussed: approval of minutes; executive session—discussed executive director, §2(g), Article 6252-17, Texas Civil Statutes; executive director; election of chairman, §2(g), Article 6252-17, Texas Civil Statutes; election of chairman; reports from staff; discussed concepts for commission procedures; discussed and acted on proposed dates for future public meetings/public hearings.

Contact: George E. Chapman, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: April 13, 1990, 9:08 a.m.

TRD-9003776

**Friday, April 20, 1990, 12 noon.** The Special Advisory Committee on Physician Fees and Charges of the Texas Workers' Compensation Commission will meet at the Quality Inn South, 2200 South Interregional, Suite 3, Austin. According to the complete agenda, the committee will discuss and make recommendations for the implementation of Article 8. Medical Services of Senate Bill 1. Discussion and recommendation will pertain to the following issues: approval of minutes; review of committee charges; Open Meetings Act requirements; reconsideration of "Official Medical Fee Guideline" ground rules, pathology, anesthesiology, physician therapy, medicine, and osteopathy; discussion of procedures for updating fee guidelines.

Contact: Ellen C. English, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: April 13, 1990, 9:08 a.m.

TRD-9003775



## Regional Meetings

### Meetings Filed April 10, 1990

The Bexar Appraisal District Board of Directors met at 535 South Main, San Antonio, April 16, 1990, at 5 p.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Education Service Center, Region XIII Board of Directors met at ESC, Region XIII, Room 205, 5701 Springdale, Austin, April 16, 1990, at 12:45 p.m. Information may be obtained from Dr. Joe Parks, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1313.

The Hickory Underground Water Conservation District # 1 Board held an emergency meeting at 2023 South Bridge, Brady, April 12, 1990, at 7 p.m. The emergency status was necessary because of consultation with legal counsel in regards to litigation. City of San Angelo vs Hickory Water District cause 2779. Information may be obtained from Vickie Roddie, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785.

The Mental Health Mental Retardation Center of East Texas Board of Trustees met at 6700 Hollytree Drive, Tyler, April 18, 1990, at 8 a.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

The Trinity River Authority of Texas Resources Development Committee met at 5300 South Collins, Arlington, April 16, 1990, at 10:30 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343.

The Trinity River Authority of Texas Red Oak Creek Regional Wastewater System Right-of-Way Committee met at 5300 South Collins, Arlington, April 16, 1990, at 11:30 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343.

TRD-9003652

#### Meetings Filed April 11, 1990

The Austin Transportation Study Policy Advisory Committee met at Joe C. Thompson Conference Center, Room 2.102, 26th and Red River Streets, Austin, April 17, 1990, at 6 p.m. Information may be obtained from Joseph P. Gieselman, 811 Barton Springs Road, Suite 700, Austin, Texas 78704, (512) 472-7483.

The Bexar Appraisal District Appraisal Review Board met at 535 South Main, San Antonio, April 16, 1990, at 9 a.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Central Counties Center for Mental Health Mental Retardation Services Board of Directors met at 304 South 22nd Street, Temple, April 17, 1990, at 7:45 p.m. Information may be obtained from Michael K. Muegge, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841.

The Dallas Central Appraisal District Public Hearing met at 1420 West Mockingbird Lane, Suite 500, Dallas, April 18, 1990, at 7 p.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0520.

The Guadalupe-Blanco River Authority Industrial Development Corporation met in the Authority's Offices, 933 East Court

Street, Seguin, April 19, 1990, at 9:30 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (512) 379-5822.

The Guadalupe-Blanco River Authority Board of Directors met in the Authority's Office, 933 East Court Street, Seguin, April 19, 1990, at 10 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (512) 379-5822.

The Hays County Appraisal District Appraisal Review Board met at 623 "A" East Hopkins, Municipal Building, San Marcos, April 17, 1990, at 9 a.m. Information may be obtained from Lynnell Sedlar, 632 "A" East Hopkins, Municipal Building, San Marcos, Texas 78666, (512) 754-7400.

The Lamar County Appraisal District Regular Board meeting was held at 521 Bonham Street, Paris, April 17, 1990, at 5 p.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (214) 785-7822.

The Limestone County Appraisal District Board of Directors met in the Meeting Room, Limestone County Courthouse, Groesbeck, April 18, 1990, at 5 p. m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009.

The Lubbock Regional Mental Health Mental Retardation Center Board of Trustees held an emergency meeting at 3801 Avenue J, Lubbock, April 12, 1990, at 9 a.m. The emergency status was necessary because of modification of mental health services. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202.

