

Texas Register

Volume 15, Number 65, August 28, 1990

Pages 4926-4985

In This Issue.

Governor

Appointments Made August 14, 1990

4937-Agricultural Resources Protection Authority

4937-Christopher Columbus Quincentenary Texas Jubilee Commission

4937-State Board of Trustees for the Teacher Retirement System

4937-Board of Trustees of the Texas County and District Retirement System

Appointments Made August 15, 1990

4937-Agricultural Finance Authority

Appointments Made August 16, 1990

4937-Texas Agricultural Finance Authority Board of Directors

4937-Statewide Health Coordinating Council

Attorney General

Opinions

4939-JM-1206 (RQ-1852)

4939-JM-1207 (RQ-1793)

4939-JM-1208 (RQ-1960)

4939-JM-1209 (RQ-1992)

Request For Opinions

4939-RQ-2072

4939-RQ-2073

4939-RQ-2074

4939-RQ-2075

4939-RQ-2076

4939-RQ-2077

4939-RQ-2078

4939-RQ-2079

4939-RQ-2080

4939-RQ-2081

4940-RQ-2082

4940-RQ-2083

4940-RQ-2084

4940-RQ-2085

4940-RQ-2086

4940-RQ-2087

4940-RQ-2088

4940-RQ-2089

4940-RQ-2090

4940-RQ-2091

4940-RQ-2092

4940-RQ-2093

4940-RQ-2094

4940-RQ-2095

4940-RQ-2096

4940-RQ-2097

4940-RQ-2098

4940-RQ-2099

4940-RQ-2100

4940-RQ-2101

4940-RQ-2102

4940-RQ-2103

4940-RQ-2104

4940-RQ-2105

CONTENTS CONTINUED INSIDE

Texas Register

The *Texas Register* (ISSN0362-4781) is published semi-weekly 100 times a year except June 1, 1990, November 9 and 27, 1990, and December 28, 1990. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711.

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

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

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

Governor-Appointments, executive orders, and proclamations

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

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

Proposed Sections-sections proposed for adoption

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

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

Open Meetings-notice of open meetings

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

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

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

In Order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 TexReg 3"

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

§27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).



Texas Register Publications

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

Secretary of State
George S. Bayoud, Jr.

Director
Dan Procter

Assistant Director
Dee Wright

Documents Section Supervisor
Patty Parris

Documents Editors
Lisa Brull
Janiene Hagel

Open Meetings Clerk

Production Section Supervisor
Ann Franklin

Production Editor

Typographers
Sherry Rester
Janice Rhea

Circulation/Marketing
Cheryl Converse
Roberta Knight

TAC Editor
Dana Blanton

TAC Typographer
Madeline Chrisner

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

Emergency Sections

State Board of Medical Examiners

4941-Physician Assistants

4943-Standing Delegation Orders

Texas Workers' Compensation
Commission

4946-Federal Programs

Proposed Sections

Railroad Commission of Texas

4949-Gas Utilities Division

State Board of Medical Examiners

4949-Physician Assistants

4950-Standing Delegation Orders

Texas Employment Commission

4951-Interagency Matters

Withdrawn Section

State Board of Medical Examiners

4953-Physician Assistants

4953-Standing Delegation Orders

Adopted Sections

State Board of Medical Examiners

4955-Schedule of Fees and Penalties

Polygraph Examiners Board

4955-Polygraph Examiner Internship

Texas Water Commission

4955-Special Provisions

4957-Industrial Solid Waste and Municipal Hazardous
Waste

Texas Department of Public Safety

4962-Organization and Administration

Texas Department of Human Services

4963-Intermediate Care Facility/Skilled Nursing Facility
(ICF/SNF)

Open Meetings

4971-Texas Commission on the Arts

4971-Texas Commission for the Blind

4971-Bond Review Board

4971-Texas Commission for the Deaf

4972-Texas Education Agency

4972-Employees Retirement System of Texas

4972-Fire Fighters' Pension Commission

4972-Texas Growth Fund

4972-Texas Health and Human Services Coordinating
Council

4972-State Department of Highways and Public
Transportation

4972-Interagency Council for Services for the Homeless

4973-Department of Information Resources

4973-State Board of Insurance

4973-Texas Commission on Law Enforcement Officer
Standards and Education

4973-Texas Parks and Wildlife Department

4974-Texas State Board of Public Accountancy

4974-Public Utility Commission of Texas

4975-Railroad Commission of Texas

4975-Texas Southern University

4975-Texas Water Commission

4975-Regional Meetings

In Addition

Texas Department of Community Affairs

4977-Request for Proposals

Office of Consumer Credit Commissioner

4977-Notice of Rate Ceilings

Credit Union Department

4978-Notice of Hearings

Texas Department of Health

4980-Licensing Actions for Radioactive Materials

State Purchasing and General Services
Commission

4984-Request for Proposals

The University of Texas System

4984-Request for Proposal

Texas Water Commission

4985-Notice of Public Hearing



Name: Linda Arredondo

Grade: 7

School: Garner Middle School, Northeast ISD

TAC Titles Affected

TAC Titles Affected—August

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

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

1 TAC §§71.40, 71.41, 71.45—4427, 4429

1 TAC §78.50—4869, 4871

1 TAC §101.52—4691

1 TAC §101.60—4691

1 TAC §102.20—4675, 4677

1 TAC §102.40—4675, 4677

Part XII. Advisory Commission on State Emergency Communications

1 TAC §252.2—4633

1 TAC §255.5—4633

TITLE 4. AGRICULTURE

Part II. Animal Health Commission

4 TAC §35.6—4429

4 TAC §59.4—4430

TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

10 TAC §§162.1-162.8, 162.10—4691

10 TAC §§165.1, 165.3, 165.5-165.7—4691

10 TAC §165.2—4749

10 TAC §§172.1-172.7, 172.10—4693

10 TAC §176.2, §176.2, 176.8—4693

10 TAC §180.2—4694

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

13 TAC §§1.42, 1.72, 1.77—4577

Part II. Texas Historical Commission

13 TAC §13.1—4694

Part VII. State Preservation Board

13 TAC §111.20—4897

13 TAC §111.21—4897

13 TAC §111.22—4897

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

16 TAC §5.152—4489

16 TAC §5.294—4634

16 TAC §7.58—4949

16 TAC §7.70, §7.81—4677

16 TAC §11.221—4485

Part II. Public Utility Commission of Texas

16 TAC §23.57—4869, 4871

16 TAC §23.58—4872

Part VIII. Texas Racing Commission

16 TAC §301.1—4525

16 TAC §309.303—4525

16 TAC §309.305—4525

16 TAC §309.309—4526

16 TAC §309.311—4526

16 TAC §309.315—4526

16 TAC §309.316—4527

16 TAC §309.353—4527

16 TAC §309.355—4527

16 TAC §309.362—4528

16 TAC §309.364—4528

16 TAC §309.365—4529

16 TAC §311.171—4529

16 TAC §311.173—4529

16 TAC §§315.1-315.5—4530

16 TAC §§315.31-315.42—4531

16 TAC §§315.101-315.111—4533

16 TAC §§315.201-315.211—4535

16 TAC §§319.201—4537

16 TAC §319.202—4537

16 TAC §319.203—4537

16 TAC §319.204—4538

16 TAC §319.391—4538

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

19 TAC §§5.350-5.353—4694

19 TAC §9.77—4694

19 TAC §§9.270-9.283—4695

19 TAC §13.72, §13.73—4695

19 TAC §17.1—4897

19 TAC §§17.21-17.28, 17.31-17.33—4898

19 TAC §§17.21-17.30—4898

19 TAC §§17.41-17.44—4899

19 TAC §§17.61-17.65—4900

19 TAC §§17.61-17.67—4901

19 TAC §25.18—4485

19 TAC §25.33—4489

Part II. Texas Education Agency

19 TAC §89.246—4634

19 TAC §129.61—4428, 4430

TITLE 22. EXAMINING

Part III. Texas Board of Chiropractic Examiners

22 TAC §73.4—4641

22 TAC §75.6—4807

22 TAC §79.1—4642 1

22 TAC 79.2, 79.4—4678

22 TAC §80.1—4435

22 TAC §80.2—4805

22 TAC §80.3—4642, 4901

Part VI. Texas State Board of Registration for Professional Engineers

22 TAC §§131.53-131.56—4642

22 TAC §131.71, §131.72—4643

22 TAC §131.81—4643

22 TAC §131.93—4644

22 TAC §131.101, §131.105—4644

22 TAC §131.111, §131.112—4644

22 TAC §131.133—4644

22 TAC §131.138—4645

Part IX. State Board of Medical Examiners

22 TAC §175.1—4955

22 TAC §§185.1-185.12—4941, 4949, 4953

22 TAC §§185.1-185.14—4941, 4950, 4953

22 TAC §§193.1-193.6—4943, 4950, 4953

22 TAC §193.8—4945, 4950, 4953

Part X. Texas Funeral Service Commission

22 TAC §203.6—4902

Part XI. Board of Nurse Examiners

22 TAC §213.21—4431

22 TAC §215.3—44341

22 TAC §§217.1, 217.5, 217.6—4432

22 TAC §217.16—4435

22 TAC §223.1—4432

Part XIX. Polygraph Examiners Board

22 TAC §391.3—4955

TITLE 22. TEXAS STATE BOARD OF PHARMACY

Part XV. Pharmacies

22 TAC §281.33—4807

22 TAC §281.51—4807

22 TAC §§291.31-291.36—4807

22 TAC §§291.71-291.76—4810

22 TAC §297.1—4817

22 TAC §309.5—4817

Part XXII. Texas State Board of Public Accountancy

22 TAC §511.57—4645

22 TAC §511.58—4645

22 TAC §511.122—4817

22 TAC §519.17—4750

22 TAC §519.30—4617

22 TAC §519.31—4617

22 TAC §§523.63—4817

Part XXIII. Texas Real Estate Commission

22 TAC §§531.10-531.17—4872

22 TAC §535.17—4873

22 TAC §535.92—4873

22 TAC §541.1—4874

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

25 TAC §1.134, §1.135—4818

25 TAC §§13.31-13.34—4750

25 TAC §37.90—4539

25 TAC §97.16—4818

25 TAC §97.21—4752

25 TAC §98.61-98.68—4820

25 TAC §§98.81-98.89—4821

25 TAC §133.21—4895

25 TAC §§229.141-221.149—4826

25 TAC §§229.141-229.152—4826

25 TAC §325.5—4832

25 TAC §§325.1001-325.1004—4832

25 TAC §325.136—4834

25 TAC §§229.271-229.273—4689

25 TAC §325.5—4492

25 TAC §325.42—4493

25 TAC §325.133—4493

25 TAC §§325.631-325.633—4493

25 TAC §§325.801-325.803—4493

25 TAC §§325.811-325.818—4494

25 TAC §§325.831-325.838—4495

25 TAC §§325.851-325.855—4498

25 TAC §325.871—4499

25 TAC §§325.919-325.924—4500

Part II. Texas Department of Mental Health and Mental Retardation

25 TAC §401.53—4676, 4679

25 TAC §401.54—4695

25 TAC §§402.151-402.159—4696

25 TAC §§405.81-405.92—4699

25 TAC §§405.641-405.652—4700

TITLE 28. INSURANCE

Part I. State Board of Insurance

28 TAC §§3.3306-3.3309, 3.3317, 3.3319-3.3321—4550

28 TAC §3.3820—4575

28 TAC §5.4001—4679

28 TAC §7.23—4486

28 TAC §§7.601-7.606—4435

28 TAC §§7.601-7.614—4436

28 TAC §§7.631-7.636—4444

28 TAC §§9.1—4556, 4631

28 TAC §9.21—4486

Part II. Texas Workers Compensation Commission

28 TAC §41.1—4701

28 TAC §41.70—4701

28 TAC §§64.5, 64.10, 64.15, 64.20—4701

28 TAC §162.1—4946

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

31 TAC §4.11—4681

31 TAC §4.22—4681

31 TAC §4.93—4681

31 TAC §4.99—4682

31 TAC §§4.161-4.163—4682

Part IX. Texas Water Commission

31 TAC §§275.91-275.101—4955

31 TAC §§291.121-291.127—4444

31 TAC §293.87—4753

31 TAC §§293.141-293.152—4753

31 TAC §§305.42, 305.51, 305.53—4760

31 TAC §§305.61-305.64, 305.69—4761

31 TAC §§305.92-305.93, 305.96, 305.98-305.99, 305.102-30-5.106—4792

31 TAC §305.127—4793

31 TAC §305.144—4793
31 TAC §§305.171-305.172, 305.174—4793
31 TAC §305.184—4794
31 TAC §§334.412, 334.414-334.428—4617
31 TAC §335.112—4795
31 TAC §§335.321-335.323, 335.326-335.333—4957

31 TAC §§335.326-335.332—4962
31 TAC §§335.152, 335.157, 335.158, 335.163-335.165—
4796

Part X. Texas Water Development Board

31 TAC §363.1, 363.2—4557
31 TAC §§363.31, 363.32, 363.35—4558
31 TAC §§363.52-363.54, 363.57, 363.58—4559
31 TAC §§363.81, 363.83, 363.84—4560
31 TAC §§363.104-363.106—4561
31 TAC §363.125—4562

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

34 TAC §3.37—4874
34 TAC §3.288—4902
34 TAC §3.289—4834
34 TAC §3.290—4875
34 TAC §3.300—4876
34 TAC §3.307—4701
34 TAC §3.319—4877
34 TAC §3.335—4878
34 TAC §5.122—4615

Part II. State Treasurer

34 TAC §§15.4-15.6—4879
34 TAC §§15.1-15.17—4879

Part IV. Employees Retirement System of Texas

34 TAC §§81.3, 81.5, 81.7—4504
34 TAC §§85.1, 85.3, 85.5, 85.7, 85.9, 85.13—4646

Part IX. Texas Bond Review Board

34 TAC §181.3, §181.4—4433

34 TAC §181.21, 181.23, 181.25, 181.27, 181.29, 181.31,
181.33, 181.35—4445

**TITLE 37. PUBLIC SAFETY AND
CORRECTIONS**

Part I. Texas Department of Public Safety

37 TAC §1.23—4962
37 TAC §§13.71, 13.73-13.82, 13.84, 13.88—4563
37 TAC §§19.1-19.7—4623
37 TAC §§33.1-33.6—4565

Part III. Texas Youth Commission

37 TAC §81.5—4702
37 TAC §81.115—4902
37 TAC §85.29—4902
37 TAC §85.30, §85.39—4702
37 TAC §87.21—4702
37 TAC §87.99, §87.109—4702
37 TAC §§89.5, 89.7, 89.10, 89.19—4702
37 TAC §89.19—4703
37 TAC §§91.55, 91.59, 91.63, 91.69—4703
37 TAC §93.53—4703
37 TAC §119.5—4683

Part IX. Texas Commission on Jail Standards

37 TAC §§263.1-263.4—4567
37 TAC §§263.10-263.17—4568
37 TAC §§263.11-263.24—4569
37 TAC §§263.30-263.33—4569
37 TAC §§263.31-263.34—4569
37 TAC §§263.40-263.44—4569
37 TAC §§263.41-263.45—4570
37 TAC §§263.50-263.57—4570
37 TAC §§263.51-263.58—4572
37 TAC §§263.70-263.71—4572
37 TAC §§263.71-263.72—4572
37 TAC §§263.80-263.83—4572
37 TAC §§263.81-263.84—4573
37 TAC §263.90—4573
37 TAC §263.91—4573

37 TAC §§271.1-271.3—

Part XI. Texas Juvenile Probation Commission

37 TAC §341.23—4433

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.1003—4885

40 TAC §§3.1101, 3.1102, 3.1104—4903

40 TAC §§3.1101-3.1105—4903

40 TAC §§10.2301-10.2308—4903

40 TAC §§10.2301-10.2309—4903

40 TAC §§10.3101-10.3190—4706

40 TAC §§10.3301-10.3307, 10.3320-10.3324—4707

40 TAC §10.3325—4683

40 TAC §§10.3340-10.3347—4904

40 TAC §§10.3401-10.3455—4708

40 TAC §10.3456—4683

40 TAC §15.455—4648

40 TAC §15.460—4648

40 TAC §16.1510—4837

40 TAC §16.1514—4965

40 TAC §16.9801—4483

40 TAC §§27.102-27.104—4904

40 TAC §27.109—4904

40 TAC §27.1804, §27.1805—4904

40 TAC §29.601—4575

40 TAC §29.603, 29.606—4648

40 TAC §§41.104, 41.106, 41.108, 41.109, 41.112—4684

40 TAC §41.110—4685

40 TAC §46.5001—4505

40 TAC §46.7001—4505

40 TAC §§48.2401-48.2414—4886

40 TAC §48.2501—4891

40 TAC §48.2911, §48.2918—4579

40 TAC §48.9802, §48.9808—4505

40 TAC §49.104—4446

40 TAC §49.106, §49.107—4892

40 TAC §§49.511, 49.512, 49.514, 49.515—4447

40 TAC §49.701, §49.702—4447

40 TAC §50.1902—4711

40 TAC §50.2901—4893

40 TAC §§50.3901, 50.3904, 50.3912—4711

40 TAC §51.50—4506

40 TAC §54.403—4579

40 TAC §56.205—4573

40 TAC §56.601—4574

Part II. Texas Rehabilitation Commission

40 TAC §115.9—4629

Part III. Texas Commission on Alcohol and Drug Abuse

40 TAC §151.601—4447

40 TAC §151.602—4447

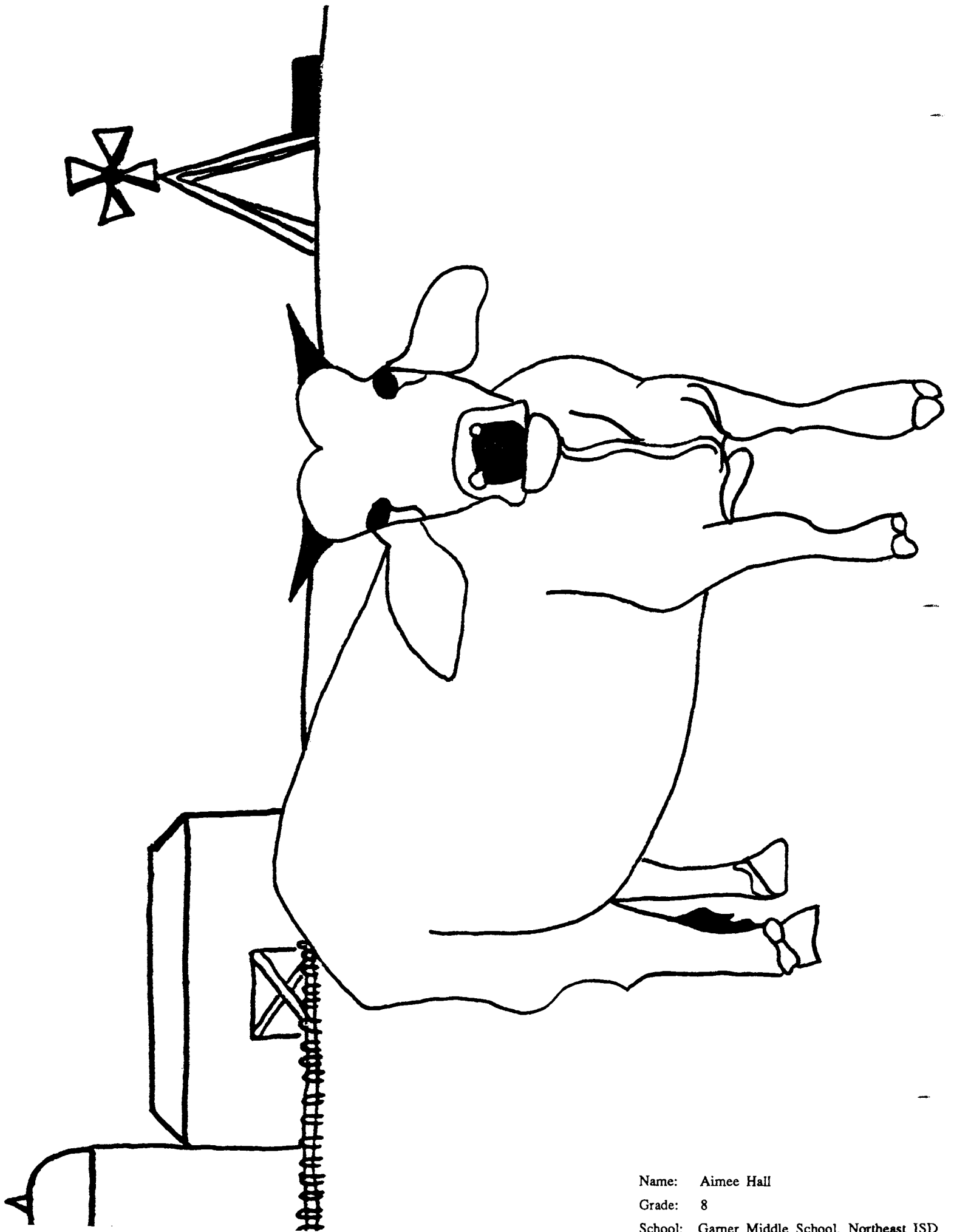
40 TAC §§151.602-151.606—4447

40 TAC §155.34—4449

Part X. Texas Employment Commission

40 TAC §305.2—4951

◆ ◆ ◆



Name: Aimee Hall

Grade: 8

School: Garner Middle School, Northeast ISD

The Governor

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

Appointments Made August 14, 1990

To be a member of the **Agricultural Resources Protection Authority** for a term to expire February 1, 1991: Inez Suderman, 130 Rio Grande Drive, Mission, Texas 78572. Mrs. Suderman will be replacing E. L. Caraway of Fort Worth whose name was withdrawn.