The North Texas Municipal Water District Board of Directors will meet at the Administrative Offices, 505 East Brown Street, Wylie, April 26, 1990, at 4 p.m. Information may be obtained from Carl W. Riehn, P.O. Drawer C, Wylie, Texas 75098, (214) 442-5405.

The Region VII Education Service Center Board of Directors met at the Days Inn, Highway 259 South, Henderson, April 19, 1990, at 7 p.m. Information may be obtained from Don J. Peters, 818 East Main, Kilgore, Texas 75662, (214) 984-3071.

The Toledo Bend Project Joint Operation Operating Board met at the Texas Office, Damsite, Burkeville, April 17, 1990, at 10 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-2192.

The Trinity River Authority of Texas Utility Services Committee met at 5300 South Collins, Arlington, April 17, 1990, at 10 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343.

The Trinity River Authority of Texas Ten Mile Creek Regional Wastewater System Right-of-Way Committee met at 5300 South Collins, Arlington, April 17, 1990, at 11:30 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343.

TRD-9003696

#### Meetings Filed April 12, 1990

The Barton Springs/Edwards Aquifer Conservation District public meeting was held at 1124-A Regal Row, Austin, April 16, 1990, at 7 p.m. Information may be obtained from Bill E. Couch, 1124-A Regal Row, Austin, Texas 78741, (512) 282-8441.

The Tax Appraisal District of Bell County Board of Directors met at the Tax Appraisal District Building, 411 East Central Avenue, Belton, April 16, 1990, at 10 a.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, ext. 29.

The Bosque Central Appraisal District Board of Directors met at the District Office, 104 West Morgan Street, Meridian, April 18, 1990, at 7:30 p. m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665, (817) 435-2304.

The Dallas Area Rapid Transit Budget and Finance Committee met at 601 Pacific Avenue, Board Room, Dallas, April 17, 1990, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Board of Directors met at 601 Pacific Avenue, Board Room, Dallas, April 17, 1990, at 6:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Board of Directors met at 601 Pacific Avenue, Dallas, April 17, 1990, at 6:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The East Texas Council of Governments East Texas Private Industry Council met at the ETCOG Offices, Kilgore, April 19, 1990, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

The Hockley County Appraisal District Board of Directors met at 1103-C Houston Street, Levelland, April 16, 1990, at 7 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

The Hockley County Appraisal District Board of Directors met at 1103-C Houston Street, Levelland, April 16, 1990, at 7 p.m.

Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

**The Houston-Galveston Area Council Board of Directors** met at 3555 Timmons Lane, Fourth Floor Conference Room, Houston, April 17, 1990, at 10 a.m. Information may be obtained from Marjorie Baker, P.O. Box 22777, Houston, Texas 77227-2777, (713) 627-3200.

**The Jack County Appraisal District Ag Advisory Board** met at Los Creek Office Building, 216-D South Main Street, Jacksboro, April 16, 1990, at 7 p.m. Information may be obtained from Gary L. Zeitler or Donna Hartzell, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

**The Jack County Appraisal District Board of Directors** met at Los Creek Office Building, 216-D South Main Street, Jacksboro, April 17, 1990, at 7 p.m. Information may be obtained from Gary L. Zeitler or Donna Hartzell, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

**The Jones County Appraisal District Board of Directors** met at the District Office, 1137 East Court Plaza, Anson, April 19, 1990, at 8:30 a.m. Information may be obtained from John Steele, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422.

**The Lavaca County Central Appraisal District Agricultural Appraisal Advisory Board** will meet at the District Office, 113 North Main, Hallettsville, April 23, 1990, at 1 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

**The Lavaca County Central Appraisal District Appraisal Review Board** will meet at the District Office, 113 North Main, Hallettsville, April 24, 1990, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

**The Swisher County Appraisal District Board of Directors** met at 130 North Armstrong, Tulia, April 19, 1990, at 8 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118.

**The Trinity River Authority of Texas Right-of-Way Committee** met at 5300 South Collins, Arlington, April 18, 1990, at 11 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343.

TRD-9003739

◆ ◆ ◆  
**Meetings Filed April 13, 1990**

**The Tax Appraisal District of Bell County Board of Directors** met at the District Building, 411 East Central Avenue,

Belton, April 18, 1990, at 7 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, ext. 29.

**The Erath County Appraisal District Appraisal Review Board** will meet at the District Office, 1390 Harbin Drive, Stephenville, April 20, 1990, at 7 a.m. Information may be obtained from Treacia Perales, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434.