To be a member of the **Christopher Columbus Quincentenary Texas Jubilee Commission** for a term at the pleasure of the governor: Henry Otto Strunk, P. O. Box 42, Oakland, Texas 78951. Mr. Strunk is being appointed to a new position pursuant to Executive Order Number WPC 88-10.

To be a member of the **State Board of Trustees for the Teacher Retirement System** for a term to expire December 31, 1995: A. W. "Dub" Riter, 403 Bluebonnet Drive, Tyler, Texas 75701. Mr. Riter will be replacing Henry Bell, Jr. of Tyler whose term expired.

To be a member of the **Board of Trustees of the Texas County and District Retirement System** for a term to expire December 31, 1995: Bill W. Wallis, 4401

Dorchester, Tyler, Texas 75703. Mr. Wallis will be replacing Judge Ed Landry of Houston whose term expired.

Appointments Made August 15, 1990

To be chairman of the **Agricultural Finance Authority** for a term at the pleasure of the Governor: Jerry Harris, Lamesa.

Appointments Made August 16, 1990

To be a member of the **Texas Agricultural Finance Authority Board of Directors** for a term to expire January 1, 1991: Edward Paul Comer, P.O. Box 306 Evant, Texas 76525. Mr. Comer will be filling the unexpired term of John Jones of Brady who resigned.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1992: Kay Holleman Williamson, 11502 Village Place Drive, Houston, Texas 77077. Mrs. Williamson is being reappointed.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1992: A. Bryan Spires, M.D.,

712 Sparks Avenue, Austin, Texas 78705. Dr. Spires is being reappointed.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1992: Bob Max Hollander, D.C., 3710 Blossom Lane, Odessa, Texas 79762. Dr. Hollander is being reappointed.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1992: Geraldine T. Hester, 3514 Tanglewood Drive, Bryan, Texas 77801. Dr. Hester is being reappointed.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1992: Letha F. Barber, M.D., 2625 Gerol Drive, Galveston, Texas 77551. Dr. Barber is being reappointed.

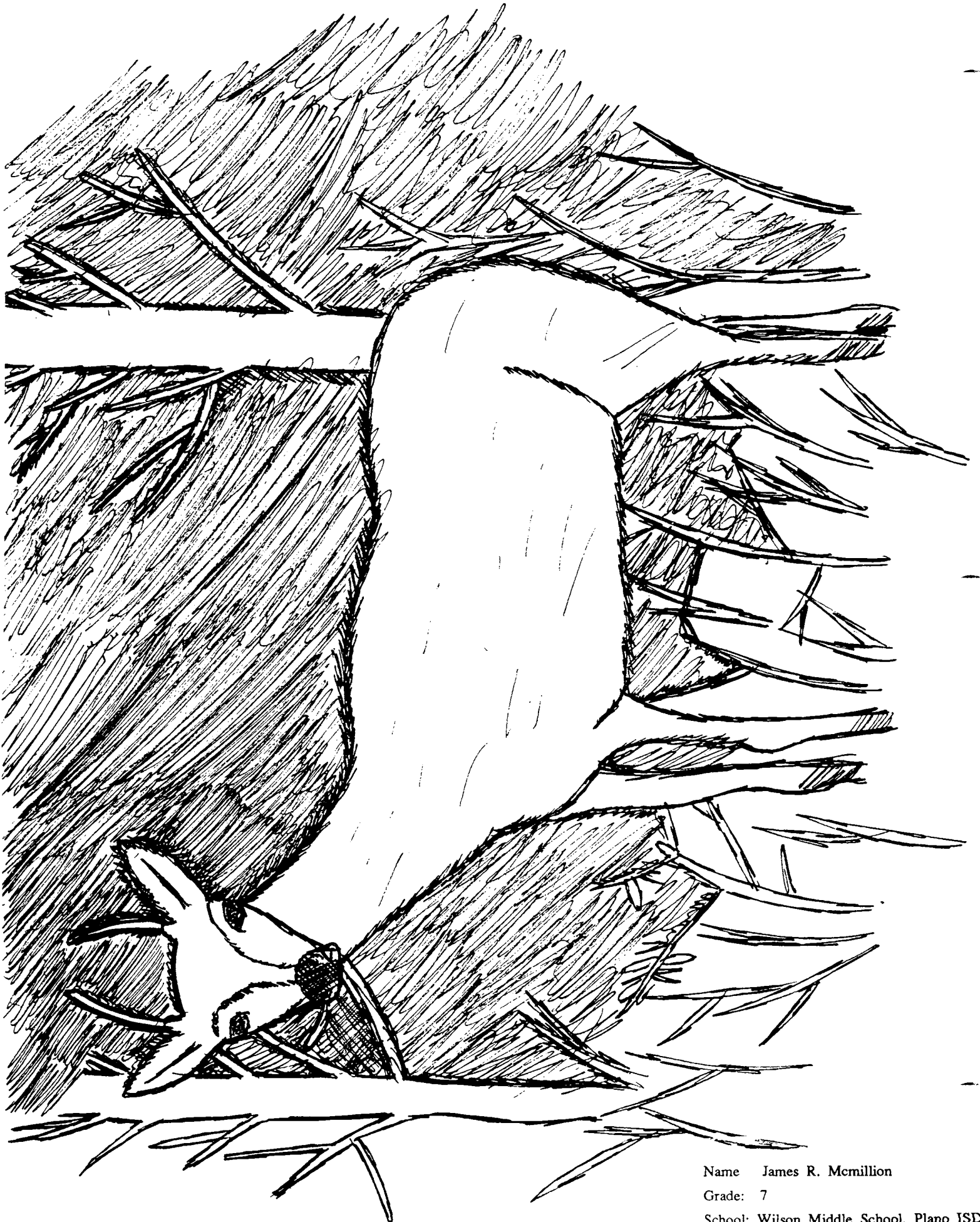
To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1992: Helen T. Chang, 10723 Braes Bayou Drive, Houston, Texas 77071. Mrs. Chang will be replacing Lynda Calcote of Abilene whose term expired.

Issued in Austin, Texas, on August 21, 1990.

TRD-9008428

William P. Clements, Jr.
Governor of Texas





Name James R. Mcmillion

Grade: 7

School: Wilson Middle School, Plano ISD

Attorney General

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

Opinions

JM-1206 (RQ-1852). Request from Andrew Sansom, Executive Director, Texas Parks and Wildlife Department, Austin, concerning whether licensed commercial shrimpers must hold commercial finfish fisherman's licenses in order to sell finfish.

Summary of Opinion. The captain and paid members of the crew of a boat licensed as a commercial shrimp boat are not required to obtain commercial finfish fisherman's licenses in addition to the general commercial fisherman's license required by the Parks and Wildlife Code, §77.040, in order to sell finfish species that otherwise are lawful to sell.

TRD-9008392

JM-1207 (RQ-1793). Request from Ron Lindsey, Commissioner, Texas Department of Human Services, Austin, concerning obligation of a metropolitan transit authority with regard to medicaid recipients.

Summary of Opinion. Whether a transit authority may legally charge the Department of Human Services more per ticket for bulk prepurchased bus tickets for medicaid recipients than it charges members of the general public for individually prepurchased tickets would probably involve factual issues that cannot be resolved in an attorney general opinion.

TRD-9008393

JM-1208 (RQ-1960). Request from Alan Beinke, Executive Director, Texas Water Commission, Austin, concerning potential conflict in two amendments adopted at the same legislative session regarding requirements of notice for selling realty located in a special district.

Summary of Opinion. Two bills enacted by the 71st Legislature amend the Water Code, §50.301(b) which prescribes the wording of a notice required by §50.301(a). Acts 1989, 71st Legislature, Chapter 1218 (House Bill 1333); id. Chapter 935 (Senate Bill 1207). Because the changes in language mandated by Senate Bill 1207 include the

change in the language mandated by House Bill 1333, a purchaser can satisfy the requirements of both bills by complying with the notice as prescribed by Senate Bill 1207.

TRD-9008394

JM-1209 (RQ-1992). Request from David M. Motley, Kerr County Attorney, Kerrville, concerning authority of a county to directly fund a rural fire prevention district and related questions.

Summary of Opinion. A county has, under Local Government Code, Chapter 352, and the Interlocal Cooperation Act, Texas Civil Statutes, Article 4413(32c), authority to contract with a rural fire prevention district in the county for the latter's provision of fire protection services in non-incorporated areas of the county included in the rural fire prevention district. A county also has authority under Chapter 352 to contract with an incorporated volunteer fire department for provision of fire protection services in non-incorporated areas, even if such areas are included in a rural fire prevention district. Adequate controls must be exercised in connection with such arrangements to insure that public benefits to county residents of such areas are thereby obtained.

TRD-9008395

Requests for Opinions

(RQ-2072). Request from Tim Rodgers, County Auditor, Wise County, Decatur, concerning use of county funds to pay for the defense of a county officer in a criminal prosecution.

(RQ-2073). Request from S. E. Seely, County Auditor, El Paso County, El Paso, concerning validity of County payroll deductions on behalf of a political action committee, and related questions.

(RQ-2074). Request from Mr. Ray L. Goad, Executive Director, Commission on Fire Protection Personnel Standards and Education, Austin, concerning whether aircraft crash and rescue personnel employed by the Adjutant General at Ellington Field,

Houston, are subject to the training and certification standards promulgated by the Commission on Fire Protection Personnel Standards and Education.

(RQ-2075). Request from Robert T. Jarvis, County Attorney, Grayson County, Grayson County Justice Center, Sherman, concerning whether a prosecutor's file may be released to a plaintiff's attorney in a civil suit.

(RQ-2076). Request from Mr. Ray L. Goad, Executive Director, Commission on Fire Protection Personnel Standards and Education, Austin, concerning whether persons employed to drive fire trucks must meet the minimum certification standards for fire protection personnel, and related questions.

(RQ-2077). Request from Patricia S. Bizzell, M.P.A., Executive Director, Texas State Board of Examiners of Psychologists, Austin, concerning jurisdiction of the Texas State Board of Examiners of Psychologists over individuals who have voluntarily requested and been granted certification and licensure but are employed in a exempted agency.

(RQ-2078). Request from John D. Hughes, County Attorney, Hood County, Granbury, concerning whether a prosecutor may use drug seizure funds to pay bonuses or increase salaries without approval of the commissioners court.

(RQ-2079). Request from Ann W. Richards, Treasurer, Treasury Department, Austin, concerning whether the names and "percentages" of cigarette distributors' participation in the Cigarette Tax Recovery Trust Fund are subject to disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-2080). Request from John B. Holmes, Jr., District Attorney, Harris County, Houston, concerning whether a trial transcript and statement of facts prepared on behalf of a district attorney is subject to disclosure under the Open Records Act, Texas Civil Statute, Article 6252-17a.

(RQ-2081). Request from Jerome H. Supple, President, Southwest Texas State University, San Marcos, concerning availability under the Open Records Act, Texas Civil Statutes, Article 6252-17a, of source codes

and related documentation designed to limit access to computer-stored records.

(RQ-2082). Request from Iris J. Jones, City Attorney, City of Austin, Austin, concerning computation of the 10-day deadline for submitting a request for decision to the Attorney General under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-2083). Request from Chet Brooks, Chairman, Health and Human Services Committee, Austin, and Bob McFarland, Chairman, Criminal Justice Committee, Austin, concerning authority of an insurance carrier to deny coverage for chemical dependency treatment on the basis of the type of facility in which treatment was performed.

(RQ-2084). Request from Bob Bullock, Comptroller, Comptroller of Public Accounts, Austin, concerning whether the county attorney of Fayette County is entitled to be compensated as a district attorney.

(RQ-2085). Request from Jack E. Crump, Executive Director, Texas Commission on Jail Standards, Austin, concerning authority of the Texas Commission on Jail Standards to require that individual inmates be tested for tuberculosis.

(RQ-2086). Request from Ernestine V. Glossbrenner, Chairman, Public Education Committee, Austin, concerning whether an uncompensated board member may participate in the school district's medical insurance program.

(RQ-2087). Request from Scott Warren Johnson, Reeves County Attorney, Reeves County Courthouse, Pecos, concerning whether a county is authorized to reimburse a professional management corporation for amounts contributed on behalf of employees to a stock ownership plan.

(RQ-2088). Request from Karren S. Price, District Attorney, 123rd Judicial District, Shelby and Panola Counties, Center, concerning district attorney's share of forfeited funds.

(RQ-2089). Request from Ron Resech, Executive Director, Texas Cosmetology Commission, Austin, concerning authority of the Texas Cosmetology Commission to require a salon license for independent contractors.

(RQ-2090). Request from Bob Bullock, Comptroller of Public Accounts, Austin, concerning gross receipts assessment for telephone companies under Texas Civil Statutes, Article 1446c, §78.82, the Public Utility Regulatory Act.

(RQ-2091). Request from Robert H. Norris, Executive Director, Texas Board of Architectural Examiners, Austin, concerning whether default on a student loan requires automatic non-renewal of a professional license issued by a state licensing agency.

(RQ-2092). Request from W. N. Kirby, Commissioner of Education, Texas Education Agency, Austin, concerning whether interest earned on funds from school related activities may be used by a school district to provide scholarship for graduates.

(RQ-2093). Request from Charles W. Chapman, Criminal District Attorney, Hays County, San Marcos, concerning whether a commissioners court may set a fee of \$20 for the service of a sheriff's processing of a bail bond.

(RQ-2094). Request from J. Edgar Ruiz, Hidalgo County Judge, Edinburg, concerning whether a county health department investigative file regarding an outbreak of shigellosis is subject to disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-2095). Request from Patrick J. Fleming, County Attorney, Parker County Courthouse, Weatherford, concerning whether the names and addresses of purchasers of automobile license plates are excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-2096). Request from W. N. Kirby, Commissioner of Education, Texas Education Agency, Austin, concerning whether competitive bidding is required for a contractor selected to operate food services in a public school district.

(RQ-2097). Request from E. Bruce Curry, District Attorney, 216th Judicial District, Bandera, Gulespie, Kendall, Kerr Counties, Kerrville, concerning whether appropriation of unmarked axis deer by use of a trap door installed in a common fence constitutes theft, and related questions.

(RQ-2098). Request from Vernon M. Arrell, Commissioner, Texas Rehabilitation

Commission, Austin, concerning whether certain vocational rehabilitation appropriated to the Texas Rehabilitation Commission must be expended for the purpose of providing medical care to indigents.

(RQ-2099). Request from David Aken, County Attorney, San Patricio County, Sinto, concerning authority of a Commissioners Court to grant salary increases to selected county employees without amending its budget.

(RQ-2100). Request from Steve N. Spaw, P.E., Executive Director, Texas Air Control Board, Austin, concerning authority of the Texas Air Control Board to conduct covert audits of motor vehicle inspection stations under certain circumstances.

(RQ-2101). Request from Fred Toler, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, Austin, concerning appointment of board members to the Law Enforcement Management Institute, and related questions.

(RQ-2102). Request from Terral Smith, Chairman, Natural Resources, Texas House of Representatives, Austin, concerning authority of the legislature to authorize casino games of chance without a constitutional amendment.

(RQ-2103). Request from Robert T. Jarvis, Grayson County Attorney, Grayson County Justice Center, Sherman, concerning validity of a county judge elect to serve as a county records management officer.

(RQ-2104). Request from Lloyd Criss, Chairman, Committee on Labor and Employment Relations, Texas House of Representatives, Austin, concerning whether emergency medical service technicians are within the scope of Texas Civil Statutes, Article 5154c-1 the Fire and Police Employee Relations Act.

(RQ-2105). Request from Nathan B. Rheinlander, Comal County Attorney, New Braunfels, concerning whether a marina operating for profit under a lease with the United States Army is required to collect a special district's tax on rental of boat ships, and related questions.

TRD-9008391

◆ ◆ ◆

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 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 185. Physician Assistants

• 22 TAC §§185.1-185.12

The Texas State Board of Medical Examiners adopts on an emergency basis the repeal of §§185.1-185.12, concerning physician assistants. This is necessary because of House Bill 18, as passed by the most recent legislative session, which concerns rural health care in Texas. The repeal of the chapter allows insertion of rules which will relate to the delegated delivery of health care under the provisions of the new law in accordance with the Medical Practice Act.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws non inconsistent with that act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of the act.

§185.1. *Purpose.*

§185.2. *Definitions.*

§185.3. *Application for Approval to Supervise.*

§185.4. *Grounds for Denial or Revocation of Approval.*

§185.5. *Notification of Termination of Employment.*

§185.6. *Consent and Identification.*

§185.7. *Supervision of Performance.*

§185.8. *Tasks Permitted to be Delegated to a Physician Assistant.*

§185.9. *Tasks Not Permitted to be Delegated to a Physician Assistant.*

§185.10. *Employment Guidelines.*

§185.11. *Enforcement.*

§185.12. *Exceptions.*

Issued in Austin, Texas, on August 20, 1990.

TRD-9008477

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: August 22, 1990

Expiration date: December 20, 1990

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

◆ ◆ ◆ • 22 TAC §§185.1-185.14

The Texas State Board of Medical Examiners adopts on an emergency basis new §§185.1-185.14, concerning physician assistants. The emergency is necessary because of House Bill 18, as passed by the most recent legislative session, which concerns rural health care in Texas. The new chapter reflects rules which relate to the delegated delivery of health care under the provisions of the new law in accordance with the Medical Practice Act.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with that act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of the act.

§185.1. *Purpose.* The purpose of these sections is to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified physician assistants where such delegation is consistent with the patient's health and welfare under standards of supervision which take into account the skill, training and experience of the physician and physician assistant. The board recognizes that the delivery of quality health care requires expertise and assistance of many dedicated individuals in the allied health professions. These sections are not intended to, and shall not be construed to, restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of independent medical judgment to those specialty trained individuals instructed and directed by a licensed physician who ac-

cepts responsibility for the acts of such allied health personnel. Nothing in these sections shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients.

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

Board—The Texas State Board of Medical Examiners.