**The Golden Crescent Service Delivery Area Private Industry Council, Inc.** met at 2401 Houston Highway, Victoria, April 18, 1990, at 6:30 p.m. Information may be obtained from Sandy Heiermann, P.O. Box 164, Victoria, Texas 77902, (512) 576-5559.

**The Hickory Underground Water Conservation District #1 Board** met at 2023 South Bridge, Brady, April 19, 1990, at 7 p.m. Information may be obtained from Vickie Roddie, Box 821, Brady, Texas 76825, (915) 597-2785.

**The Lower Colorado River Authority Board of Directors** met at 407 Seventh Street, Matagorda Hotel, M. Four Conference Room, Bay City, April 17, 1990, at 9 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

**The Lower Colorado River Authority Energy Operations Committee** met at 407 Seventh Street, Matagorda Hotel, M. Four Conference Room, Bay City, April 18, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

**The Lower Colorado River Authority Audit and Budget Committee** met at 407 Seventh Street, Matagorda Hotel, M. Four Conference Room, Bay City, April 18, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

**The Lower Colorado River Authority Finance and Administration Committee** met at 407 Seventh Street, Matagorda Hotel, M. Four Conference Room, Bay City, April 18, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

**The Lower Colorado River Authority Natural Resources Committee** met at 407 Seventh Street, Matagorda Hotel, M. Four Conference Room, Bay City, April 18, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

**The Lower Colorado River Authority Planning and Public Policy Committee** met at 407 Seventh Street, Matagorda Hotel, M. Four Conference Room, Bay City, April 18, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

**The Lower Colorado River Authority Board of Directors** met at 407 Seventh Street, Matagorda Hotel, M. Four Conference Room, Bay City, April 18, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

**The Lower Colorado River Authority Board of Directors** met at 407 Seventh Street, Matagorda Hotel, M. Four Conference Room, Bay City, April 19, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

**The North Texas Private Industry Council, Inc.** will meet in Room 215, Wichita Falls Activity Center, 10th and Indiana, Wichita Falls, April 25, 1990, at 12:15 p.m. Information may be obtained from Art Frerich, 4515 Allendale Road, Wichita Falls, 76310, (817) 691-0020.

**The Red River Authority of Texas Board of Directors** will meet at the Wichita Falls Activity Center, 607 Tenth Street, Room 214, Wichita Falls, April 25, 1990, at 9:30 a.m. Information may be obtained from Ronald J. Glenn, 520 Hamilton Building, Wichita Falls, Texas 76301, (817) 723-8697.

**The Sulphur-Cypress Soil and Water Conservation District #419** met at 1603 North Jefferson, Mt. Pleasant, April 18, 1990, at 8:30 a.m. Information may be obtained from Beverly Amerson, 1603 North Jefferson, Mt. Pleasant, Texas 75455, (214) 572-5411.

**The Wood County Appraisal District Board of Directors** met at 217 North Main, Conference Room, Quitman, April 19, 1990, at 1:30 p.m. Information may be obtained from W. Carson Wages, 217 North Main, Quitman, Texas 75783, (214) 763-4891.

TRD-9003771

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**Meetings Filed April 16, 1990**

**The Atascosa County Appraisal District Board of Directors** met at Fourth and Avenue J, Poteet, April 19, 1990, at 1:30 p.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson, Jourdanon, Texas 78026, (512) 769-2730.

**The Dallas Central Appraisal District Board of Directors** met at 1420 West Mockingbird Lane, Suite 500, Dallas, April 16, 1990, at 1 p.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0520.

**The Eastland County Appraisal District Appraisal Review Board** will meet at the Commissioners' Courtroom of Eastland County Courthouse, Eastland, May 3, 1990, at 10 a.m. Information may be obtained from Steve Thomas, P.O. Box 914,

Eastland, Texas 76448, (817) 629-8597.

**The Ellis County Appraisal District** met at 406 Sycamore Street, Waxahachie, April 19, 1990, at 7 p.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

**The Henderson County Appraisal District Appraisal Review Board** will meet at 1751 Enterprise, Athens, April 26, 1990, at 9:30 a.m. Information may be obtained from Helen Marchbanks, 1751 Enterprise, Athens, 75751, (214) 675-9296.

**The Northeast Texas Municipal Water District Board of Directors** will meet at Highway 250, South, Hughes Springs, April 23, 1990, at 10 a.m. Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (214) 639-7538.

**The Region 14 Education Service Center Board of Directors** will meet at 1850 State Highway 351, Abilene, April 30, 1990, at 5:30 p.m. Information may be obtained from Taressa Huey, Rt 1, Box 70-A, Abilene, Texas 79601, (915) 675-8608.

**The Sulphur River Basin Authority Board of Directors** will meet at 1604 North

Jefferson, Mt. Pleasant, April 20, 1990, at 11 a.m. Information may be obtained from C. B. Wheeler, P.O. Box 1838, Texarkana, Texas 75504, (214) 794-3121.

**The Texas Municipal League Group Benefits Risk Pool Board of Trustees, Group Benefits Risk Pool** will meet at the Marriott Mandalay at Las Colinas, Irving, April 20-21, 1990, at 10 a.m. Information may be obtained from Rhonda Ruckel, 211 East Seventh Street, Suite 1020, Austin, Texas 78701, (512) 478-6601.

**The Upper Leon River Municipal Water District Board of Directors** will meet at the General Office of the Filter Plant, Proctor Lake, Comanche County, April 26, 1990, at 6:30 p.m. Information may be obtained from Gary D. Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258.

TRD-9003823

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**Meetings Filed April 17, 1990**

**The Central Plains Mental Health Mental Retardation Center Board of Trustees** will meet at 620 West Seventh, Plainview, April 26, 1990, at 6:30 p. m. Information may be obtained from Rick

Van Hersh, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636.

**The Central Texas Council of Governments Central Texas Private Industry Council** will meet at 302 East Central, Belton, April 26, 1990, at 10 a. m. Information may be obtained from Susan Kamas, P.O. Box 729, Belton, Texas 76513, (817) 939-3771.

**The Deep East Texas Regional Mental Health Mental Retardation Services Board of Trustees** held an emergency meeting at Ward R. Burke Community Room-Administration Facility, 4101 South Medford Drive, Lufkin, April 17, 1990, at 4 p.m. The emergency status was necessary to consider bids for asbestos abatement project at Alpha House. Information may be obtained from Jim McDermott, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141.

**The Lee County Appraisal District Board of Directors** will meet at 218 East Richmond Street, Giddings, April 25, 1990, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

TRD-9003893

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# 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 Cancellation

As no opposition has been noted in the application for domicile change by the Fidelity Trust Company, Dallas, the hearing previously scheduled for Tuesday, April 17, 1990, has been canceled.

Issued in Austin, Texas, on April 9, 1990.

TRD-9003690 William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

Filed: April 10, 1990

For further information, please call: (512) 479-1200

## Texas Department of Commerce

### Bi-Weekly Report on the 1990

#### Allocation of the State Ceiling on Certain Private Activity Bonds

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1990 is \$849,550,000.

State legislation, Texas Civil Statutes, Article 5190.9a (the Act), established the allocation process for the State of Texas. The Act specifies that 33% of the state ceiling is to be made available to qualified mortgage bonds and of that amount, one-third is available to the Texas Housing Agency and two-thirds is available to local issuers. Fifteen percent of the state ceiling is available to state-voted issued, 10% of the state ceiling is available for issuers of bonds for manufacturing and related facilities, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation.

Pursuant to the Act, the aggregate amount for qualified mortgage bond subceiling is \$280,351,500 with \$186,904,500 available to local housing authorities and \$93,447,000 is available to the Texas Housing Agency. The aggregate amount for state-voted issues is \$127,432,500, the amount for manufacturing and related facilities is \$84,955,000, and the amount for all other bonds requiring an allocation is \$356,811,000.

Generally, the state ceiling is allocated by lottery for applications received from January 2-January 10, and thereafter on a first-come, first-served basis, with the Texas Department of Commerce administering the allocation system.

The information that follows is a report of the allocation activity for the period, March 26, 1990-April 6, 1990.

Total amount of state ceiling remaining unreserved for the \$280,351,500 subceiling for qualified mortgage bonds under the Act as of April 6, 1990: \$93, 447,000.

Total amount of state ceiling remaining unreserved for the \$127,432,500 subceiling for state-voted issues under the Act as of April 6, 1990: \$127,432, 500.

Total amount of state ceiling remaining unreserved for the \$84,955,000 subceiling for manufacturing and related facilities under the Act as of April 6, 1990: \$41,355,000.

Total amount of state ceiling remaining unreserved for the \$356,811,000 subceiling for all other bonds under the Act as of April 6, 1990: none.

Total amount of the \$849,550,000 state ceiling remaining unreserved as of April 6, 1990: \$262,234,500.