Physician assistant, assistant, or P.A.—Refers specifically to a person who is a graduate of a physician assistant training program accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association or a person who has passed the examination given by the National Commission on the Certification of Physician's Assistants.

Supervising physician—Refers to the physician licensed by the board either as a doctor of medicine or doctor of osteopathic medicine who is assuming responsibility and legal liability for the services rendered by the physician assistant and who has been approved by the board to supervise a specific physician assistant.

§185.3. *Application for Approval to Supervise.* Approval by the board to supervise a particular physician assistant must be obtained by each proposed supervising physician by filing an application with the board on forms provided by said board, which shall include the following:

(1) the physician assistant's name, mailing address, date of birth, social security number, physician assistant's education, and certification by the National Commission on Certification of Physician's Assistants, if applicable;

(2) the supervising physician's name, practice address, and license number; the names and license numbers of alternate physicians who will supervise in the temporary absence of the primary supervising physician, if applicable; and the amount of time the physician assistant will be supervised (full-time or part-time). The names of other physician assistants that are currently being supervised by the physician should also be included;

(3) a description by the said physician of his or her practice, including

the nature thereof and the location and the way in which the assistant is to be utilized;

(4) a statement by the supervising physician that he or she has made adequate investigation of and is of the opinion that the proposed physician assistant is possessed of good moral character and is both mentally and physically able to perform as a physician assistant with competence; and that the supervising physician will exercise control and supervision of the physician assistant in accordance with these sections and retain professional responsibility for the care and treatment of his or her patients.

§185.4. Grounds for Denial or Revocation of Approval. The board may deny an application or withdraw its approval previously granted under §185.3 of this title (relating to Application for Approval to Supervise) for any of the following causes on the part of the physician assistant:

(1) conviction of a felony or any offense involving moral turpitude;

(2) use of drugs or any alcoholic beverage to the extent and in a manner dangerous to himself or herself, any other person, or the public, or to any extent that such use impairs his or her ability to perform the work of a physician assistant with safety to the public;

(3) impersonating a physician;

(4) allowing another person to use his or her certificate or letter of approval;

(5) using fraud, deception, or misrepresentation in the application for approval;

(6) willful, unauthorized communication of information received in personal confidence during his or her duties as a physician assistant;

(7) being grossly incompetent or grossly negligent in his or her duties as a physician assistant, or having demonstrated repeated and/or continuous negligence or irresponsibility in the performance of his or her duties;

(8) violating or aiding in the violation of any of these sections or of applicable provisions of §193.8 of this title (relating to Delegation of the Carrying Out of Prescription Drug Orders to Physician Assistants and Registered Nurses);

(9) working in the capacity of a physician assistant under a physician or other person who has not received the approval of the board to supervise a physician assistant, except as provided in §185.10 of this title (relating to Employment Guidelines);

(10) working as a physician assistant under the supervision of a physician whose approval to supervise has been suspended or revoked, or whose

license to practice medicine has been revoked, cancelled, or suspended by the board; or

(11) performing tasks beyond those permitted to be performed by a physician assistant as set forth in these sections or in §193.8 of this title (relating to Delegation of the Carrying Out of Prescription Drug Orders to Physician Assistants and Registered Nurses).

§185.5. Notification of Termination of Employment. If for any reason a physician assistant discontinues working for the supervising physician who has obtained board approval for such physician assistant, the supervising physician shall inform the board of such termination within 72 hours from the effective date thereof. Failure to notify the board of such termination may jeopardize future approvals by the board to such supervising physician.

§185.6. Consent and Identification.

(a) No physician assistant shall render general medical services nor any permitted tasks as hereinafter stated to any patient unless said patient has first been informed that such assistant is not a physician and that the patient has the right to insist at any time on seeing the supervising physician, and that services will be rendered by the physician assistant only after the patient has consented and documentation of said consent has been entered on the chart.

(b) In the locations of employment of the physician assistant (P.A.), patient education information must be plainly visible and easily available to all patients. This information should explain the meaning of the term "physician assistant" and the functions delegated to the physician assistant.

(c) The physician assistant must wear an appropriate name tag, clearly visible, with the designation of Mr., Miss, Mrs., Ms., and the surname plus the term "physician assistant" so that he or she is not mistaken for a licensed physician.

§185.7. Supervision of Performance.

(a) The physician assistant augments the physician's data gathering abilities necessary to reach decisions and institute patient care plans. The physician assistant will not independently supplant the physician in the integration of medical data or in the decision-making process required to establish a final diagnosis and formulate a therapeutic plan.

(b) Generally, the adequacy of the physician's supervision of the physician assistant's performance shall be reckoned by standards which take into account the skill, training, and experience of both the supervising physician and the physician

assistant. While not requiring continuous and constant physical presence of the supervising physician, the physician must make a personal review of historical and physical data on all patients and their problems. Supervision of the physician assistant's performance at a site serving a medically underserved population as that term is defined in the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5), shall conform, at a minimum, to the requirements of §193.8 of this title (relating to Delegation of the Carrying Out of Prescription Drug Orders to Physician Assistants and Registered Nurses).

(c) On follow-up care, hospital visits, nursing home visits, attendance of the chronically ill at home, or in similar instances where a therapeutic regimen or other written protocol has been established by the physician, and in instances covered under standing delegation orders as authorized by §§193.1-193.5 of this title (relating to Purpose; Definitions; Exclusion from the Provisions of this Chapter; Scope of Standing Delegation Orders; and Enforcement), the physician assistant may check and record that patient's progress within the confines of the established regimen or protocol and report the patient's progress to the physician. After the physician assistant has consulted with the supervising physician, the physician assistant may initiate or change orders at the supervising physician's verifiable direction when a new problem arises or established parameters are exceeded. If the supervising physician orders treatment for new problem or outside established parameters without seeing the patient, the supervising physician must undertake a personal review of the patient and his or her problem as soon as possible after ordering such treatment.

(d) The physician assistant may render emergency medical services without supervision, pending the arrival of a responsible physician, in cases where immediate evaluation and treatment are necessary to avoid disability or death.

(e) Physician assistants may serve as assistants in surgery at the discretion of the supervising physician and when such duties are not in conflict with hospital by-laws or rules.

§185.8. Tasks Permitted to be Delegated to a Physician Assistant. Providing the supervising physician has satisfied himself or herself as to the ability and competence of the physician assistant, and with due regard for the safety of the patient and in keeping with sound medical practice, the physician assistant may perform such duties, which do not require the exercise of independent medical judgment, as assigned by his or her supervising physician who is responsible for the performance of such tasks and who retains direct control and supervision of the physician assistant.

At a site serving a medically underserved population, a physician may delegate authority to a physician assistant to perform acts permitted by and pursuant to section the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5), and §193.8 of this title (relating to Delegation of the Carrying Out of Prescription Drug Orders to Physician Assistants and Registered Nurses).

§185.9. Tasks Not Permitted to be Delegated to a Physician Assistant. The supervising physician shall neither delegate to nor allow a physician assistant to:

(1) prescribe, order or dispense medication, or sign prescriptions on behalf of the supervising physician, or have prescription blanks available that have been presigned or stamped by the physician, or order the refilling of a prescription, except as authorized by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5), and §193.8 of this title (relating to Delegation of the Carrying Out of Prescription Drug Orders to Physician Assistants and Registered Nurses) or other applicable law;

(2) independently delegate a task assigned to him or her by the supervising physician.

§185.10. Employment Guidelines. Except as otherwise provided in this section, or as authorized by §193.8 of this title (relating to Delegation of the Carrying Out of Prescription Drug Orders to Physician Assistants and Registered Nurses), two full-time equivalent physician assistant positions shall be allowed for each supervising physician. A supervising physician may utilize more than two physician assistants to allow part-time employment or the employment of a substitute during the temporary absence of a supervising physician's primary physician assistant, provided the supervising physician has obtained approval to supervise each part-time and substitute physician assistant as provided in §185.3 of this title (relating to Application for Approval to Supervise). Part-time or substitute physician assistants supervised by a particular physician shall not work during the same hours for that supervising physician, and a supervising physician shall not utilize more than two physician assistants during the same hours.

(1) The services of the physician assistant shall be considered as part of the global services provided by the supervising physician and there shall be no separate billing for services rendered by the physician assistant except where provided by law.

(2) The physician assistant shall not be maintained in an office practice setting separate from that of his or her supervising physician, except as authorized by §193.8 of this title (relating to Delegation

of the Carrying Out of Prescription Drug Orders to Physician Assistants and Registered Nurses).

§185.11. Qualifications for Carrying Out Prescription Drug Orders. All physician assistants who have either graduated from a training program accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association or who have passed the examination given by the National Commission on the Certification of Physician Assistants, are presumed to possess the education and training necessary to carry out a prescription drug order pursuant to the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5).

§185.12. Identification Number. The board shall assign to each physician assistant whose supervision application has been approved a permanent identification number.

§185.13. Enforcement. Any supervising physician who violates Texas Civil Statutes, Article 4495b, §3.08(4)(H), (12), and (15) and §4.01, shall be subject to disciplinary action by the board, including withdrawal of his or her authority to utilize a physician assistant and/or revocation or suspension of his or her license to practice medicine in Texas.

§185.14. Exceptions. Upon written application to the board, the board may grant exceptions to the rules in §185.6 of this title (relating to Consent and identification) and in §185.10 of this title (relating to Employment Guidelines) for physicians and physician assistants employed by facilities or institutions owned or operated by state agencies that have established programs of health care or institutions funded by public money. In addition to the information required in §185.3 of this title (relating to Application for Approval to Supervise) and any other information the board may require, the application for exceptions shall explain the specific exceptions requested, the reasons the exceptions are needed, the tasks that will be delegated to physician assistants covered by the exceptions, and the manner in which those physician assistants will be supervised.

Issued in Austin, Texas, on August 20, 1990.

TRD-9008475 Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: August 22, 1990

Expiration date: December 20, 1990

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

◆ ◆ ◆

Chapter 193. Standing Delegation Orders

• 22 TAC §§193.1-193.6

The Texas State Board of Medical Examiners adopts on an emergency basis an amendment to §§193.1-193.6, concerning standing delegation orders. The amendment is necessary because of House Bill 18, as passed by the most recent legislative session, which concerns rural health care in Texas. The amendments reflect rules which relate to the delegated delivery of health care under the provisions of the new law, in accordance with the Medical Practice Act.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and by-laws not inconsistent with that act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of the act.

§193.1. Purpose. The purpose of this chapter is to encourage the more effective utilization of the skills of physicians by establishing guidelines for the delegation of health care tasks to qualified nonphysicians providing services under reasonable physician control and supervision where such delegation is consistent with the patient's health and welfare; and to provide guidelines for physicians in order that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services. Texas Civil Statutes, Article 4495b, §§3.08(4)(H), 3.08(12), and 3.08(15), [Article 4505, §(12), and §(15) and Article 4506, as amended] empower the Texas State Board of Medical Examiners to cancel, revoke, or suspend the license of any practitioner of medicine upon proof that such practitioner is guilty of failing to supervise adequately the activities of persons acting under the physician's supervision, allowing another person to use his license for the purpose of practicing medicine, or of aiding or abetting, directly or indirectly, the practice of medicine by a person or entity not licensed to do so by the board [lending his license to practice medicine by any person not duly licensed to practice medicine by such board]. The board recognizes that the delivery of quality health care requires expertise and assistance of many dedicated individuals in the allied health profession. The provisions of this chapter are not intended to, and shall not be construed to, restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of medical judgment, to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. The board recognizes that statutory law shall prevail over any rules

adopted and that the practice of medicine is, by statute, defined as follows: "A [Any] person shall be considered to be [regarded as] practicing medicine within [the meaning of] this Act [law]:

(A)[(1)] who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; or

(B)[(2)] [or] who shall diagnose, treat, or offer to treat any disease or disorder, mental or physical or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation. [; ...]" Likewise, nothing in this chapter shall be construed as to prohibit a physician from instructing a technician, assistant, or nurse to perform delegated tasks so long as the physician retains supervision and control of the technician, assistant, or employee. Nothing in this chapter should be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of those persons with whom the delegating physician has established a physician-patient relationship. Nothing in this chapter shall enlarge or extend the applicable statutory law relating to the practice of medicine, or other rules and regulations previously promulgated by the board.

§193.2. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

Authorizing physician—A physician or physicians licensed by the board who execute a standing delegation order.

Carrying out a prescription drug order—To complete a prescription drug order prescribed by the delegating physician by providing the following information: the patient's name and address; the drug to be dispensed; directions to the patient for taking the drug; dosage; the name, address, and telephone number of the physician; the name, address, telephone number, identification number, and signature of the physician assistant or registered nurse completing the prescription drug order; the date; and the number of refills permitted.

Dangerous drug—A device or a drug that is unsafe for self medication and that is not included in the Texas Health and Safety Code, Schedules I-V or Penalty Groups I-IV of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription".

Health manpower shortage area (HMSA)—An area, population group, or facility designated by the United States Department of Health and Human Services (USDHHS) as having a shortage of primary care physicians.

Medically underserved area (MUA)—An area or population group designated by the USDHHS as an area with a shortage of personal health services.

Physician's orders—The instructions of a physician for the care of an individual patient.

Protocols—Standing delegation orders or standing medical orders authorizing a physician assistant or registered nurse to carry out prescription drug orders pursuant to the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) and §193.8 of this title (relating to Delegation of the Carrying Out of Prescription Drug Orders) agreed upon and signed by the physician, the physician assistant and/or registered nurse which are reviewed and signed at least annually, are maintained at the site serving a medically underserved population, and contain a list of dangerous drugs available for prescription, limitations on the number of dosage units and refills permitted, and instructions to be given the patient for follow-up monitoring.

Site serving a medically underserved population—a site located in a medically underserved area; a site located in a health manpower shortage area; a rural health clinic designated under Public Law 95-210, the Rural Health Clinic Services Act of 1977; a public health clinic or a family planning clinic operating under contract with the Texas Department of Human Services or the Texas Department of Health; a site located in an area in which there exists an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs, as determined by the Texas Department of Health; or a site that serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs, as determined by the Texas Department of Health.

Standing delegation order—Written instructions, orders, rules, regulations, or procedures prepared by a physician and designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms. Such written instructions, orders, rules, regulations, or procedures shall delineate under what set of conditions and circumstances action should be instituted. These instructions, orders, rules, regulations, or procedures are to provide authority for and a plan for use with patients presenting themselves prior to being examined or evaluated by a physician to assure that such acts are carried out

correctly and are distinct from specific orders written for a particular patient, and shall be limited in scope of authority to be delegated as provided in §193.4 of this title (relating to Scope of Standing Delegation Orders). As used in this chapter, standing delegation orders do not refer to treatment programs ordered by a physician following examination or evaluation by a physician, nor to established procedures for providing of care by personnel under direct, personal supervision of a physician who is directly supervising or overseeing the delivery of medical or health care. Such standing delegation orders should be developed and approved by the physician who is responsible for the delivery of medical care covered by the orders. Such standing delegation orders, at [as] a minimum, should:

(A)-(L) (No change.)

Standing medical orders—Orders, rules, regulations or procedures prepared by a physician or approved by a physician or the medical staff of an institution for patients which have been examined or evaluated by a physician and which are used as a guide in preparation for and carrying out medical or surgical procedures or both. These orders, rules, regulations or procedures are authority and direction for the performance for certain prescribed acts for patients by authorized persons as distinguished from specific orders written for a particular patient.

§193.3. Exclusion From the Provisions of This Chapter. The provisions of this chapter shall not be applicable, nor shall they restrict the use of pre-established programs of health care, nor shall they restrict physicians from authorizing the provision of patient care by use of pre-established programs under the following circumstances.

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

(4) Where limitation from civil liability is provided under the Texas Civil Practice and Remedies Code, §74.001, [Statutes, Article 1a.]

(5)-(7) (No change.)

(8) Where care is to be delivered as authorized by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) except as provided in §193.8 of this title (relating to Delegation of the Carrying Out of Prescription Drug Orders).

§193.4. Scope of Standing Delegation Orders. Providing the authorizing physician is satisfied as to the ability and competence of those for whom the physician is assuming responsibility, and with due regard for the safety of the patient and in keeping with sound medical practice, standing delegation orders may be authorized for the performance of acts and

duties which do not require the exercise of independent medical judgment. Limitations on the physician's use of standing delegation orders which are stated in this section shall not apply to patient care delivered as authorized by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) or §193.8 of this title (relating to Delegated Delivery of Health Care). When care is delivered under other circumstances, standing delegation orders [and] may include authority to undertake the following:

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

(4) the administration or providing of drugs ordered by direct personal or voice communication by the authorizing physician who shall assume responsibility for the patient's welfare, providing such administration or provision of drugs shall be in compliance with other state or federal laws and providing further that pre-signed prescriptions shall not be utilized by the authorizing physician except under the following conditions:

(A) the prescription shall be prepared in full compliance with the Texas Health and Safety Code, §483.001(13) [Civil Statutes, Article 4476-14 §2(g) (the Texas Dangerous Drug Law)] except for the inclusion of the name of the patient and the date of issuance.

(B)-(D) (No change.)

(5)-(8) (No change.)

§193.5. Enforcement. Any physician authorizing standing delegation orders or standing medical orders which authorize the exercise of independent medical judgment or treatment shall be subject to having his or her license to practice medicine in the State of Texas revoked or suspended under Texas Civil Statutes, [Article 4505(12) and (15), Article 4506, Article 4509, and] Article 4495b, §§3.08(4)(H), 3.08(12), and 3.08(15).

§193.6. Special Standing Delegation Orders for Optometrists under §3.06(d)(6)(5).

(a) The purpose of this section is to implement the provisions of the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(6)(5). Section 3.06(d)(6)(5) requires a physician, in certain circumstances, to issue a standing delegation order to an optometrist which authorizes the optometrist to use topical ocular pharmaceutical agents for nontherapeutic purposes in the practice of optometry. Section 3.06(d)(6)(5) further provides that a physician who has issued a standing delegation order in compliance with that section shall be immune from liability in connection with acts performed pursuant to the standing delegation order so long as the physician has used prudent

judgment in the issuance of the standing delegation order or in the continuances of the standing delegation order. These sections are not intended to limit or restrict a physician's authority to issue a standing delegation order to an optometrist or to any other person which would otherwise be valid under this chapter or any other provision of these sections and regulations, or under the laws of the State of Texas.

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

(f) The optometrist is required to:

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

(3) certify to the board upon the initial delegation that the optometrist is familiar with the Texas Medical Practice Act, §3.06(d)(6)(5), and with the duties and obligations imposed upon him by this chapter:

(4) (No change.)

(g) The authorizing physician is required to:

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

(3) certify to the board upon the initial delegation that the optometrist is familiar with the Texas Medical Practice Act, §3.06(d)(6)(5), and with the duties and obligations imposed upon him by this chapter.

(h) The Board of Medical Examiners may cancel the standing delegation order if it determines that the optometrist possessing the standing delegation order has violated either the standing delegation order or the Texas Medical Practice Act, section 3.06(d)(6)(5). The secretary or executive director of the board is authorized to make the determination to cancel a standing delegation order. The secretary or executive director shall give notice of his or her intent to cancel in writing to both the physician and the optometrist stating the reasons for the cancellation and affording the physician and the optometrist an opportunity to respond in writing within the 30-day period. The decision of the secretary or executive director shall be final within the board.

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

Issued in Austin, Texas, on August 20, 1990.

TRD-9008473

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: August 22, 1990

Expiration date: December 20, 1990

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

◆ ◆ ◆
• 22 TAC §193.8

The Texas State Board of Medical Examiners adopts on an emergency basis new §193.8, concerning standing delegation orders. The emergency is necessary because of House

Bill 18, as passed by the most recent legislative session, which concerns rural health care in Texas. The new section reflects language which relates to the delegated delivery of health care under the provisions of the new law, in accordance with the Medical Practice Act.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with that act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of the act.

§193.8. Delegation of the Carrying Out of Prescription Drug Orders to Physician Assistants and Registered Nurses.

(a) The purpose of this section is to provide guidelines for implementation of the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5), which provide for the use by physicians of standing delegation orders, standing medical orders, physician's orders, or other orders or protocols in delegating authority to physician assistants or registered nurses at sites serving medically underserved populations. For purposes of this section, the term "registered nurse" means a licensee of the Texas Board of Nurse Examiners who is approved to carry out a prescription drug order by that board. In accord with Texas Civil Statutes, Article 4495b, §3.06(d)(5), this section establishes minimum standards for supervision by physicians of physician assistants and registered nurses for provision of services at such sites. This section also provides for the use of prescriptions prescribed by the supervising physician which may be carried out by a physician assistant or registered nurse according to protocols. At sites serving medically underserved populations, such protocols may authorize diagnosis of the patient's condition and treatment, including prescription of dangerous drugs. Proper use of protocols requires integration of clinical data gathered by the physician assistant or registered nurse by means of the supervising physician's pre-existing written plan for determining a diagnosis and appropriate treatment. Neither the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5), nor do these rules authorize the exercise of independent medical judgment by physician assistants or registered nurses, and the supervising physician remains responsible to the board and to his or her patients for acts performed under the physician's delegated authority. Registered nurses remain professionally responsible for acts performed under the scope and authority of their own licenses.

(b) Physician supervision of a physician assistant or registered nurse at a site serving a medically underserved population will be adequate if a delegating physician:

(1) receives a daily status report to be conveyed in person, by telephone, or by radio from the registered nurse or physician assistant on any complications or problems encountered that are not covered by a protocol;

(2) visits the clinic in person at least once a week during regular business hours to observe and to provide medical direction and consultation to include, but not be limited to:

(A) reviewing with the physician assistant or registered nurse case histories of patients with problems or complications not covered by a protocol;

(B) personally diagnosing or treating patients requiring physician follow-up;

(C) verifying that patient care is provided by the clinic in accordance with a written quality assurance plan on file at the clinic, which includes a random review and countersignature of at least 10% of the patient charts by the supervising physician;

(3) is available by telephone or direct telecommunication for consultation, assistance with medical emergencies, or patient referrals at all times the clinic is open.

(c) Physician supervision shall be documented through a log kept at the clinic that includes the names or identification numbers of patients discussed during the daily status reports, the times when the physician is on site, and a summary of what the physician did while on site. Said summary shall include a description of the quality assurance activities conducted and the names of any patients seen or whose case histories were reviewed with the physician assistant or registered nurse. The supervising physician shall sign each log at the conclusion of each site visit.

(d) If a delegating physician will be unavailable to supervise the physician assistant or registered nurse as required by this section, arrangements shall be made for another physician to provide that supervision. The physician providing that supervision shall affirm in writing that he or she is familiar with the protocols or standing delegation orders in use at the clinic and is accountable for adequately supervising care provided pursuant to those protocols or standing delegation orders.

(e) A physician may not supervise more than three clinics without approval of the board. A physician may not supervise any number of clinics with combined regular business hours exceeding 80 hours per week without approval of the board.

(f) Exceptions to the percentage of patient chart reviews required by subsection

(b)(2)(C) of this section and the provisions of subsection (e) of this section relating to the number of clinics or clinic hours supervised may be made by the board upon special request by a delegating physician. Such a request shall state the special circumstances and needs prompting the exception, the names, and locations of the clinics and/or hours to be supervised, and a plan of supervision. In granting an exception, the board shall state the percentage of charts that must be reviewed and/or the number of clinics or the combined clinic hours that can be supervised.

(g) A physician may authorize a physician assistant or registered nurse to complete and issue prescriptions prescribed by the physician in treating patients at a site serving a medically underserved population. The prescription form itself shall comply with applicable rules adopted by the Texas State Board of Pharmacy. Presigned prescriptions issued pursuant to this section may only be written for dangerous drugs. No prescriptions for controlled substances may be authorized or issued. A physician's signature on one of the two signature lines on the prescription shall convey his or her instructions to a pharmacist regarding the pharmacist's authority to dispense a generically equivalent drug, if available. If a physician proposes to authorize generic substitution, the protocol shall provide direction to the physician assistant or registered nurse as to whether and under what circumstances product selection will be permitted by a pharmacist. A delegating physician is responsible for devising and enforcing a system to account for and monitor the use of presigned prescriptions.

(h) Violation of this section by the supervising physician may result in cancellation of the physician's authority to supervise a physician assistant or registered nurse under this section. Violation of this section may also subject the physician to disciplinary action as provided by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §4.12 for violation of that Act, §3.08. If a registered nurse violates this section or the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5), the board shall promptly notify the Texas Board of Nurse Examiners of the alleged violation. The board may refuse to approve or may revoke its approval for a physician to supervise a physician assistant who has violated this section.

Issued in Austin, Texas, on August 20, 1990.

TRD-9008471 Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: August 22, 1990

Expiration date: December 20, 1990

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

◆ ◆ ◆

TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 162. Federal Programs

Subchapter A. General Provisions

• 28 TAC §162.1

The Texas Workers' Compensation Commission adopts on an emergency basis, §162.1, concerning the transfer of certain Texas Department of Health programs to Texas Workers' Compensation Commission as authorized by and pursuant to the provisions of the Texas Workers' Compensation Act, Senate Bill 1, 71st Legislature, 2nd Called Session (December 1989) Article 17, §17.02(c) and (d). This rule shall make possible the official transfer of the following programs: those programs administered by the Texas Department of Health, Division of Occupational Safety; as authorized by Chapter 201, Acts of the 60th Legislature, Regular Session, 1967 (Texas Civil Statutes, Article 5182a), and in accordance with §7(c) and §24, Occupational Safety and Health Act of 1970 (29 United States Code, §656(c) and 673). These programs also specifically include the statistical functions currently operating as the Occupational Safety and Health Statistics Branch of the Texas Department of Health Division of Occupational Safety and Health.

Texas Workers' Compensation Commission finds that it is necessary to adopt this rule on an emergency basis. The agency finds that there will be imminent peril to public health, safety or welfare if the rule is not enacted on an emergency basis. The facts constituting emergency are: the Statute requires transfer to be accomplished by interagency agreement was not executed until July 31, 1990; statute requires transfer of the programs by September 1, 1990, and the rule relating to the transfer must be adopted by that date; and if the law is not complied with, health and safety inspections would be curtailed.

The new section is adopted on an emergency basis as authorized under the Texas Workers' Compensation Act, Senate Bill 1, 71st Legislature, 2nd Called Session (December 1989), Article 17, §17.02(e), which states that the Texas Workers' Compensation Commission shall adopt rules relating to the transfer of the programs assigned to the Commission no later than September 1, 1990, and by authority of Texas Civil Statutes, Article 6252-13a, §4 and §5.

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

§162.1. Transfer of Programs From the Texas Department of Health.

(a) The transfer of certain programs to the Texas Workers' Compensation Commission, currently administered by the Texas Department of Health, Division of Occupational Safety, authorized by Chapter

201, Acts of the 60th Legislature, Regular Session, 1967 (Texas Civil Statutes, Article 5182a), and in accordance with the Occupational Safety and Health Act of 1970, §7(c) and §24, (29 United States Code §§656(c) and 673), including any statistical functions connected with those programs shall be accomplished according to the terms of the Memorandum of Agreement between the

Commission and the Department of Health.

(b) The Memorandum of Agreement was executed in duplicate copies, and signed by George E. Chapman (for the Texas Workers' Compensation Commission) on July 27, 1990, and Robert Bernstein, M.D. (for the Texas Department of Health) on July 31, 1990.

Issued in Austin, Texas, on August 21, 1990.

TRD-9008465

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: August 21, 1990

Expiration date: December 19, 1990

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

◆ ◆ ◆



Name Sarah Weekes

Grade: 12

School: Plano Senior High School, Plano ISD

Proposed Sections

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

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

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 7. Gas Utilities Division

Substantive Rules

• 16 TAC §7.58

The Railroad Commission of Texas (Commission) proposes new §7.58, concerning the evidentiary treatment of books and records of gas utilities.

The new section provides that a gas utility's books and records that are kept in accordance with commission rules, or excerpts and summaries thereof, when properly offered as evidence, shall be considered prima facie evidence of the amount of investment or expense reflected, and that the expenses and investments shown are reasonable and have been necessarily incurred. The proposed section does not alter the burden of proof or persuasion that rests upon the gas utility to justify the reasonableness of any challenged expenses or investments, and subsection (b) preserves the right of hearings examiners and the commissioners to request additional information in support of any issue. The proposed section also extends to the accounts of affiliates of utilities engaged in transactions with the utilities since the Gas Utility Regulatory Act, §7.01, gives the commission regulatory review over those accounts; the supporting rationale is the same as exists for utilities.

Sandra Boone, assistant director of the Legal 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. Boone 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 efficiency and certainty in evidentiary hearings before the commission involving gas utilities. 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 Sandra Boone, Assistant Director, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 45 days after publication in the *Texas Register*.

The new section statutory is proposed under Texas Civil Statutes, Articles 6053 and 1446e, §5.06(d) which gives the commission authority to promulgate rules regarding treatment of gas utility expenses for rate making purposes.

§7.58. *Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities.*

(a) In any proceeding before this commission involving a gas utility that keeps its books and records in accordance with commission rules, the amounts shown on its books and records as well as summaries and excerpts therefrom shall be considered prima facie evidence of the amount of investment or expense reflected when introduced into evidence, and such amounts shall be presumed to have been reasonably and necessarily incurred; provided, however, that if any party introduces probative evidence that a specific investment or expense item has been unreasonably incurred, then the presumption as to that specific investment or expense item shall no longer exist and the gas utility shall have the burden of introducing probative evidence that the challenged item has been reasonably and necessarily incurred. The gas utility shall be given a reasonable opportunity to prepare and present such additional evidence relevant to the reasonableness of necessity of any item so challenged. This section shall apply to the books and records of an affiliate of a gas utility engaged in a transaction with the gas utility as described in the Gas Utility Regulatory Act, §7.01.

(b) Nothing herein shall prevent the examiner or any commissioner from requiring the gas utility to provide additional information to support any specific record, fact or argument at any time, whether or not such was put in issue at the hearing.

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

Issued in Austin, Texas, on August 20, 1990.

TRD-9008479

Cril Payne
Legal Division, General
Law
Railroad Commission of
Texas

Proposed date of adoption: October 12, 1990

For further information, please call: (512) 463-7009

TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 185. Physician Assistants

• 22 TAC §§185.1-185.12

(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 Board of Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Medical Examiners proposes the repeal of §§185.1-185.12, concerning physician assistants. The chapter is being reconstructed to reflect compliance with streamlining of the physician assistant application procedure and with recently enacted legislation.

Ivan Hurwitz, director of administrative services, 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.

Jean Davis, administrative assistant, has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be clarification by omission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held at a later date.

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

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

Issued in Austin, Texas, on August 20, 1990.

TRD-9008476

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: September 28, 1990

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

◆ ◆ ◆
• 22 TAC §§185.1-185.14

(Editor's Note: The State Board of Medical Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The Texas State Board of Medical Examiners proposes new §§185.1-185.14, concerning physician assistants. The proposed new sections replace those being simultaneously proposed for repeal and reflect streamlining of the physician assistant application procedure. Further, with the legislature's passage of House Bill 18 last session, physician assistants and registered nurses have been authorized to complete presigned prescriptions for dangerous drugs under protocols or standing delegation orders. The board is required to adopt rules in that regard.

Ivan Hurwitz, director of administrative services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Jean Davis, administrative assistant, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the rules as they related to the recently enacted legislation and its relation to health care provision. 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 Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held at a later date.

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

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

Issued in Austin, Texas, on August 20, 1990.

TRD-9008474

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: September 28, 1990

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

◆ ◆ ◆
Chapter 193. Standing
Delegation Orders

• 22 TAC §§193.1-193.6

(Editor's Note: The State Board of Medical Examiners proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections is in the Emergency Rules section of this issue.)

The Texas State Board of Medical Examiners proposes amendments to §§193.1-193.6, concerning standing delegation orders. With the legislature's passage of House Bill 18, physician assistants and registered nurses have been authorized to complete presigned prescriptions for dangerous drugs under protocols or standing delegation orders. The board is required under House Bill 18, whose provisions were added to the Medical Practice Act, to adopt certain rules. The law change provided the impetus to review rule chapters to harmonize the new and existing rules.

Ivan Hurwitz, director of administrative services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Jean Davis, administrative assistant, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the rules and carrying out the intent of the new legislation. 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 Jean Davis, Box 13562, Austin, Texas 78711. A public hearing will be held at a later date.

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

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

Issued in Austin, Texas, on August 20, 1990.

TRD-9008472

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: September 28, 1990

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

Chapter 193. Standing
Delegation Orders

• 22 TAC §193.8

(Editor's Note: The State Board of Medical 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 Texas State Board of Medical Examiners proposes new §193.8, concerning standing delegation orders and delegated delivery of health care under the provisions of the Medical Practice Act, §3.06(d)(5). The new section comes as the result of recently enacted legislation (House Bill 18) wherein physician assistants and registered nurses have been authorized to complete presigned prescriptions for dangerous drugs under protocols or standing delegation orders.

Ivan Hurwitz, director of administrative services, 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.

Jean Davis, administrative assistant, 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 rules and carrying out the intent of the new legislation. 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 Jean Davis, Box 13562, Austin, Texas 78711. A public hearing will be held at a later date.

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

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

Issued in Austin, Texas, on August 20, 1990.

TRD-9008470

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: September 28, 1990

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

**TITLE 40. SOCIAL
SERVICES AND
ASSISTANCE**

**Part X. Texas
Employment
Commission**

**Chapter 305. Interagency
Matters**

**Subchapter L. Memorandum of
Understanding on Transition
Planning for Students En-
rolled in Special Education**

• 40 TAC §305.2

The Texas Employment Commission (TEC) proposes new §305.2, concerning general provisions pertaining to a memorandum of understanding with the Texas Education Agency (TEA) and other agencies. The proposal is made pursuant to Senate Bill 417 of the 71st Texas Legislature which mandates specified state agencies to adopt by rule a memorandum of understanding for the provision of the services necessary to prepare students enrolled in special education

programs for a successful transition to life outside the public school system.

Mr. Roy Kimble, disability services coordinator, 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. Kimble, 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 coordination of effort among the Texas Education Agency, Texas Commission for the Blind, Texas Department of Human Services, Texas Employment Commission, Texas Department of Mental Health and Mental Retardation and Texas Rehabilitation Commission. 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 Carolyn Calhoun, Office of Special Counsel, Texas Employment Commission Building, 101 East 15th, Room 660, Austin, Texas 78778, (512) 463-2291.

The new section is proposed under Texas Civil Statutes, Article 5221b, which provide the Texas Employment Commission with the

authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act.

§305.2. Memorandum of Understanding with Texas Education Agency. The Texas Employment Commission hereby adopts by reference the terms of a memorandum of understanding on transition planning for students enrolled in special education. Said memorandum of understanding is set out at 19 TAC §89. 246. Copies are available at the Texas Employment Commission, 101 East 15th, Room 660, Austin, Texas 78778.

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

Issued in Austin, Texas, on August 20, 1990.

TRD-9008412

Carolyn Calhoun
Administrative Technician
IV
Texas Employment
Commission

Earliest possible date of adoption: September 28, 1990

For further information, please call: (512) 463-2291

◆ ◆ ◆



Name Janet Brightwell

Grade: 11

School: Plano Senior High School, Plano ISD

agenda summary, the commission will consider the following Dockets: 9491, 6668, 6753, 8425, 8431, and 8646 (Phase I), 8672, 8660, 8684, and 8719, 9037, and P9656.

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

Filed: August 28, 1990, 3:30 p.m.

TRD-9008663

Wednesday, September 5, 1990, 1 p.m. The Administrative Board of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N ("CHR"), Austin. According to the agenda summary, the board will discuss reports; discussion and action on budget and fiscal matters; progress report on dual-party relay service; discussion of proposal from University of Texas Center for Energy Studies; adjournment for executive session to consider litigation and personnel matters; reconvene for discussions and decisions on matters considered in executive session; and set time and place for next meeting.

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

Filed: August 28, 1990, 3:31 p.m.

TRD-9008664

Friday, September 28, 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 in Docket Number 9640, to hear complaint of Metropolitan Fiber Systems, Inc. against Southwestern Bell Telephone Company.

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

Filed: August 28, 1990, 3:32 p.m.

TRD-9008665

Friday, September 28, 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 in Docket Number 9618-petition of Southwestern Bell Telephone Company for declaratory relief, for a cease and desist order, and for further investigation regarding alternate carriers.

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

Filed: August 28, 1990, 3:33 p.m.

TRD-9008666

Tuesday, September 11, 1990, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet (resched-

uled from August 28, 1990) at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a prehearing conference in Docket Number 9584-application of AT&T Communications of the Southwest, Inc. to revise tariff to offer a discount to Texas AT&T 800 readyline customers who choose to have their AT&T 800 readyline service terminate on a multijurisdictional dedicated access line.

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

Filed: August 28, 1990, 3:26 p.m.

TRD-9008662

State Purchasing and General Services Commission

Wednesday, August 29, 1990, 9 a.m. The State Purchasing and General Services Commission met at the Central Services Building, 1711 San Jacinto Street, Conference Room 402, Austin. According to the complete emergency revised agenda, the commission added the following agenda item to the open meeting notice previously submitted: executive session to receive a report concerning the status of an ongoing personnel investigation, and a discussion about potential actions to be taken regarding the matter. The emergency status was necessary because of recent events concerning the investigation necessitated an immediate briefing and consideration of this matter by the commission.

Contact: John R. Neel, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3446.

Filed: August 28, 1990, 2:50 p.m.

TRD-9008658

Railroad Commission of Texas

Thursday, August 30, 1990, 10:20 a.m. The Railroad Commission of Texas met at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor Conference Room, Austin. According to the complete emergency revised agenda, the commission considered the market demand for production from the East Texas Field and other issues relating to conservation of oil and gas in that field. The emergency status was necessary due to unforeseeable demand for oil created by political unrest and threat of war in the Middle East.

Contact: David Garlick, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6887.

Filed: August 30, 1990, 8:21 a.m.

TRD-9008724

Texas Real Estate Commission

Friday, September 7, 1990, 8:30 a.m. The Texas Real Estate Appraiser Certification Committee of the Texas Real Estate Commission will meet at the Texas Real Estate Commission conference room, Second Floor, 1101 Camino La Costa, Austin. According to the agenda summary, the committee will approve minutes of the August 20, 1990 committee meeting; review staff reports; update on Title XI, Real Estate Appraisal Reform Amendments of 1989; discussion and possible action to recommend changes to proposed 22 TAC §§544.1-544.9 concerning certification of appraisers; recommend fees; review of public comments; discussion and possible action on proposed legislation; discussion and possible action to establish operation guidelines with regard to applications, education, experience, examinations, and complaints; and date and place of subsequent meetings.

Contact: Renil C. Liner, 1101 Camino La Costa, Austin, Texas 78711, (512) 465-3900.

Filed: August 28, 1990, 3:22 p.m.