Comprehensive listing of bond issues which have received a reservation date pursuant to the Act from March 26, 1990-April 6, 1990: San Antonio Housing Finance Corporation, Prime Group, Incorporated, All other issue, \$14,590,000; Nueces County Housing Finance Corporation, Mortgage Credit Certificates, Qualified Mortgage Bonds, \$1,694,000; Nueces County Housing Finance Corporation, Mortgage Credit Certificates, Qualified Mortgage Bonds, \$3,628,000; Southeast Texas Housing Finance Corporation, Single Family, Qualified Mortgage Bonds, \$22, 622,000.

Following is a comprehensive listing of bond issues which previously received a reservation for allocation and have either been withdrawn or been cancelled from March 26, 1990-April 6, 1990: San Antonio Housing Finance Corporation, Multi-Family, All Other Issues, \$13,100,000.

Comprehensive listing of bonds issued and delivered as pursuant to the Act from March 26, 1990-April 6, 1990: Bexar County Housing Finance Corporation, Anthony/Quintana, Limited, All Other Issues, \$10,410,000; Brazos Higher Education Authority, Incorporated, Student Loans, All Other Issues, \$49,900,000; Houston Housing Finance Corporation, Single Family, Qualified Mortgage Bonds, \$30,000,000; North Texas Higher Education Authority, Student Loans, All Other Issues, \$50,000,000; Dallas County Housing Finance Corporation, Single Family, Qualified Mortgage Bonds, \$13,250,000; East Texas Housing Finance Corporation, Single Family, Qualified Mortgage Bonds, \$24,015,000; Greater East Texas Higher Education Authority, Student Loans, All Other Issues, \$50,000,000; Travis County Housing Finance Corporation, Prime Crest, Limited, Multi-Family Rental Rehab, All Other Issues, \$5,800,000; Harris County Health Facilities Corporation, Texas Medical Center Central Heating and Cooling Services (TECO), All Other Issues, \$4, 250,000; City of El Paso Industrial Development Authority, Incorporated, Millard Refrigerated Services-Atlanta, Incorporated, Qualified Small Issue, \$5,500,000; Cameron County Industrial Development Corporation, Austin Star Detonator Company, Qualified Small Issue, \$2,500,000; City of Dallas Housing Finance Corporation, Single Family, Qualified Mortgage Bonds, \$20,500,000; Harris County Industrial Development Corporation, Encon Safety Products, Incorporated, Qualified Small Issues, \$2,750,000; North Central Texas Housing Finance Corporation, Single Family, Qualified Mortgage Bonds, \$18, 980,000.

Issued in Austin, Texas, on April 11, 1990.

TRD-9003760 William D. Taylor  
Executive Director  
Texas Department of Commerce

Filed: April 12, 1990

For further information, please call: (512) 472-5059

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**Community Justice Assistance Division**  
**Community Educational Campaign for**  
**the Battering Intervention and**  
**Prevention Program**

The Community Justice Assistance Division of the Texas Department of Criminal Justice is requesting proposals to provide contract services to the Division's Battering Intervention and Prevention Program for a Community Educational Campaign.

**Eligible Applicants.** Applicants must be public or private entities which have a proven record of designing and producing high-quality public education products in all media (print and broadcast), working on a contractual basis through a county, municipality, or community supervision and corrections department which sponsors the application. The applicant must be able to provide a community educational campaign relating to family violence to be implemented in the geographic area covered by the Battering Intervention and Prevention Program. The campaign may use a variety of media, including newspapers, radio, television, written materials, and billboards; and shall focus on the criminality of acts of violence toward family members; the consequences of family violence crimes to the batterer; and eradicating public misconceptions of family violence.

**Contract Period.** The proposed contract period is from May 15, 1990, to August 31, 1990.

**Due Date.** Proposals from applicants are due by 4 p.m. on or before May 1, 1990. Please mail or deliver grant application to Frances Cox, Texas Department of Criminal Justice-Community Justice Assistance Division, P.O. Box 12427, 8100 Cameron Road, Austin, Texas 78711.

**Final Section.** The Division's Battering Intervention and Prevention Program will make the selections. The Division reserves the right to accept or reject any or all of the proposals submitted and is under no legal requirement to execute a contract on the basis of this advertisement.

**Contract.** The request for a proposal application form and additional information may be obtained from Frances Cox, Community Justice Assistance Division of the Texas Department of Criminal Justice, P.O. Box 12427, 8100 Cameron Road, Austin, Texas 78711, (512) 834-8188.

Issued in Austin, Texas, on April 13, 1990.