TRD-9008660

Monday, September 10, 1990, 9:30 a.m. The Texas Real Estate Commission will meet at the Texas Real Estate Commission Headquarters Office, 1101 Camino La Costa, Second Floor, #235, Conference Room, Austin. According to the agenda summary, the commission will approve minutes of August 13, 1990, commission meeting; discuss staff reports for month of July, 1990; presentations or comments from visitors; discussion and possible action to adopt proposed new 22 TAC §§544.1-544.9 relating to appraiser certification, and amendments to §537.11 relating to computer reproduction of forms, and §§535.164-.165 relating to agency disclosure; discussion of proposed amendments to 22 TAC §535.92 concerning renewals, to §535.17 concerning appraisals, to §541.1 concerning criminal offenses, and proposed repeal of §§531.1-531.17 concerning minimum appraisal standards; discussion and possible action to approve MCE providers, courses, or instructors, or to approve accredited schools or courses; discussion and possible action to approve for publication proposed amendments to 22 TAC §535.141 concerning monitoring disciplinary orders, and 22 TAC §539.51 concerning employees of residential service companies; request for authorization to conduct an investigation on complaint information concerning David Mozingo; executive session to discuss pending litigation and personnel matters pursuant to §2(e) and §2(g), Article 6252-17, Texas Civil Statutes; authorization for payment of claims against the Real Estate Recovery

Fund without contest or possible action on any matter discussed in executive session; motions for rehearing and/or probation; entry of orders in contested cases; and date and place of next meeting.

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: August 28, 1990, 3:21 p.m.

TRD-9008659

Teacher Retirement System of Texas

Tuesday, September 11, 1990, noon. The Medical Board of the Teacher Retirement System of Texas will meet at 1000 Red River, Austin. According to the complete agenda, the board will discuss the files of members who are currently applying for disability retirement; and the files of disability retirees who are due a re-examination report.

Contact: Don Cadenhead, 1000 Red River, Austin, Texas 78701, (512) 397-6400.

Filed: August 29, 1990, 2:46 p.m.

TRD-9008714

Thursday, September 13, 1990, 2:30 p.m. The Board of Trustees of the Teacher Retirement System of Texas will meet at 1000 Red River Street, Fifth Floor Board Room, Austin. According to the agenda summary, the board will consider petition of Dr. Hugh S. Forrest; hear report of committee to nominate officers; approval of minutes; review of investments for quarter and year ending August 31, 1990; report of portfolio performance; review of discussion and recommendations at IAC meeting; consideration of appointments to investment advisory committee; consideration of appointment of trustee representative to Texas Growth Fund; consideration of appointment to audit committee; consideration of signature authorization for member benefits; consideration of revised administrative manual; certification of estimate of state contributions for the 1992-1993 biennium; certification of estimate of state contributions for the retired school employees group insurance fund for the 1992-1993 biennium; report of member benefits division; report of Texas Public School retired employees group insurance program; report of general counsel concerning litigation; and executive session to discuss personnel.

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

Filed: August 30, 1990, 9:45 a.m.

TRD-9008733

State Medical Education Board

Saturday, September 15, 1990, 3 p.m. The State Medical Education Board will meet at the Chevy Chase Office Complex, 7715 Chevy Chase Drive, Building Four, Room 4.100, Austin. According to the complete agenda, the board will hear an updated report of program operations; and will also request guidance from the board regarding various program participants who are out of compliance with board guidelines.

Contact: Mack Adams, 200 East Riverside Drive, Austin, Texas 78711, (512) 462-6420.

Filed: August 29, 1990, 2:05 p.m.

TRD-9008707

Sunset Advisory Commission

Friday, September 7, 1990, 9 a.m. The Sunset Advisory Commission will meet at the State Capitol, Senate Chamber, Austin. According to the complete agenda, the commission will approve minutes; review and discuss operating budget; conduct public hearing on staff reports for: Dallas Area Rapid Transit Authority, Capital Metropolitan Transportation Authority and State Department of Highways and Public Transportation; and set next meeting date.

Contact: Susan Kinney, 105 West 15th Street, Room 305, Austin, Texas 78701, (512) 463-1300.

Filed: August 28, 1990, 4:08 p.m.

TRD-9008672

The Texas A&M University System

Friday, August 31, 1990, 10:30 a.m. The Board of Regents of the Texas A&M University System will meet at Texas A&M University, MSC Annex, College Station. According to the complete agenda, the board will adopt a resolution formally admitting West Texas State University into the Texas A&M University System by telephonic meeting.

Contact: Vickie Running, The Texas A&M University System, College Station, 77843, (409) 845-9600.

Filed: August 28, 1990, 10:55 a.m.

TRD-9008643

Toxic Substances Coordinating Committee

Thursday, September 6, 1990, 9 a.m. The Toxic Substances Coordinating Committee will meet at the Texas Department of Health, 1100 West 49th Street, Room M-

652, Austin. According to the agenda summary, the committee will approve minutes of previous meeting; discuss Texas Air Control Board report regarding lead emissions from sand blasting of water towers; activities related to Galveston Bay oil spill response by Texas state agencies; future means of handling oil spills; Texas Chemical Council letter to state comptroller; report of meeting on comparative risk analysis and strategic planning; and schedule next meeting.

Contact: Dennis Perrotta, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7268.

Filed: August 28, 1990, 2:10 p.m.

TRD-9008654

Board of Vocational Nurse Examiners

Monday-Tuesday, September 17-18, 1990, 8 a.m. The Board of Vocational Nurse Examiners will meet at the Ramada Inn Airport, (Frontier Room), 5600 North IH-35, Austin. According to the agenda summary, on the 17th the board will approve minutes; review and discuss education report (program matters, program actions, meetings/conferences attended); TPAPIN proposal; executive director's report; unfinished business (peer assistance update, continuing education); new business (budget update FY 1990, budget request for FY 1992-1993); and administrative hearings. On September 18, the board will conduct administrative hearings; agreed orders/voluntary surrenders; and on call-executive session to discuss personnel changes/matters.

Contact: Marjorie A. Bronk, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

Filed: August 29, 1990, 10:42 a.m.

TRD-9008688

Texas Water Commission

Wednesday, September 12, 1990, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. 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) 463-7898.

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 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 175. Schedule of Fees and Penalties

• 22 TAC §175.1

The Texas State Board of Medical Examiners adopts an amendment to §175.1, without changes to the proposed text as published in the June 22, 1990, issue of the *Texas Register* (15 TexReg 3620).

The amendment clarifies the schedule of fees to reflect the board's increase in examination fees.

The amendment will reflect the current and correct fees.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on August 20, 1990.

TRD-9008399

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: September 10, 1990

Proposal publication date: June 22, 1990

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

Part XIX. Polygraph Examiners Board

Chapter 391. Polygraph Examiner Internship

• 22 TAC §391.3

The Polygraph Examiners Board adopts an amendment to §391.3, without changes to the proposed text as published in the April 20, 1990, issue of the *Texas Register* (15 TexReg 2235).

The amendment is adopted so that the polygraph industry will be more closely regulated in areas that the board determines to be critical.

The section insures that only qualified polygraph schools will be approved by the board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4413(29cc), the Texas Polygraph Examiners Act, §6(a), which provides the Polygraph Examiners Board with the authority to issue regulations consistent with the provisions of this 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 August 17, 1990.

TRD-9008390

Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Effective date: September 10, 1990

Proposal publication date: April 20, 1990

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

TITLE 31. NATURAL RESOURCES AND CON- SERVATION

Part IX. Texas Water Commission

Chapter 275. Special Provisions

Appeals of Rules of the Ed- wards Underground Water District

• 31 TAC §§275.91-275.101

The Texas Water Commission (commission) adopts new §§275.91-275.101. Sections 275.91-275.97 and 275.99 are adopted with changes to the proposed text as published in the March 6, 1990, issue of the *Texas Register* (15 TexReg 1219). Sections 275.98, 275.100 and 275.101 are adopted without changes and will not be republished.

The new sections concern special provisions relating to the appeal to the commission of a rule adopted by the Edwards Underground Water District (district) under the District's Drought Management Plan and pursuant to recent amendments made to the Texas Wa-

ter Code, Article 8280-219, §3 (Vernon Pamphlet 1988) by House Bill 1942, 70th Legislature Regular Session (1987) This legislation required the commission to adopt rules for the appeal of a rule adopted by the District pursuant to Article 8280-219, §3, and relating to the implementation and enforcement of the District's Drought Management Plan. The legislation further provides that should the commission determine that a district rule is unreasonable or otherwise invalid, it shall, at its discretion, either declare that the rule is null and void and direct the district's board of directors to adopt a substitute rule or reform the rule so that it is reasonable and valid.

Additionally, Article 8280-219, §3(a)(10)(D), provides that if the Edwards Underground Water District fails to develop and approve a drought management plan by September 1, 1988, such plan shall be developed and enforced by the Texas Water Commission. The promulgation of these rules shall in no way be construed as a determination by the commission that the District did timely develop a drought management plan that adequately meets statutory requirements and, thus, constitutes a plan as required by §3(a). If the commission determines that the district failed to timely develop a plan as contemplated by §3(a), the commission shall develop and enforce such plan or plans as authorized by §3(a)(10)(D).

House Bill 1942 does not provide definitional guidance to, nor does it limit in any way, the broad scope of commission review in determining whether a rule is "unreasonable or otherwise invalid". Therefore, in considering whether a rule is unreasonable, the commission shall construe reasonableness in accordance with Texas court decisions and the rules of statutory construction contained in Chapters 311 and 312 of the Texas Government Code. In reviewing these laws, the meaning of the term has been found to include, but not limited to, "fair," "proper," "just," "moderate," "suitable under the circumstances," and "fit and appropriate to the end in view." Consequently, issues which may derive from paragraphs (2), (3), (4), and (8) under §275.93 shall include whether a rule fails to meet or helps defeat the purposes and goals of the drought management plan as contemplated by Article 8280-219, §3(a). Such construction is appropriate given the other provisions and legislative history of House Bill 1942, which reflect the intention to have the commission provide, if necessary, input to the substantive provisions of the drought management plan and to maintain a supervisory role through the appeals process. Additionally, such construction supports the rationale of requiring appeals to be heard by an agency with special expertise in water management prior to such appeal being brought before the courts, as generally required by other laws of this state.

Minor amendments to the proposed text seek to clarify who may bring an appeal, the issues on appeal, and provide more specificity to provisions relating to the notice to be provided of an appeal of a rule. Specifically, proposed §275.91 and §275.92 are amended to include definitions of "person" and "rule", respectively. Additionally, proposed §275.93 is amended by adding language to paragraph (2) to clarify that an issue on appeal is whether a rule conflicts with state or federal law. Also, proposed §275.93(7) is amended by adding language providing the issue of undue hardship may be addressed on appeal if the alleged hardship or discrimination cannot be addressed under the rules of the Edwards Underground Water District providing for variances from the District's rules. Proposed §275.94 is amended to reflect statutory language providing that the determination of an appeal is based upon whether the rule is unreasonable or otherwise invalid. Additionally, proposed §275.95 is amended to make clear that a rule remains effective in whole or in part pending an appeal of the rule unless stayed or temporarily reformed by the commission. Also, proposed §§275.95, 275.96, and 275.97 are amended to reflect that notice of an appeal must be provided by the chief clerk of the commission to an affected person who has requested such notice from the commission and has sufficiently provided for related mailing and administrative costs. Finally, proposed §275.99 is amended to provide that the commission may remand any appeal to the Office of Hearings Examiners prior to commission consideration and action.

The 30-day comment period ended April 4, 1990. The commission received only one comment during this period. The comment was submitted by the City of New Braunfels and New Braunfels Utilities. The comment was in support of the rules and suggested changes to clarify that a prerequisite to appealing a rule because of undue hardship or unfair discrimination is that the appellant must have first sought and been denied a variance by the district. The comments also recommended that more specificity be provided to rules relating to providing notice to affected persons. The commission agrees in general with the comments and has, accordingly, made changes to the proposed rules as described above. The commission adopted the rules at its August 15, 1990, meeting.

These new sections are adopted under the authority of the Texas Code, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its powers and duties under the laws of the state.

§275.91. General. This subchapter applies to appeals to the commission of rules promulgated by the Edwards Underground Water District pursuant to Texas Civil Statutes, Article 8280-219, Water Auxiliary Laws (1988 Pamphlet), as amended by House Bill 1942, 70st Legislature, Regular Session (1987). For the purposes of this subchapter, "rule" shall mean an established standard, guide, or regulation prescribing or directing action, forbearance, or responsibility.

§275.92. Petition by an Affected Person. Any person affected by a rule promulgated by the Edwards Underground Water District pursuant to Texas Civil Statutes, Article 8280-219, §3, Water Auxiliary Laws (1988), may appeal such rule by filing a petition for appeal with the commission. For the purposes of this subchapter, "person" shall include a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

§275.93. Issues on Appeal. A rule may be determined unreasonable or otherwise invalid by the commission if the rule:

- (1) exceeds the authority conferred by applicable state law;
- (2) irreconcilably conflicts with state or federal law;
- (3) extends or modifies applicable state law;
- (4) has no reasonable relationship to statutory purposes and authorizations;
- (5) was promulgated upon unlawful procedures which prejudice substantial rights of the appellant;
- (6) requires the doing of an act so vague that persons of common intelligence must guess at its meaning and differ as to its application;
- (7) causes an unreasonably disproportionate hardship or is discriminatory in a manner not in accordance with established priorities for water use and the alleged hardship or discrimination cannot be addressed under the rules of the Edwards Underground Water District providing for variances for the District's rules; or
- (8) is otherwise unreasonable or violates such principles provided by the courts of this state relating to the invalidity of a rule.

§275.94. Burden of Proof. It is the burden of the person who filed the petition for appeal to demonstrate that the rule is unreasonable or otherwise invalid.

§275.95. Rule Remains Effective Pending Appeal Unless Stayed or Reformed.

(a) During the pendency of an appeal of a rule to the commission, the rule shall remain in effect for all purposes until final disposition of the appeal by the commission, unless, after consideration of a proper request as provided in this section, enforcement of the rule is stayed by the commission, in whole or in part, or the rule is reformed by the commission pending appeal. A request for commission stay of the enforcement and/or reformation of a rule pending appeal must contain the grounds for such request and the relief

sought and be filed with the chief clerk of the commission.

(b) A copy of the request must be served by the person filing the request by certified mail or personal delivery on the Edwards Underground Water District on or before the date the request is filed with the chief clerk. Commission determination on such request may not be made earlier than ten days from filing of the request with the chief clerk. Commission determination on the request shall be made on an expedited basis.

(c) Any person may file a written request with the chief clerk of the commission to be mailed notice by the chief clerk within five days of receipt of a petition by the commission of any appeal of a rule to the commission taken pursuant to §275.92, or to be so notified of any request made pursuant to §275.95 for a stay of the enforcement or for reformation of a rule pending commission action on the appeal. The chief clerk shall maintain a current list of persons requesting to be notified and shall furnish a copy of the list to any person requesting it. Failure to provide the notice does not invalidate any action by the commission. At the end of each state fiscal year, the chief clerk shall notify persons who have requested to be notified as provided in this section to confirm their desire to continue to be notified. The names of any persons who fail to so confirm within 30 days of such notification shall be removed from the list. The chief clerk shall, on an annual basis, assess fees for notices under this section in accordance with Texas Water Code, §5.174.

§275.96. Prerequisites to Appeal. The following are prerequisites to appeal under this subchapter.

(1) Filing a petition. An appeal under this subchapter requires the filing of a petition for review with the chief clerk of the commission as provided under §275.97 of this title (relating to Appeals of Rules of the Edwards Underground Water District).

(2) Service of pleadings. A copy of the petition and all other pleadings shall be served by the petitioner by certified mail or personal delivery on the Edwards Underground Water District, the executive director of the commission, and the public interest counsel of the commission. A certificate of service shall be furnished to the chief clerk with the original pleading.

(3) Filing fee. Each petition shall be accompanied by a filing fee of \$100, unless the petition is submitted by a state agency or other entity exempt from such fee requirements.

(4) Hearing. A time and place for hearing on the matter in dispute shall be set and due notice of the hearing shall be issued by the commission as required by law. The petitioner is responsible for the cost of required notice.

§275.97. *Contents of Petition for Appeal.* The following information shall be contained in the petition for appeal under this subchapter:

- (1) the name of the petitioner, with the original copy of the pleading signed by the petitioner or his authorized representative;
- (2) the telephone number and address of the petitioner and his authorized representative;
- (3) a clear and concise statement of the legal grounds for such appeal including how the petitioner is an "affected" person as provided by §275.92 of this title (relating to Appeals of Rules of the Edwards Underground Water District);
- (4) a certified copy of the applicable rule; and
- (5) a prayer stating the type of relief, action, or order desired by the petitioners (e.g. - repeal of the rule or specified modification to the rule);
- (6) a certificate of service; and
- (7) any other matter required by law.

§275.99. *Review by Commission.* If the commission determines a rule is unreasonable or invalid, it shall, at its discretion, either declare that the rule is null and void and direct the board of directors of the district to adopt a substitute rule or reform the rule so that it is reasonable and valid. The commission on its own motion, or at the request of any party to an appeal, may refer the appeal to the office of hearings examiners for hearing prior to commission decision.

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

Issued in Austin, Texas, on August 22, 1990.

TRD-9008480 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: September 12, 1990

Proposal publication date: March 6, 1990

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

◆ ◆ ◆
**Chapter 335. Industrial Solid
Waste and Municipal
Hazardous Waste**
**Subchapter J. Hazardous Waste
Generation, Facility, and
Disposal Fees System**
• 31 TAC §§335.321-335.323,
335.326-335.333

The Texas Water Commission adopts amendments to §§35.221-335.323, the repeal

of §§335.326-335.332, and new §§335.326-335.333. The amendment to §335.322 and new §§335.326-335.329 are adopted with changes to the proposed text as published in the May 25, 1990, issue of the *Texas Register* (15 TexReg 2891). Amendments to §335.321 and §335.323, the repeals of §§335.326-335.332, and new §§335.330-335.333 are adopted without changes and will not be republished.

The Texas Water Commission is authorized under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361 (Vernon Supplement 1989), to establish a hazardous waste generation, facility, and disposal fee program to support the state's costs of hazardous waste regulation. Senate Bill 1544, Acts of the 71st Legislature, 1989, amends the Texas Solid Waste Disposal Act to require the commission to impose a fee on the operator of a commercial hazardous waste storage, processing, or disposal facility for the hazardous wastes received and managed at that facility for a charge. The commercial facility fee is to be assessed in addition to any fee currently authorized by the Solid Waste Disposal Act and this subchapter under the hazardous waste fee program. The commission is authorized to establish a schedule for commercial facility fees and revise rates as necessary to meet the requirements of Senate Bill 1544. In establishing hazardous waste fees, including commercial hazardous waste fee rates, the commission shall consider the following: risks to the public of various waste management methods; promotion of reclamation, recycling, and reuse of wastes; promotion of the public policy of preferred waste management methods, particularly for wastes which are amenable to more than one method of disposition; promotion of the efficient use of existing hazardous waste storage, processing, and disposal facility capacity within the state; and the funding necessary to adequately support the regulation of industrial solid waste and hazardous waste activities.

Wastes which are received from out-of-state generators may be charged an incremental fee in addition to that assessed for wastes from in-state generators. This incremental fee shall be established based on: the added costs to the state of regulating the interstate transport and subsequent management and disposal of imported hazardous wastes; similar fees that may be assessed in the state of origin of a hazardous waste; and the contributions in fees and taxes that are paid by generators in this state to support the state's hazardous waste regulatory programs.

The commission is authorized to establish a separate fee for the storage, processing, incineration, and disposal of hazardous waste fuels. A hazardous waste fuel is defined for the purposes of fee assessment as a hazardous waste or a blend of hazardous wastes which is burned for energy recovery but is not subject to regulation under 40 Code of Federal Regulations Part 264, Subpart O, concerning incinerators. The fee for waste fuels shall be the same for those wastes generated in-state and out-of-state. For hazardous wastes which are legitimately reclaimed, reused, or recycled at a commercial hazardous waste storage, processing, or disposal facility, the fee shall also be the same for wastes generated in-state and out-of-state.

No commercial facility fee shall be imposed on the operator of a commercial hazardous waste storage, processing, or disposal facility for hazardous wastes which are generated in this state by an affiliate or wholly owned subsidiary, provided that the commercial facility handles solely wastes which are generated on-site or by an affiliate or wholly owned subsidiary. A fee shall not be imposed on the operator of a commercial hazardous waste storage, processing, or disposal facility for the storage of wastes which are received from off-site generators, provided such wastes are stored for less than 60 days. A commercial facility fee shall not be imposed under this subchapter on the operation of a wastewater treatment facility permitted under the Water Code, Chapter 26.

Also, no additional commercial facility fee will be assessed for the on-site disposition of wastes generated by a commercial facility in the form of residuals which result from the normal process of incineration, recycling, or waste treatment. Certain aqueous wastes, which contain 1.0% or less of total organic carbon, will qualify for a fee of 10% of the scheduled rate if they are incinerated.

A captured facility is defined as a manufacturing operation which shares in the use of integrated waste management units owned by and located within a contiguous commercial storage, processing, or disposal facility. No commercial fee would be imposed on the operator of such a commercial facility receiving wastes from a captured facility, provided it is not receiving wastes subject to assessment under new §335.326 from any facility which does not qualify as a captured facility.

The commercial hazardous waste fees adopted are based on the total weight of the waste except for those wastes disposed of in underground injection wells, in which case the fee is based on the dry weight. Dry weight is the basis for fee assessment for the on-site hazardous waste land disposal fees currently authorized by the Texas Solid Waste Disposal Act as part of the commission's hazardous waste fee program and is defined in this subchapter. Senate Bill 1544 authorizes a maximum commercial hazardous waste fee, for wastes generated in state, of \$20 per ton, which applies to wastes which are landfilled. The fees established for other methods of waste management are to be at lesser amounts and based on the factors previously identified. It is proposed that commercial fees be assessed on all hazardous wastes which are managed subject to the provisions of this section on or after October 1, 1990.

The proposed fee rate structure supports the public policy for preferred waste management methods in the Texas Solid Waste Disposal Act and the specific criteria of Senate Bill 1544. The highest authorized fee is assessed for landfilling of hazardous waste and the lowest for those activities of greatest preference, such as recycling. In determining the incremental fee for wastes imported into the state, the major factors considered were the costs of regulating imported hazardous waste and the revenue which generators in this state currently contribute to the costs of the state's regulatory programs through fees and taxes which out-of-state generators do not pay. Under the current generation fee structure authorized in this subchapter, the

annual cost per unit of waste for each generator may vary considerably with the volume generated and where the reported volume falls within a particular bracket of the rate schedule. The median cost per year to a generator, however, is approximately \$10 per ton. The incremental fees for imported wastes approach, but do not exceed, this value.

The fee schedule adopted at this time does not establish rates for imported wastes which are consistent with or reciprocal to those charged in other states for hazardous waste management. Rates in other states vary widely and generally cannot be related to a quantifiable objective such as the recovery of the cost of regulation. Such fee revenue programs are being used with increasing frequency to effect broader policies regarding interstate transportation and intrastate management and disposal of wastes. Senate Bill 1544, in recognition of the significant impact that such revenue policies may have on the interstate transportation and management of hazardous waste, does authorize the commission to consider the rates in other states of origin in establishing fees for imported wastes. The commission is concerned that these programs may not be consistent with the objective of maximizing the efficient use of existing waste management capacity. At this time the implementation of reciprocal fees will be deferred until the effects of the new commercial fees on waste management activities can be assessed and administrative and procedural requirements evaluated. Other states have imposed fees for imported wastes which are, in some cases, many times greater than those adopted here. Should these waste management and revenue policies in other states result in an increase in exportation of waste to Texas facilities, the commission must evaluate the impacts of such an increase on the availability of waste management capacity of this state. Any increase which jeopardizes the capacity of existing facilities to properly manage those wastes generated in this state may result in a reconsideration of the policy to defer reciprocal fee assessments.

The disposition of revenue collected from commercial hazardous waste storage, processing, or disposal facilities shall be as follows: 25% is to be deposited to the hazardous waste generation and facility fee fund to supplement existing fees from hazardous waste generators and facilities which are used to support the commission's hazardous waste regulatory program; 25% is to be deposited to the hazardous waste generation and facility fee fund and subsequently distributed by the commission to the county in which the commercial facility paying the fee is located. These funds will be available to the county to assist in defraying costs to local government associated with commercial hazardous waste management facilities. Upon receipt and verification of payment, the commission shall distribute funds to the affected county; 50% is to be deposited to the hazardous waste disposal fee fund to supplement existing fees from on-site hazardous waste land disposal which support both the federal and state Superfund programs for the remediation of abandoned waste disposal sites.

Beyond authorization of commercial hazardous wastes fees, Senate Bill 1544 fur-

ther requires that the commission report to the legislature in January of 1991 with an evaluation of the commercial hazardous waste fee program which is adopted and the additional fees presently authorized under the Solid Waste Disposal Act and this subchapter. Consideration is to be given to the revenue generated by existing and new fee programs, the equity of the cumulative effects of the various assessments, and any recommendations for adjustments to fee schedules or amendments to legislative authority. The commission adopts these commercial hazardous waste fees, consistent with the provisions of Senate Bill 1544, with the intent that needed revisions to the program, which may be identified during implementation and administration, should be addressed in the commission's report in January of 1991.

In addition to implementing new authority for assessment of commercial facility fees, the commission also adopts a broader exemption for assessment of generation fees, consistent with the criteria of Senate Bill 1544 for setting fee rates and the public policies for preferential methods of waste management. Currently wastes which are hazardous solely due to the characteristic of corrosivity and which are neutralized on site are exempt from generation fee assessment. The proposal would broaden the current exemption to apply to any wastewater stream containing a characteristic hazardous waste which is treated on site to destroy hazardous characteristics.

Minor changes to procedural requirements are proposed to improve the assessment and collection of fees. Provisions which establish due dates for payment of existing generation, facility, and land disposal fees are amended to clarify that the commission shall establish a due date upon distribution of an invoice requesting payment. This change is consistent with the commission's consolidation and automation of agency accounts receivable functions and will insure that the agency's accounting and related data processing activities for fee revenue programs can be coordinated more efficiently. Payment of proposed commercial facility fees will be made monthly by a facility operator and is due within 25 days of the end of each month during which commercial waste management activity occurs.

Section 335.322, concerning definitions, is changed by amending the definition of a hazardous waste fuel for the purpose of fee assessment. The reference to specific chemical and physical parameters is deleted. This revised definition is more consistent with the current status of regulation of incineration and energy recovery activities and will insure that the definition of waste fuels is sufficiently broad to capture the activities associated with energy recovery intended under Senate Bill 1544.

Section 335.326, concerning commercial fee assessment, is changed in order to clarify a number of aspects of commercial fee assessment and to simplify various administrative requirements. Subsection (a) is changed to reflect an effective date of October 1, 1990. This date will give affected facilities time in which to review operations and install necessary procedures for implementing new provisions of the hazardous waste fee program.

Section 335.326(i) is changed to clarify that the assessment of a fee for a hazardous waste fuel is also determined on the same basis as other commercial fees, that is, where the waste is received for a charge, consistent with the definition of a hazardous waste storage, processing, or disposal facility. The provision for assessing the same fee for waste fuels generated in-state and out-of-state is moved to subsection (k) of this section.

Section 335.326(k) is changed by deleting the provision which requires that a waste generated out of state be assessed the greater of: the fee specified in the rate schedule for imported waste; or the fee which would be applied in the state of origin for the same method of disposition. This change will considerably reduce the potential administrative effort which would otherwise be required of both commercial facilities and commission staff to maintain current information on the status of rapidly evolving hazardous waste fee related programs in other states. The provision for assessing waste fuels from both in-state and out-of-state the same fee is moved from subsection (i) of this section and a reference to recycled wastes is added to clarify that the same provision for out-of-state wastes is applicable to recycled wastes.

Section 335.326(1) is changed by deleting the requirement that a commercial facility operator declare the disposition of a waste within 10 days and pay the fee for that method of handling. The proposed approach would potentially decrease the time between receipt of waste and payment of a fee, however, it would result in significant discrepancies between monthly activity reports and fee payments and increase the administrative workload related to auditing facility records and responding to requests for adjustments to monthly assessments where the actual disposition of a waste varies from the original declaration. Under this subsection as adopted, the fee to be paid shall be based on the actual reported disposition of a waste. In addition, language has been added which clarifies the conditions under which only one fee is assessed for the management of a particular waste at a facility.

Section 335.326(m) is changed by modifying the assessment of fees for storage. The option of paying a fee in lieu of a storage fee by declaring the ultimate disposition of a waste is deleted. Under this subsection as adopted, one fee shall be assessed at a particular facility for the management of a waste, except that a fee for storage will be assessed in addition to the fee for other methods of disposition. This change is consistent with §335.326(1) as adopted and is made for the same reason, to insure that fees paid more closely correspond to monthly reports of waste activity.

Section §335.327, concerning dry weight determination, and §335.328, concerning alternative methods of dry weight determination, are changed to correct inadvertent references to sections which are repealed. References to repealed §§335.326, 335.327, and 335.332 are changed to §§335.327, 335.328, and 335.333, respectively.

Section 335.329, concerning fees payment, is changed to be consistent with §335.326, concerning commercial fee assessment, as

adopted. Subsection (c) is changed to clarify that an assessment is due for wastes which are managed, subject to the provisions of §335.326, in any particular month.

Comments regarding the proposed rules were received from a number of parties, including potentially affected commercial facilities. USPCI, Inc. objected to the proposal that fees for the management of wastes from out-of-state would be reciprocal to those charged in the state of origin. The proposal is characterized as unfair and punitive to the extent that it goes beyond the recovery of legitimate expenses of the state in regulating imported waste. The position of USPCI is that such a provision is not consistent with the most efficient use of existing waste management capacity. Although many states have rejected reciprocity as a policy, if the largest generator of hazardous waste among the states (and currently a net waste exporter) adopts such a position, other states will follow suit. The costs of waste management services to generators will escalate dramatically. Generators utilizing landfills in other states could face increased costs levied by other states when sufficient commercial landfill capacity is unavailable in this state as an alternative. Concern was also expressed for the administrative burden represented by a reciprocal fee provision which would require that each commercial facility be aware of the current fee rate structure for each method of waste disposition in every other state at any point in time. In addition, USPCI commented that the proposed fees could result in double taxation of certain wastes, particularly recycled wastes, the by-products of which are frequently blended into waste fuels and burned for energy recovery. It was suggested that the residual materials from a recycling process be exempted from an energy recovery fee.

Texas Ecologists shared essentially the same position regarding reciprocal fees. In addition, the statement was made that Texas and neighboring states should be working to establish a regional compact to achieve solutions to waste management problems and that establishing a reciprocal fee policy at this time must be considered an obstacle to any such regional agreement. Gibraltar Chemical Resources, Inc. submitted similar comments and added that differential fees for imported wastes have been legally challenged in at least one neighboring state and could presumably be overturned or restricted through the courts. The GNI Group, representing Disposal Systems, Inc., also offered comments which generally supported the positions of these respondents.

The commission acknowledges that there are undesirable effects of implementing a reciprocal hazardous waste fee. Such a measure could financially impact generators utilizing facilities in other states. Efforts to establish interstate agreements regarding hazardous waste management policy may not be as well received, particularly by states which have rejected the policy. Such a rule will require a significant investment in staff and other resources to administer, both for commercial facilities and the commission. The legality of such measures, particularly their effects on interstate commerce and their consistency with federal hazardous waste regulatory programs, is still at issue. It is for these reasons that the provision is deleted from the

section as adopted at this time. As stated previously, however, the commission is concerned about the eventual effects of fee policies in place in other states on the importation of waste to this state and on available waste management capacity. While reciprocity may not be consistent with the most efficient use of existing waste management capacity in many cases, it must also be recognized that dramatically increased waste disposal fees in other states, approaching or exceeding \$100 per ton, could force generators to export wastes to other states and eliminate the utilization of existing waste management facilities in the states of origin at the expense of management capacity in another state with a lower fee. Many states have rejected reciprocity as an undesirable policy, but included among them are those whose fee policies all but ensure that generators will export their wastes to avoid fees substantially higher than those adopted in these sections. The intent of the commission will be to monitor developments relating to similar fees assessed in other states, assess the impact of these sections as adopted on interstate waste activities, and utilize the authority granted under Senate Bill 1544 as necessary to protect the interests of the state.

The GNI Group also offered comments regarding the justification of a fee for recycling of wastes. The position stated is that recycling, as a preferred method of disposition, should be exempt from any assessment and that revenues from recycling should not be directed to the remediation of old land disposal problems. This comment refers to the deposit of 50% of the commercial fee revenue to the hazardous waste disposal fee fund which is used for the remediation of abandoned contaminated sites. The question was also raised as to the justification for the recent reduction of on-site land disposal fees in light of the proposed imposition of a fee on recycling. Other commenters, including the Texas Chemical Council, provided similar recommendations for either an exemption or partial exemption for recycled wastes or a reduction in the proposed fee to a lesser amount.

We agree that recycling is a preferred method of disposition and should not be treated in the development of commercial fee regulations in a way which will discourage the activity. At the same time, however, waste recycling involves a number of processes which are subject to regulatory control and represent costs to the state within the hazardous waste management programs. It may appear unjustified to direct revenues from waste recycling or other treatment processes to the remediation of abandoned contaminated sites. In fact, many of the sites which are in need of remediation are not land disposal operations but rather various types of facilities, including recycling facilities, at which waste was generated or handled improperly and allowed to contaminate the site through mismanagement. Relative to the other methods of disposition, recycling is assessed the lowest cost in terms of fee assessments. The commission does not feel that this level of assessment, given its relationship to alternative methods of handling, will create a significant obstacle to the continued recycling and reclamation of hazardous waste streams. As the effects of these fee assessments be-

come more apparent, and as changes occur in the regulatory and economic environment, the commission will continually reevaluate its fee revenue program and initiate changes which are necessary to support the state's hazardous waste management policies. In regards to the reduction of on-site land disposal fees, effective September 1, 1989, it must also be recognized that the commercial land disposal fees here adopted are in addition to the existing land disposal fee, making land disposal an even more costly method of disposition than indicated in the commercial fee schedule. Also, the commission is required under the Solid Waste Disposal Act to establish an on-site land disposal fee which will result in the collection of no more than \$12 million in the biennium. The reduction from \$10 per dry weight ton to \$8.00 per dry weight ton, based on projections of land disposal activity, was accomplished to comply with this requirement. Should projections indicate that statutory revenue objectives will not be met in the biennium, the rate will again be readjusted.

The GNI Group also provided comments regarding clarification of when a waste would be subject to an assessment and what the basis for assessment would be, particularly in cases in which waste is handled by more than one facility. The concern is that a waste would, under some circumstances, be assessed more than one fee. A suggestion is made that perhaps a mechanism for recognizing credits on certain wastes could be implemented to prevent any secondary charges for a waste if it changed hands from one facility to another. Similar comments were received from BFI Environmental Systems and Gibraltar Chemical Resources, Inc. and Brown Maroney & Oaks Hartline requested similar clarification regarding the assessment of fees on waste fuels.

Changes made to the proposed text, specifically in subsections (i), (l), and (m) of §335.326, attempt to clarify the potential assessment of fees. Perhaps most significantly, language is added to reiterate that a fee is assessed only if the waste which is received is in fact managed by a commercial facility, that is, for a charge. With the possible exception of storage prior to subsequent waste management on site, a waste is subject to only one fee at one facility. In the event a waste is shipped to another commercial facility, additional fees may be applied to the extent that some other disposition occurs for which the operator of the facility levies a charge. Specific to waste fuels, only a commercial facility, as that term is defined, would pay a fee for the storage, processing, or disposal of a fuel. While a mechanism could presumably be devised which would levy only one fee in essentially all cases and depend on credits or adjustments to preclude any additional assessments, such an approach would, we feel, be a significant administrative effort and would carry with it certain costs for both facility operators and the commission which would reduce the real benefits.

North Star Steel Texas commented on these commercial fee rules as to their potential effect on recycling of a specific waste stream produced during the manufacture of steel and raised an issue concerning the application of fees to wastes received from off-site generators, as specified by Senate Bill 1544. North Star Steel Texas would interpret the language

of the statute to allow the construction of a commercial waste processing (recycling) facility on an existing manufacturing site, to be owned and operated by a separate concern, but pay no fee assessment due to its location on-site rather than off-site as specified in the bill. The concern of the commenter is that the commercial assessment could make recycling of this waste economically impractical compared to the current practice of landfilling.

We do not agree that commercial waste management under the circumstances described should not be subject to an assessment under the provisions of Senate Bill 1544. To interpret the application of the term "off-site" in this manner assumes a restrictive and narrow meaning that we do not feel is intended by the statute. The nature of the activity and the control and ownership of the site must be considered in determining what is off-site from a manufacturing facility. It is the position of the commission that changing the nature of the use of the site, placing it under different ownership, and operating it as a commercial facility would no longer qualify the facility as an on-site facility. To consider such a facility to be exempt from the authority of Senate Bill 1544 would potentially place other commercial operations at a competitive disadvantage—operations which could be located within or contiguous to generating facilities would escape an assessment that a facility located elsewhere would have to pay and collect from all customers. More specific to the issue of recycling, the economic impacts of these rules on a preferred method of waste management must be considered in light of the greater increases in the cost of the less preferable alternative, in this case landfilling.

Several commenters questioned the inclusion of specific chemical and physical parameters to define hazardous waste fuels. These parameters, intended to specifically define which materials would have been assessed a fee as a fuel, would also have limited the application of the waste fuels assessment to an extent not intended. In agreement with these comments, the specific parameters are deleted.

A comment was received from BFI Environmental Systems regarding the use of the revenue derived from the commercial fee assessments. BFI stated that a portion of these fees should go toward an education program to better inform the industry of regulatory requirements and other developments which affect waste generators.

There is no prohibition against the application of these funds in this manner. In fact, the commission has a program which is designed to target specific industrial or commercial sectors and provide detailed information tailored to those activities about hazardous waste regulatory requirements. Revenues generated through commercial fee assessments will enable the commission to increase efforts in this area.

Comments were also received regarding the effective date of these regulations. The

proposed effective date of July 1, 1990, is changed to October 1, 1990, consistent with the date of adoption.

The amendments and new sections are adopted under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon Supplement 1989), as amended by Senate Bill 1544, Acts of the 71st Legislature, 1989, which provides the Texas Water Commission with the authority to establish a hazardous waste fee program and to implement fee assessments for the commercial management of hazardous wastes.

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

Captured facility—A manufacturing or production facility which generates hazardous waste which is routinely stored, processed, or disposed, on a shared basis, in an integrated waste management unit owned and operated by and located within a contiguous manufacturing facility.

Commercial hazardous waste storage, processing, and disposal facility—Any facility which accepts a hazardous waste for storage, processing (including incineration), or disposal from an off-site generator for a charge.

Hazardous waste fuel—A hazardous waste or blend of hazardous wastes to be burned for energy recovery which, for the purposes of assessment of fees under this section, is not subject to regulation under 40 Code of Federal Regulations Part 264 (or Part 265) Subpart O, relating to incinerators.

§335.326. Commercial Fee Assessment.

(a) A fee is hereby assessed on each operator of a commercial hazardous waste storage, processing, or disposal facility, except as provided in subsections (b)-(e) of this section, for hazardous wastes which are stored, processed, disposed, or otherwise managed for a charge on or after October 1, 1990.

(b) A fee shall not be imposed on the operator of a commercial hazardous waste storage, processing, or disposal facility for hazardous wastes which are generated in this state and received from an affiliate or wholly owned subsidiary of the commercial facility, provided that said commercial facility handles solely industrial solid wastes generated either on site or by an affiliate or wholly owned subsidiary. For the purpose of this section, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(c) A fee shall not be imposed on the operator of a commercial hazardous waste storage, processing, or disposal facility for wastes received from a captured facility, defined under §335.322 of this title (relating to Definitions), provided that the commercial facility in question receives and handles solely industrial solid wastes generated either on site or by a contiguous captured facility.