TRD-9003817 Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice

Filed: April 13, 1990

For further information, please call: (512) 834-8188

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**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).

<u>Type of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer<sup>(3)</sup>/Agricultural/Commercial<sup>(4)</sup> thru \$250,000</u>	<u>Commercial<sup>(4)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	04/16/90-04/22/90	18.00%	18.00%
Monthly Rate Art. 1.04(c) <sup>(1)</sup>	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) <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 9, 1990.

TRD-9003715 Al Endsley  
Consumer Credit Commissioner

Filed: April 11, 1990

For further information, please call: (512) 479-1280



## Texas Department of Health

### Correction of Errors

The Texas Department of Health submitted an adopted section, concerning clinical health services, which contained an error in the fee schedule as submitted by the agency for the April 10, 1990, issue of the *Texas Register* (15 TexReg 2033).

Section 1.91(b)(20) should read as follows. "(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.







Insurance Services Office of Miscellaneous Changes to the Commercial General Liability Program-Miscellaneous Coverage Parts. Copies of these filings are available for public inspection at the office of the chief clerk of the State Board of Insurance in Room 406 of the State Insurance at 1110 San Jacinto Boulevard in Austin.

These agenda items will be considered under the jurisdiction and legal authority of the Insurance Code, Article 1.04 and Article 5.97, and the Insurance Code, Chapter 5, Subchapter B, and this hearing will concern those articles and other articles of the Insurance Code and the rules adopted under the authority of those articles, which are published in Title 28 Texas Administrative Code §§5.1001, 5.1002, 5.1101, 5.1102, 5.1103, 5.1201, 5.8001, 5.8002, 5.8003, and 5.8004, as well as the Commercial Lines Manual adopted by the State Board of Insurance under the Insurance Code, Article 5.97.

The hearing and procedure under Docket Number 1747 will be governed by the provisions of the Rules of Practice and Procedure before the State Board of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A) and by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), as modified by the Insurance Code, Article 5.97.

Please direct inquiries regarding this hearing to James W. Fisher, Director of General Liability Insurance, State Board of Insurance, Mail Code 012-3, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 322-3460.

Issued in Austin, Texas, on April 11, 1990.

TRD-9002719      Nicholas Murphy  
                         Chief Clerk  
                         State Board of Insurance

Filed: April 11, 1990

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

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**Interagency Council on Early  
Childhood Intervention**  
**Additional Funding For Early Childhood  
Intervention**

The Texas Interagency Council on Early Childhood Intervention announces the availability of \$15,000 for comprehensive services for children with developmental delays or who are at risk of developmental delay, ages birth to six.

The awarding of these dollars are only available to current providers who have documented the need for additional dollars based on their inability to continue services at their current rate of delivery through the end of August 31, 1990. All requests for funding must be received by the Early Childhood Intervention Program by 5 p.m. on May 15, 1990. Questions should be directed to the Early Childhood Intervention Administrative Office at (512) 458-7673.

Issued in Austin, Texas, on April 13, 1990.

TRD-9003789      Patti Patterson, M.D.  
                         Chairperson  
                         Interagency Council on Early Childhood  
                         Intervention.

Filed: April 13, 1990

For further information, please call: (512) 458-7673



**Pecos River Compact Commission**  
**Agenda for April 26, 1990 Meeting**  
**Pecos River Compact Commission**

The interstate (Texas and New Mexico) Pecos River Compact Commission will hold its 41st Annual Meeting in the Maby Hall, State Education Building, Santa Fe, New Mexico, on April 26, 1990, at 10 a.m.

The annual meeting will be called to order; minutes of the 1989 annual meeting will be approved; reports of the chairman, secretary, and treasurer will be presented; reports of the engineering, legal, and budget committees will be presented; Federal Agency reports will be given; unfinished business and new business will be considered; and the meeting will be adjourned.

Issued in Fort Stockton, Texas, on April 2, 1990.

TRD-9003683      Billy L. Moody  
                         Pecos River Compact Commissioner for  
                         Texas  
                         Pecos River Compact Commission

Filed: April 10, 1990

For further information, please call: (915) 336-5034

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**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 30, 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 Lufkin-Conroe Telephone Exchange, Inc. for a minor boundary change within Montgomery County, Docket Number 9473 before the Public Utility Commission of Texas.

**The Application:** In Docket Number 9473, Lufkin-Conroe Telephone Exchange requests approval of its application to extend its Riverbrook Exchange to include territory currently within its Conroe 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 April 9, 1990.