(d) A fee shall not be imposed on the operator of a commercial hazardous waste storage, processing, or disposal facility for the storage of hazardous wastes which are received from off-site generators, provided that such wastes are stored for less than 60 days.

(e) A fee may not be imposed under this section on the operation of a facility permitted under the Water Code, Chapter 26, or the federal National Pollutant Discharge Elimination System Program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface waters of the state.

(f) The commercial hazardous waste fee authorized under this section shall be based on the total weight or volume of a hazardous waste except for wastes which are disposed of in an underground injection well in which case the fee shall be based on the dry weight of the waste, measured in dry weight tons (dwt), as defined in §335.322 of this title (relating to Definitions) and §335.327 of this title, (relating to Dry Weight Determination).

(g) The commercial hazardous waste fee for wastes generated in this state shall not exceed \$20 per ton for wastes which are landfilled. The fee established by rule for other waste management methods shall be at a lesser amount.

(h) The operator of a commercial hazardous waste storage, processing, or disposal facility receiving hazardous waste from out-of-state generators shall be assessed the fee amount required on wastes generated in state plus an additional increment to be established by rule, except as provided in subsection (i) of this section.

(i) A fee shall be established by rule of the commission in lieu of the commercial fee for the storage, processing (including incineration), and disposal of hazardous waste fuels where such wastes are received and/or managed for a charge.

(j) Except as provided in subsections (k)-(o) of this section, commercial hazardous waste fees shall be assessed according to the following schedule:

Wastes Generated Wastes Generated

<u>Disposition</u>	<u>in State</u>	<u>Out of State</u>
Landfill	\$18/ton	\$27/ton
Landfarm	16/ton	25/ton
Underground Injection	14/dwt	23/dwt
Treatment/Incineration	10/ton	19/ton
Storage	6/ton	9/ton
Energy Recovery	6/ton -	6/ton
Recycle	4/ton	4/ton

(k) For wastes which are generated out of state, the fee will be that specified in subsection (j) of this section except that the fee for wastes which are recycled and the fee for hazardous waste fuels shall be the same for wastes generated out of state and in state.

(l) Except as provided in subsection (m) of this section, only one fee shall be paid for a waste received at a commercial facility. No additional commercial fee will be assessed under this section for the management on site of those wastes which are generated as residuals by the operator of the commercial facility in the normal process of incineration, recycling, or waste treatment operations. In any instance where more than one fee could be applied under this section to a specific volume of waste, the higher of the applicable fees will be assessed.

(m) A fee for storage of hazardous waste shall be assessed in addition to any fee for other methods of disposition at a commercial facility. No commercial fee shall be assessed under this section for the storage of a hazardous waste for a period of 60 days or less from the date of receipt of the waste (or the effective date of this section). The fee rate specified in the schedule under subsection (j) of this section shall apply to the storage of waste from 61 to 90 days. A fee of one-half of the amount specified in subsection (j) of this section shall be assessed for each subsequent 90-day period, or part of such period, beyond the initial 90 days of storage.

(n) A commercial facility which receives waste transferred from another commercial facility shall pay any fee

applicable under this section except as provided under subsection (b) of this section regarding the receipt of waste from an affiliate or wholly-owned subsidiary.

(o) The fee rate for incineration of aqueous wastes containing 1.0% or less of total organic carbon will be 10% of the fee for incineration under the schedule in subsection (j) of this section.

§335.327. Dry Weight Determination.

(a) The method of calculating the dry weight of each hazardous waste stream shall be determined initially and at any time the waste stream undergoes a significant change in water content using the appropriate method(s) as specified in this section. Determinations shall be made from a representative sample collected by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.

(1) Hazardous wastes which contain suspended solids greater than or equal to 15% of the sample on a weight basis shall have the dry weight determination calculated using the method specified in Appendix I in §335.333 of this title (relating to Appendices I and II).

(2) Aqueous based hazardous wastes which contain suspended solids less than 15% of the sample by weight basis and which contain a single liquid phase shall have the dry weight determination calculated using *Standard Methods for the Examination of Water and Wastewater*, 15th Edition; Method 209A; pages 92 and 93 or equivalent method in later editions.

(3) Organic based hazardous

wastes which contain suspended solid less than 15% of the sample by weight and which contain a single liquid phase shall have the dry weight determination calculated using:

(A) *1981 Annual Book of ASTM Standards*, Part 30; Method E203, pages 803-812 or equivalent method in later editions; or

(B) the method specified in Appendix II in §335.333 of this title (relating to Appendices I and II).

(4) Hazardous wastes which do not meet any of the criteria specified in paragraphs (1)-(3) of this subsection shall have the dry weight determination calculated using:

(A) the *1981 Annual Book of ASTM Standards*, Part 23; Method D96, pages 64-81 or equivalent method in later editions;

(B) the method specified in Appendix II in §335.333 of this title (relating to Appendices I and II); or

(C) the 1981 Annual Book of ASTM Standards, Part 23; Method D95, pages 59-63 or equivalent method in later editions. Method D96 determines the water and sediment content of the sample. The calculations shall be modified to determine only the water content.

(5) The method for calculating the dry weight shall be that method specified in Appendix I in §335.333 of this title (relating to Appendices I and II) or an alternate method selected by the generator pursuant to §335.328 of this title (relating to Alternate Methods of Dry Weight Determination), if the hazardous waste cannot be analyzed by one of the other required methods of this section due to interfering constituents. Documentation identifying the method of analysis and describing the interference shall be maintained by the generator.

(b) Hazardous wastes containing free liquids which are designated for disposal in a landfill and must be solidified prior to disposal shall have the dry weight determination made on the hazardous waste, prior to the addition of the solidification agent.

§335.328. Alternate Methods of Dry Weight Determination.

(a) Generators may select other test methods for the purpose of calculating the dry weight of their hazardous waste where one of the methods provided in §335.327 of this title (relating to Dry Weight Determination) is not applicable. Technical justification must be sent to the executive director, demonstrating that the proposed method will produce an accurate determination of the dry weight ratio of the waste unless the executive director has provided written approval for use of the alternate method. Use of an evaporation temperature above 75 degrees Celsius will be allowed only on demonstration that the waste stream contains appreciable volatile compounds that exhibit higher evaporation temperatures. Where practicable, results from the proposed test methods and the required method should be compared. Applicability of this item to such dry weight determinations is subject to review by the executive director.

(b) Generators may elect to declare the total wet weight of the hazardous waste as the dry weight.

§335.329. Fees Payment.

(a) Hazardous waste generation and facility fees are payable each year for all hazardous waste generators, permittees, facilities, and applicants. Fees must be paid by check, certified check, or money order payable to "Texas Water Commission". Annual facility fees are payable by permittees and applicants regardless of

whether the facility is in actual operation. All annual generation and facility fees shall be due by a date to be established by the Texas Water Commission at the time payment is requested.

(b) Quarterly disposal fees are payable for each operator of a land disposal facility. Fees must be paid by check, certified check, or money order to "Texas Water Commission" and shall be due by a date to be established by the Texas Water Commission at the time payment is requested.

(c) Commercial facility fees are to be paid monthly by each operator of a commercial hazardous waste storage, processing, or disposal facility for wastes managed subject to the provisions of §335.326 (relating to Commercial Fee Assessment) in that month. Fees must be paid by check, certified check, or money order to "Texas Water Commission" and shall be due by the 25th day following the end of the month for which payment is due.

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

Issued in Austin, Texas, on August 22, 1990.

TRD-9008481 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: September 12, 1990

Proposal publication date: May 25, 1990

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

◆ ◆ ◆
• 31 TAC §§335.326-335.332

These repeals are adopted under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon Supplement 1989), as amended by Senate Bill 1544, Acts of the 71st Legislature, 1989, which provides the Texas Water Commission with the authority to establish a hazardous waste fee program and to implement fee assessments for the commercial management of hazardous wastes.

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

Issued in Austin, Texas, on August 22, 1990.

TRD-9008497 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: September 12, 1990

Proposal publication date: May 25, 1990

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

◆ ◆ ◆

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Personnel and Employment Policies

• 37 TAC §1.23

The Texas Department of Public Safety adopts an amendment to §1.23, without changes to the proposed text as published in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3980).

Adoption of the amendment will ensure the public that department employees are evaluated fairly and that they reflect good moral, habits, attitudes, and general responsibility of the applicant.

The amendment adds paragraph (9) regarding an applicant's past use of any illegal substance(s). The department will request additional information for evaluating an applicant's suitability. Past use of illegal substance(s) may be cause for rejection of an applicant.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §411.007, which provides the Public Safety Commission with the authority to establish grades and positions for the department and set standards of qualification for each grade and position so established. Rulemaking authority is granted in this section.

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

Issued in Austin, Texas on August 14, 1990.

TRD-9008398 Joe M. Milner
Director
Texas Department of
Public Safety

Effective date: September 10, 1990

Proposal publication date: July 13, 1990

For further information, please call: (512) 465-2000

◆ ◆ ◆

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

The Texas Department of Human Services (DHS) adopts the repeal of §16.1514 and new §16.1514. New §16.1514 is adopted with changes to the proposed text as published in the June 5, 1990, issue of the *Texas Register*. The repeal is adopted without changes and will not be republished.

The purpose for the repeal and new section is to comply with the requirements of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Public Law 100-203). This legislation changed the Social Security Act, §1819(e) and §1919(e), and 42 Code of Federal Regulations, §483.100. These changes require ICF/SNF facilities to have in effect on January 1, 1989, a process for preadmission screening and annual resident review.

The effect of the new section is to prohibit Medicaid nursing facilities from admitting or retaining new or current residents with mental illness, mental retardation, or a related condition.

During the 30-day comment period, the department received comments on the proposed rules from the following organizations: Texas Health Care Association (THCA); United Cerebral Palsy Association of Texas (UCP-TX); Mental Health Association in Texas; Advocacy, Incorporated (AI); Texas Medical Association (TMA); Association for Retarded Citizen, Texas; and Texas Planning Council for Developmental Disabilities. DHS also received comments from the Texas Department of Health.

The PASARR rules were inadvertently republished in the *Texas Register* on July 17, 1990. DHS requested in a letter to the Secretary of State's Office that a retraction be published so that persons would disregard the reprint. Nevertheless, DHS did receive comments from one organization that the department did not feel were new substantive comments. Those comments addressed the issue of private pay individuals being subject to PASARR. This issue is addressed in this preamble and was considered prior to the decision to adopt these rules. With regard to the issue of applicable community standards, this issue was discussed with the commenter at a multi-agency meeting held on August 1, 1990. Other changes recommended by the commenter are either already addressed in the preamble or were discussed and considered prior to the decision to adopt these rules.

A summary of the comments and the department's responses follow.

COMMENT—There is a concern that the Texas Department of Health (TDH) has not published rules.

RESPONSE—The procedures and the qualification of the personnel employed by the Texas Department of Health (TDH) are already included in the rule under §16.1514(b)(4). TDH does not have statutory responsibility for any aspect of PASARR and is a subcontracting agency.

COMMENT—§16.1514(d)(5). There is a concern that any family member not in agreement with a PASARR determination be allowed to appeal the determination and receive a DHS fair hearing. It is recommended that the following language be substituted, "If the person is legally competent, he or she is the only person who has legal standing to appeal the determination. If there is a guardian appointed for a legally incompetent person, only the guardian has standing."

RESPONSE—The department concurs, and the phrase "family member" is deleted. The remainder of the paragraph will remain as it is in accordance with the department's fair hearing practices.

COMMENT—§16.1514(b)(1)(B). There is a concern that the wording "in contrast to other settings" refers to only those settings that are currently available thus making nursing facility placement, by default, the only appropriate placement. It is recommended that the following language be substituted, "Nursing facility placement is required in contrast to other settings not to exclude settings or services not currently in existence or available at this time."

RESPONSE—The department concurs and the recommendation incorporated. The recommended language also is added to subsection (d)(1)(A).

COMMENT—§16.1514(b)(1). There is a concern that the PASARR requirement for private pay individuals limits the constitutional rights of the individual.

RESPONSE—The requirement to screen private pay individuals is a congressional mandate as stipulated in the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). Because this is a federal requirement, the department has not changed the rule; however implementation may be affected by court or legislative action.

COMMENT—§16.1514(d)(1) and (e)(3). There is a concern that these subsections imply that the Texas Department of Mental Health and Mental Retardation (TDMHMR) can override the recommendations of the resident's physician and TDH in determining that the resident does need active treatment services but does not need nursing facility services and must be alternately placed. The TMA wants TDMHMR to assume all medical and legal responsibilities for the override.

RESPONSE—OBRA '87 requires that the state mental health authority and the state mental retardation authority to make the determinations regarding an individual's need for active treatment and for nursing facility services (see §1919(e)(7)). TDH does not make any recommendation or determinations. The sole role of TDH in the PASARR process is to conduct the assessment and then to send all information to TDMHMR. TDMHMR assumes responsibility for its determinations.

COMMENT—There is a concern that persons subsumed under the advanced years category may refuse active treatment and provisions should be included to continue providing health care to those persons.

RESPONSE—An individual who is categorized as being of "advanced years" may indeed refuse active treatment, if it is determined that he or she requires active treatment. If that individual has been determined to require the level of services provided by a nursing facility, then he or she will continue to receive those services.

COMMENT—§16.1514(e)(5). It has been suggested that the statement "the case manager and/or all active treatment providers will report monthly to the primary or attending physician regarding the delivery of active treatment" be substituted with "the case manager will report monthly in writing to the physician or attending physician regarding the delivery of active treatment." It is felt that this will cut the paperwork and ensure uniformity of the reports.

RESPONSE—The department concurs and the recommendation is incorporated.

COMMENT—There is a concern that there should be a unified set of proposed rules by the state agencies.

RESPONSE—The Texas Department of Mental Health and Mental Retardation (TDMHMR) has statutory responsibility for the PASARR determination and for the provision of active treatment and alternate placement. Therefore, it is appropriate the TDMHMR publish their own rules regarding the PASARR determination criteria. DHS and TDMHMR made a concerted effort to publish each agency's rules in tandem with the other. The result was the joint publishing of rules in the *Texas Register* on June 5, 1990.

COMMENT—There is a concern that the method of paying for active treatment is not stated. It was suggested that a sliding scale based on services be enacted.

RESPONSE—The method of payment for active treatment is outside the scope of this chapter. The method of paying for active treatment services will be included in contracts between TDMHMR and the local mental health/mental retardation authority. If in turn, the local mental health/mental retardation authority subcontracts for this service the method of payment will be included in the concomitant contract.

COMMENT—There is a concern regarding what happens to those individuals who refuse active treatment; the question is can that individual remain in the facility and will the facility continue to be reimbursed.

RESPONSE—If the individual is determined to require the level of services provided by a nursing facility then he or she may remain in the facility and the facility will continue to be reimbursed. However, if the person does not require nursing facility services and refuses active treatment, the individual may not remain in the facility and the facility will not be reimbursed.

COMMENT—There is a suggestion that the nursing facility be the provider of first choice to provide active treatment and the MRA/MHA should only be considered if the facility decides not to provide active treatment.

RESPONSE—OBRA '87 gives TDMHMR statutory responsibility for the provision of active treatment and alternate placement (see §1919(e)(7)(C)).

COMMENT—§16.1514(a). It is suggested that a definition of terminally ill should be added.

RESPONSE—The term "terminally ill" is not referenced in the rule.

COMMENT—§16.1514(a)(3). It is suggested that in the definition of advanced years, that the word "certify" be substituted with the word "documented." It is felt that this will save money.

RESPONSE—The department concurs and the recommendation is incorporated.

COMMENT—TDH's level of care determination should be utilized to determine need for nursing facility services.

RESPONSE—OBRA '87 requires the state mental health and mental retardation authority to make an independent decision regarding the need for the level of services provided by a nursing facility (see §1919(e)(7)(B)).

COMMENT—§16.1514(a)(24). There is a concern that the phrase "in contrast to other settings" was never stated in the OBRA '87 legislation and the level of care given by TDH is all that is necessary to satisfy the question "are nursing facility services needed?" It is recommended that the definition of the PASARR determination be changed to read "A decision made by TDMHMR PASARR Determination Program professional staff to establish if an individual has been given a level of care by long term care staff and"

RESPONSE—TDMHMR has statutory responsibility for making an independent decision regarding the need for nursing facility services. OBRA '87 states explicitly that TDMHMR is to contrast nursing facility placement to other settings.

COMMENT—§16.1514(a)(25). There is a concern that the use of psychotherapeutic medications goes beyond psychiatric therapy and cannot be used to legitimately diagnose major psychoses and that Level II PASARR should not be triggered by pharmaceutical indicators. It is recommended that this paragraph be deleted.

RESPONSE—According to the proposed rules published by the Health Care Financing Administration (HCFA) in the *Federal Register* on March 23, 1990, states are required to look at psychotherapeutic medications.

COMMENT—§16.1514(a)(27). It is stated that the definition of related condition is too broad. It is recommended that the department redefine related condition and change subparagraph (D)(i) to read "self-care with activities of daily living."

RESPONSE—The definition of related condition is the federal definition as defined at 42 Code of Federal Regulations (CFR), §435.1009.

COMMENT—§16.1514(b)(4)(A). It is stated that the nursing facility should complete Item 34 of CARE Form 3652. It is felt that it is impossible to get an assessment completed and signed by a physician in a timely manner. It is recommended that this subparagraph be

changed to read "The facility should consider a positive response to CARE form Item 34...."

RESPONSE—HCFA requires that a Level I screen be conducted. DHS has chosen CARE Form 3652 as the Level I assessment instrument and a positive response to Item 34 as the trigger for a Level II assessment. Item 34 must be signed by the physician because it is felt that he/she is the individual who is most acutely aware of that person's physical and mental condition at that point in time.

COMMENT—§16.1514(b)(4)(D)(iii). It is suggested that examples of serious medical conditions be given. For example, add to the end of clause (iii) "...for example, amyotrophic lateral sclerosis, chronic obstructive pulmonary disease, comatose, or congestive heart failure."

RESPONSE—It would be too restrictive to list specific examples for serious medical conditions. Each patient must be looked at individually to see if he or she could benefit from active treatment.

COMMENT—§16.1514(b)(4)(A). It is stated that this section is too broad and is suggested by HCFA but not mandated; therefore, it is recommended that this subparagraph be deleted.

RESPONSE—The HCFA regulations require that a Level I screening be conducted. The physician is the most appropriate person to conduct this screening because he or she is most familiar with that person's condition.

COMMENT—§16.1514(b)(4)(D)(ii). It is suggested that convalescent care be added to the definitions and be defined as 120 days.

RESPONSE—The definition of convalescent care is already in the rule under §16.1514(a)(9).

COMMENT—§16.1514(b)(4)(D)(v). It is stated that the term "Alzheimer's Disease" is inappropriate and should be changed to "Alzheimer's type dementia."

RESPONSE—The terminology in this subparagraph is taken from the HCFA regulation stated at 42 CFR, §483.102(b).

COMMENT—§16.1514(b)(4). It is recommended that the language "to verify the information marked on DHS's CARE form, Item 34" be deleted.

RESPONSE—The TMA requested this language, and the physician is responsible for the information in Item 34, CARE Form 3652.

COMMENT—§16.1514(c)(1). It is stated that the January 1, 1989, effective date is inappropriate.

RESPONSE—The department concurs, and the date is deleted. The date also is deleted in subsection (b)(1).

COMMENT—§16.1514(c)(3). It is recommended that only persons with a primary or secondary diagnoses of MI/MR/RC be screened, not just anyone with an indication.

RESPONSE—The HCFA regulations require that all persons with an indication be screened.