TRD-9003663      Mary Ross McDonald  
                         Secretary of the Commission  
                         Public Utility Commission of Texas

Filed: April 10, 1990

For further information, please call: (512) 458-0100

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 30, 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 McLennan County Electric Cooperative, Inc. to amend certified service area boundary within Coryell County, Docket Number 9481, before the Public Utility Commission of Texas.

**The Application:** In Docket Number 9481, McLennan County Electric Cooperative requests approval of its application to provide service to two customers within the certified service area boundary of Hamilton County Electric Cooperative Association.

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 April 9, 1990.

TRD-9003666 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 10, 1990

For further information, please call: (512) 458-0100

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 9, 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 Houston Lighting and Power Company for a certificate of convenience and necessity for a 138KV Transmission Line within Harris County, Docket Number 9486 before the Public Utility Commission of Texas.

**The Application:** In Docket Number 9486, Houston Lighting and Power Company requests approval of its application to construct a new transmission line along the south side of the Houston Ship Channel in Pasadena.

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 April 11 1990.

TRD-9003756 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 12, 1990

For further information, please call: (512) 458-0100

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**Texas Water Commission  
Enforcement Order**

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Chemical Enterprises Plant Site, SWR Number 34599 on March 14, 1990,

assessing \$18,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen C. Dickman, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on April 9, 1990.

TRD-9003642 Gloria A. Vasquez  
Notices Coordinator  
Texas Water Commission

Filed: April 9, 1990

For further information, please call: (512) 463-8069.

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**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 April 2-April 6, 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.

Compaq Computer Corporation; Houston; wastewater treatment facility; approximately 7,300 feet east of the intersection of Louetta Road and State Highway 249 in Harris County; 13508-01; new.

Economy Laundries; El Paso; laundering facility; 12651 Montana Avenue, approximately one mile east of the intersection of State Highway Loop 375 and Montana Avenue (U.S. Highway 62/180), east of the City of El Paso, El Paso County; 03165; new.

Fort Bend County Municipal Utility District Number 81; Houston; wastewater treatment facility; approximately ten miles northwest of Rosenberg, Texas and three miles south-southwest of Fulshear in Fort Bend County; 13051-02; new.

Harris County Municipal Utility District Number 286; Houston; wastewater treatment facility; approximately 4,000 feet west of the crossing of FM Road 149 over Cypress Creek in Harris County; 13020-01; renewal.

Daniel Humphrey doing business as Dan Humphrey Dairy; Sulphur Springs; confined animal feeding operation and dairy; adjacent to FM Road 69, approximately 1.5 miles north of the intersection of FM Road 69 and State High-

way 11 in Hopkins County; 03170; new.

Ingleside Properties, Inc.; blending terminal for drilling fluid chemicals and a treatment plant incinerating oil based cuttings and waste drilling fluids; on Bishop Road east of the City of Ingleside, San Patricio County; 02717; renewal.

City of Jasper; wastewater treatment facility; adjacent to the south bank of Big Sandy Creek, approximately 0.5 mile east of the intersection of FM Roads 2799 and 777, and approximately 1.0 mile northeast of the intersection of FM Road 777 and State Highway 63 Jasper County; 10197-01; renewal.

Jolly Oil Company; Wichita Falls; commercial truck stop; intersection of FM Road 2393 and U.S. Highway 287 in Clay County; 11349-01; renewal.

Charles and Johnny Koether doing business as Vista View Dairy; Evant; confined animal feeding operation and dairy; adjacent to FM Road 2414, approximately 1.5 miles south of the intersection of FM Road 2414 and FM Road 221 in Hamilton County; 03180; new.

La Joya Independent School District; elementary school wastewater treatment facility; approximately 2.8 miles northwest of Mission, and approximately 1,000 feet north of U.S. Highway 83, at the southwest corner of the intersection of FM Road 495 and La Homa Road in Palmview, Hidalgo County; 13523-01; new.

NBC Bank Houston, N.A.; retail office and shopping center; 5930 State Highway 6 North, Harris County; 02721; renewal.

City of Pilot Point; wastewater treatment facility; approximately 1 mile west-southwest of the intersection of U.S. Highway 377 and State Highway Loop 387, approximately 1-1/2 miles northwest of the intersection of U.S. Highway 377 and FM Road 455 in Denton County; 10361-01; renewal.

Polk County; Livingston; Southland Park wastewater treatment facility; on the east bank of the Trinity River, approximately one mile downstream from the Lake Livingston Dam and approximately 6-1/2 miles southwest of the City of Livingston in Polk County; 11223-01; renewal.

Simpson Pasadena Paper Company; mill manufacturing pulp and paper; south bank of the Houston Ship Channel immediately west of the Washburn Tunnel (North Shaver Street) in the City of Pasadena, Harris County; 02286; renewal.

Sunny Fresh Foods, Inc.; Kilgore; chicken operation; approximately eight miles east of the intersection of Interstate Highway 20 and State Highway 271, 1,000 feet west of the Smith-Gregg County boundary, 1,200 feet south of the intersection of Interstate Highway 20 and Joy-Wright Mountain Road (County Road 3111) in Smith County; 02968; new.

Treatment One, Division of the SET Environmental, Inc.; Houston; existing commercial Class I hazardous industrial solid waste storage and processing facility; on eight city lots in a mixed commercial, residential, and industrial area at 5743 Cheswood, Houston, Harris County; HW-50267, EPA I.D. Number TXD-055135388; new; 45-day notice.

Issued in Austin, Texas, on April 6, 1990

TRD-9003646 Brenda W. Foster  
Chief Clerk  
Texas Water Commission

Filed: April 9, 1990

For further information, please call: (512) 463-7906

## Texas Water Development Board Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the board.

Zapata County Water Control and Improvement District, P.O. Box 427, Zapata, Texas 78076, received February 16, 1989, for financial assistance in the amount of \$760,000 from the Water Supply Account of the Texas Water Development Fund.

City of Woodville, P.O. Box 517, Woodville, Texas 75979, received January 19, 1990, for financial assistance in the amount of \$250,000 from the Water Supply Account of the Texas Water Development Fund.

Lavaca-Navidad River Authority, P.O. Box 429, Edna, Texas 77957, received March 16, 1990, regional water supply planning grant application in an amount not to exceed \$58,000.

Additional information concerning this matter may be obtained from G. E. Kretzschmar, Executive Administrator, P.O. Box 13231, Austin, Texas 78711.

Issued in Austin, Texas, on April 11, 1990.

TRD-9003742 G. E. Kretzschmar  
Executive Administrator  
Texas Water Development Board

Filed: April 11, 1990

For further information, please call: (512) 463-7981

## Texas Workers' Compensation Commission

### Contract Award Notice

In compliance with the provisions of the Texas Civil Statutes, Article 6252-11c, the Texas Workers' Compensation Commission, furnishes this notice of a consultant contract award.

**Publication Date.** The consultant proposal request was published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 900).

**Description of Services.** The request was for a consultant to assist the TWCC with developing a suitable organizational structure, developing and implementing a comprehensive staffing plan, developing job descriptions, performance measures and a career ladder program, and assisting in the hiring and training of personnel to be on board by September 1, 1990.

**Name and Address.** The consultant contract has been awarded to Deloitte and Touche, 2000 MBank Tower, 221 West 6th Street, Austin, Texas 78701-3404.

**Value and Dates of Contract.** The total dollar value of the contract is \$188,980. The contract period extends from April 2, 1990-June 30, 1990, by which date all work associated with this contract must be completed.

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

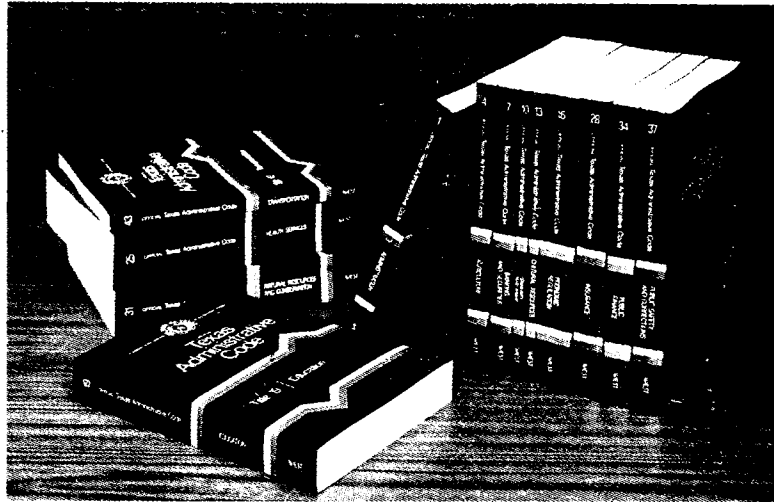
TRD-9003634 George E. Chapman  
Executive Director  
Texas Workers' Compensation Commission

Filed: April 9, 1990

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



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