COMMENT—§16.1514(d)(1)(B). THCA states that the wording "mental and/or physical condition" is too vague and mandates active

treatment. It is recommended that this subparagraph be changed to read "An individual may require active treatment for mental illness, mental retardation, or related condition."

RESPONSE—The advocate groups during the six-month Alternate Disposition Plan Task Force meetings strongly requested this language. THCA was a member of that task force.

COMMENT—§16.1514(d)(3). It is questioned whether or not a hospital stay interrupts the continuous stay. It is recommended to delete the words "continuous residence."

RESPONSE—OBRA '87 under §1919(e)(7)(C) uses the terminology "continuously resided."

COMMENT—§16.1514(d)(4). It is recommended that the word "may" be substituted with the word "will."

RESPONSE—The department concurs and the recommendation incorporated for the first usage of "may." There are other eligibility requirements involved with the second usage of "may," and that second usage will remain.

COMMENT—§16.1514(e). It is recommended that the physician be included in the process and that there should be an appeal process at the state office level.

RESPONSE—TDMHMR has a physician-consultant available when appropriate. There is an appeals process for the determination.

COMMENT—§16.1514(e)(9). It is stated that it should be the responsibility of the case manager to provide the individual active treatment plan. It is recommended that the phrase "The case manager must provide and the" be added at the beginning of the paragraph.

RESPONSE—The department concurs and the recommendation will be incorporated.

COMMENT—§16.1514(e)(10). It is suggested that the case manager should provide the interdisciplinary medical-social care plan. It is recommended that the phrase "The facility must obtain and" be deleted, and the phrase "The case manager must provide to the facility and the facility must" be added to the beginning of the paragraph.

RESPONSE—The department concurs and the recommendation is incorporated.

COMMENT—§16.1514(b)(3). It is suggested that the definition of readmissions be clarified to reflect a specific time frame that should not exceed the state bed hold policy (30 days). It is also requested that the rule be modified when a person is diagnosed as having a mental illness, to allow for a PASARR screening if the leave were necessitated by an acute episode.

RESPONSE—The department concurs and the recommendation is incorporated under the definitions section in §16.1514(a)(26).

COMMENT—§16.1514(d)(3). It is recommended that the paragraph needs to clarify the individual's involvement and opportunity for choices in the quest for alternate placement.

RESPONSE—The department concurs and the individual's involvement is stated.

COMMENT—§16.1514(b)(4)(B)(ii) and (b)(4)(C). There is a concern regarding the

assessment of individuals with related conditions. It is recommended that DHS specify what other professionals will be available to the assessment team and what mechanism will be used to include them in the process.

RESPONSE—§16.1514(b)(5)(C) states explicitly that "TDH will have other professionals on staff and/or on a consultant basis who have the expertise in the evaluation of individuals with related conditions." This statement was incorporated on the request of UCP-TX and AI. States are required to ensure that all individuals are appropriately diagnosed and receive the appropriate services if needed.

COMMENT—§16.1514(d)(3). It is recommended that the subsection should specify that the choice of whether to remain in the nursing facility or to seek alternate placement should be offered to each eligible nursing facility resident at each annual review.

RESPONSE—The department concurs and the recommendation is incorporated.

COMMENT—§16.1514(b)(4)(D)(iii). There is a concern that persons who are comatose or who have a serious medical condition are automatically exempted from a full PASARR assessment and that the TDMHMR determination must be modified to focus on an individual's need for medical care.

RESPONSE—§16.1514(b)(4)(C) requires that an individual with a positive Item 34 receive a Level II screen. The rule in question only states that the individual may be immediately admitted to or continue residing in a nursing facility; this does not exempt them from being screened for active treatment.

COMMENT—§16.1514(c)(4). There is a concern that annual resident reviews are not going to occur.

RESPONSE—§16.1514(c) explicitly details the annual resident review requirements. OBRA '87 mandates that annual resident reviews occur.

COMMENT—§16.1514(d)(5). It is suggested that this paragraph indicate the period of time in which TDMHMR will notify individuals of the results of their PASARR determination.

RESPONSE—The department concurs and the paragraph is revised to state that for preadmissions TDMHMR will notify individuals within 10 calendar days of the determination and for annual resident reviews it will notify individuals within 30 calendar days.

COMMENT—§16.1514(e). There is a concern that the local MHMR authorities do not have the expertise to provide case management services, active treatment, and/or alternate placement to persons with related conditions. It is requested that there be assurances and provisions that persons with related conditions be able to receive services to meet their needs.

RESPONSE—Paragraph (4) of this subsection states explicitly that the local MHMR authority may subcontract with other providers for services. The authorities will be required to provide the appropriate and necessary services for all OBRA '87 impacted individuals, and this includes those persons

with related conditions. TDMHMR will be auditing and reviewing their activity.

COMMENT—§16.1514(e)(3). It is recommended that this paragraph be amended to include the individual as a member of the interdisciplinary team.

RESPONSE—The department concurs and the recommendation is incorporated.

Because of comments received from the Texas Department of Health, DHS is adopting §16.1514(a)(29), (b)(5), and (e)(8)(B) with changes to clarify these subsections. As recommended by THCA, DHS has deleted subparagraph (E) under subsection (e)(10) concerning required documentation in the interdisciplinary medical-social plan of care.

• 40 TAC §16.1514

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§16.1514. Preadmission Screening and Annual Review Requirements (PASARR).

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 August 21, 1990.

TRD-9008438

Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: September 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆ • 40 TAC §16.1514

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§16.1514. Preadmission Screening and Annual Resident Review (PASARR).

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

(1) Active treatment for individuals with mental illness—The implementation of an individualized plan of care developed under and supervised by a physician, provided by a physician or other qualified mental health professionals, that prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of severe mental illness, which necessitates supervision by trained mental health personnel.

(2) Active treatment for individuals with mental retardation—A continuous program for each client, which includes aggressive, consistent

implementation of specialized and generic training, treatment, health services, and related services that is directed toward:

(A) the acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status. Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

(3) Advanced years—A chronological age of greater than 64 years of age or a chronological age of greater than 50 years along with a chronic or acute medical condition that is likely to significantly diminish life expectancy as documented by a physician.

(4) Alzheimer's disease—A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the *International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM)*.

(5) Amyotrophic lateral sclerosis—A degenerative motor neuron disease as diagnosed by a physician in accordance with *International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM)*.

(6) Chronic obstructive pulmonary disease—A disease of the respiratory system as diagnosed by a physician in accordance with the *International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM)*.

(7) Comatose—A state of unconsciousness characterized by the inability to respond to sensory stimuli as certified by a physician.

(8) Congestive heart failure—A disease of the circulatory system as diagnosed by a physician in accordance with *International Classification of Diseases, 9th Revision Clinical Modification (ICD-9-CM)*.

(9) Convalescent care—Care provided after a person's release from an acute care hospital that is part of medically prescribed period of recovery which does not exceed 120 days.

(10) Dementia—A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the *International Classification of Diseases 9th revision Clinical Modification (ICD-9-CM)*.

(11) Functioning at the brain stem level—A significantly impaired state of consciousness characterized by normal respirations and minimal (mostly reflexive)

response to environmental stimuli as certified by a physician.

(12) Huntington's disease—A disease of the central nervous system diagnosed by a physician in accordance with the *International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM)*.

(13) Level I—identification screening—The process of identifying individuals with an indication of mental illness, mental retardation, and/or a related condition, who require a Level II PASARR assessment.

(14) Level II—PASARR assessment—Preadmission screening and annual resident review assessment of persons with mental illness, mental retardation, and/or a related condition conducted in accordance with nursing home reform provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87).

(15) Mental illness—A current primary or secondary diagnosis of a major mental disorder (as defined in the *Diagnostic and Statistical Manual of Mental Disorders, 3rd edition (DSM-III-R)*) limited to schizophrenic, paranoid, major affective, schizoaffective disorder, and atypical psychosis, and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder).

(16) Mental retardation—A diagnosis of mental retardation (mild, moderate, severe, and profound) as described in the American Association on Mental Deficiency's Manual on *Classification in Mental Retardation (1983)*. In this manual mental retardation is significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(17) New admission—An individual who is admitted to any nursing facility in which he has not recently resided and to which he cannot qualify as a readmission. Also, any individual transferring from one nursing facility to another nursing facility, with or without an intervening hospital stay.

(18) Nursing facility—A Texas Medicaid-certified institution, except for a facility certified as an intermediate care facility for the mentally retarded (ICF/MR), providing nursing services to nursing facility residents.

(19) Nursing facility applicant—An individual seeking admission to a Texas Medicaid-certified nursing facility.

(20) Nursing facility resident—An individual who resides in a Texas Medicaid-certified nursing facility and receives services provided by professional medical nursing personnel of the facility.

(21) OBRA '87—Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203).

(22) Parkinson's disease—A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the *Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM)*.

(23) PASARR—Preadmission screening and annual resident review.

(24) PASARR determination—A decision made by Texas Department of Mental Health and Mental Retardation (TDMHMR) PASARR Determination Program professional staff to establish if an individual requires the level of services provided in a nursing facility as contrasted with other settings and if the individual has the need for active treatment for mental illness, mental retardation, and/or a related condition. The decisions are based on information included in the Level II PASARR assessment document.

(25) Psychotherapeutic medication—Pharmaceutical indicators for Level II PASARR assessment are:

(A) antipsychotic:

Acetophenazine (Tindal), Chlorpromazine (Thorazine), Fluphenazine Decanoate (Prolixin Decanoate), Fluphenazine enanthate (Prolixin Enanthate), Fluphenazine hydrochloride (Prolixin, Permitil), Mesoridazine (Serentil), Perphenazine (Trilafon), Prochlorperazine (Compazine), Promazine (Sparine, Prozine), Thioridazine (Mellaril, Mellaril-s), Trifluoperazine (Stelazine), Triflupromazine (Vesprin), Chlorprothixene (Taractan), Droperidol (Inapsine), Haloperidol (Haldol), Loxapine (Loxitane), Molindone (Moban), Pimozide (Orap), Thiothixene (Navane), and other antipsychotics;

(B) antimanic agents: Lithium (Eskalith, Lithobid, Lithotabs, Cibalith);

(C) antidepressants.

Medications when used for treatment of depression as identified on the DHS's client assessment, review, and evaluation (CARE) form or recipient's medical record: Isocarboxaid (Marplan), Phenelzine (Nardil), Tranylcypromine (Parnate), Amitriptyline (Elavil, Endep), Amoxapine (Asenden), Desipramine (Pertofrane), Doxepin (Adapin, Sinequan), Trazodone (Desyrel), Fluoxetine (Prozac), Imipramine (Tofranil, Tofranil-PM, Janimine), Maprotiline (Ludiomil), Nortriptyline (Aventyl, Pamelor), Protriptyline (Vivactil), and Trimipramine (Surmontil).

(26) Readmission—An individual who is readmitted to a nursing facility in which he has resided following a temporary absence for hospitalization (no more than

30 days) or for therapeutic leave.

(27) Related condition—A severe, chronic disability as defined in 42 Code of Federal Regulations, §435.1009, that meets all of the following conditions:

(A) it is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition including autism, but excluding mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons;

(B) it is manifested before the person reaches age 22;

(C) it is likely to continue indefinitely;

(D) it results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(28) Substantial risk of serious harm to self and/or others—Harm which may be demonstrated either by a person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty, as determined by a court of law.

(29) Ventilator dependent—Reliance upon a respirator or respiratory ventilator as a life support system to assist with breathing.

(b) Preadmission screenings.

(1) All new admissions (private pay, Medicare beneficiaries, and Medicaid recipients) must have a CARE form (Purpose Code 1/P) and be screened prior to admission to a nursing facility to determine if:

(A) the individual has mental illness (MI), mental retardation (MR), and/or a related condition (RC);

(B) nursing facility placement is appropriate in contrast to other

settings not to exclude settings or services not currently in existence or available at this time.

(C) the individual requires active treatment.

(2) A nursing facility must not admit any individual who has met the conditions of paragraph (1)(A) and (C) of this section, and for whom facility placement is not appropriate in contrast to other settings.

(3) Readmissions are not subject to preadmission screenings.

(4) Level I identification screening. Individuals are identified as having mental illness, mental retardation, or a related condition (MI/MR/RC) through use of DHS's CARE form, Item 34.

(A) The attending physician makes a positive response to CARE form Item 34 for the presence of MI if the individual:

(i) has a diagnosis of MI;
(ii) has a history of MI within the last two years;

(iii) has been prescribed a psychotherapeutic medication on a regular basis in the absence of a justifiable neurological disorder; or

(iv) presents any evidence of MI (excluding a primary diagnosis of Alzheimer's disease or dementia) including possible disturbances in orientation, affect, or mood.

(B) The attending physician makes a positive response to Item 34 for the presence of MR and/or RC if the individual:

(i) has a diagnosis of MR and/or RC;

(ii) has any history of MR and/or RC identified in the past;

(iii) presents any evidence (cognitive or behavioral functioning) that may indicate the presence of MR and/or a RC; or

(iv) has been determined eligible and is referred by an agency that serves people with MR and/or RC.

(C) A positive response to CARE form Item 34 requires that an individual must receive a Level II assessment prior to admission to a nursing facility.

(D) An individual may be immediately admitted to or continue residing in a nursing facility if:

(i) Item 34 of DHS's CARE form is marked no;

(ii) an individual is in the nursing facility for convalescent care;

(iii) an individual is comatose, terminally ill, or has a serious medical condition;

(iv) an individual has a primary diagnosis of dementia and is not MR and/or RC; or

(v) an individual has Alzheimer's disease.

(5) Level II Assessment. TDH staff must contact the attending physician to verify the information marked on DHS's CARE form, Item 34. The physician contact sheet will be used by the assessors to allow the resident's treating physician to have input into the assessment. The physician will be contacted by phone and specifically asked to comment on any psychoactive medications currently prescribed and whether these medications are being prescribed for a psychiatric condition. If the attending physician verifies that the individual is MI/MR/RC then TDH staff or their contracted staff will conduct on-site assessments of all individuals identified as having MI/MR/RC through the Level I screening.

(A) The assessment process consists of a:

(i) PASARR nursing facility assessment;

(ii) PASARR mental illness assessment (as appropriate);

(iii) PASARR mental retardation and related conditions assessment (as appropriate);

(B) Depending on the mental and/or physical condition, TDH sends either a:

(i) MI assessment team consisting of:

(I) a registered nurse who is a qualified mental health professional (at least one year experience with direct services in a professional capacity); and

(II) other qualified mental health professionals; with

(III) a psychiatrist and social worker sign-off at TDH state office.

(ii) MR assessment team consisting of:

(I) a registered nurse who is a qualified mental retardation professional (at least one year experience with direct services in a professional capacity working with people who have a developmental disability); and

(II) a psychologist who is also a qualified mental retardation professional with at least a Master's degree.

(C) TDH will have other professionals on staff and/or on a consultant basis who have the expertise in the evaluation of individuals with related conditions.

(D) If during the assessment process TDH ascertains that an individual does not have MI/MR/RC, then the Level II assessment may be discontinued and the individual may be admitted to the nursing facility.

(E) All assessment data are reviewed by TDH staff for completeness and accuracy and sent to TDMHMR for PASARR determination as specified in subsection (c) of this section.

(F) The nursing facility is required to notify TDH if it receives a DHS CARE form with Item 34 blank.

(c) Annual resident reviews.

(1) All current nursing facility residents with an indication of MI/MR/RC must be identified by TDH through on-site visits which includes chart reviews and interviews with residents.

(2) The nursing facility is required to assist TDH in identifying all residents who may be MI/MR/RC by providing CARE forms on all residents (Medicaid, Medicare, and private pay) and making residents' records available.

(3) Those individuals identified as having MI/MR/RC are required to receive a Level II assessment as described in subsection (b)(4) of this section.

(4) As of April 1, 1990, all identified residents must have received a Level II assessment. These residents, any new residents, or any other resident, must be reassessed annually if their condition changes to indicate a positive response to CARE form Item 34 through the identification process. The nursing facility must submit another CARE form if a resident's condition changes significantly where there is an indication that the resident might benefit from active treatment.

(d) Determination process.

(1) TDMHMR reviews the assessment data gathered by TDH in order to determine whether:

(A) nursing facility services are appropriate in contrast with other services not to exclude settings or services not currently in existence or available at this time;

(B) an individual requires active treatment for his mental and/or physical condition.

(2) Determinations are based on criteria established by TDMHMR under 25 Texas Administrative Code, Part II, Subchapter 402(E). One of the following determinations are made:

(A) nursing facility services are needed, but active treatment services are not needed. Those individuals may be admitted to or continue residing in a nursing facility;

(B) nursing facility services are needed and active treatment services are needed. Those individuals may be admitted to or continue residing in a nursing facility and receive active treatment within the facility;

(C) nursing facility services are not needed but active treatment services are needed. Those individuals may not be admitted to or continue residing in a nursing facility except as described in subsection (d)(3) of this section. Those individuals who are current nursing facility residents must be alternately placed as described in subsection (e) of this section.

(3) If a nursing facility resident has 30 or more months of continuous residence in a nursing facility preceding the PASARR determination, the resident may choose to remain and receive active treatment services in the nursing facility, or seek alternate placement. This choice will be given annually.

(4) If during the determination process TDMHMR ascertains that a person does not have MI/MR/RC, the PASARR determination process may be discontinued and the individual may be admitted to the nursing facility.

(5) TDMHMR will notify all individuals of the results of their PASARR determination through a letter sent to them, the nursing facility administrator, the attending physician, and the local MHMR authorities, the Texas Department on Aging (TDoA), and the local Medicaid eligibility unit. Individuals who have undergone a preadmission screening will be notified within 10 calendar days of the determination, and those individuals who have undergone an annual review will be notified within 30 calendar days of the determination. Any individual, or his legal representative or responsible party not in agreement with the PASARR determination, may file an appeal with TDMHMR to receive a DHS fair hearing according to Chapter 79 of this title (relating to Legal Services).

(e) Active treatment and alternate placement.

(1) TDMHMR contracts with the local MHMR authority to purchase case management, active treatment, and alternate placement for persons determined by TDMHMR as requiring active treatment and alternate placement.

(2) The local MHMR authority assigns a case manager for those residents who require active treatment services and/or must be alternately placed.

(3) An interdisciplinary team will be constituted by the case manager in order to develop a plan for active treatment and/or alternate placement. This team will identify those additional services required for active treatment that are not already being provided by the nursing facility and covered in the nursing facility daily vendor rate. This team must include:

(A) a representative of the nursing facility;

(B) primary physician;

(C) other professionals deemed appropriate;

(D) the family; and

(E) the individual.

(4) The case manager will determine how active treatment services will be provided and will facilitate provision of those services. These services will be provided via contract funds from TDMHMR with the local MHMR authority. The local MHMR authorities may directly provide or may subcontract for those services with other providers, including the nursing facility. Those services must meet the relevant portions of TDMHMR's community service standards.

(5) The case manager will report monthly to the primary or attending physician regarding the delivery of active treatment.

(6) The case manager will locate alternate placement in consultation with the individual or his legal representative if required.

(7) The nursing facility must allow TDA staff or representatives from Advocacy, Inc., to counsel and inform affected residents of their rights and options under PASARR.

(8) Active treatment services and nursing facility services are to be coordinated and integrated for maximum benefit to the resident. A nursing facility must allow for the MHMR authority or a subcontracted provider to provide active treatment services within the facility. If a nursing facility accepts individuals or has individuals who require active treatment for

their mental condition, it must establish and maintain a written cooperative agreement with the local MHMR authority that includes:

(A) general responsibilities of the facility and the provider for delivering the appropriate and mutually supportive services to those residents requiring active treatment for their MI/MR/RC;

(B) a provision allowing the MHMR authority staff to access the resident's clinical record and assessment information to avoid unnecessary duplication of services, with appropriate consent of the eligible resident, legal representative, or responsible party;

(C) a provision allowing the MHMR authority staff an opportunity to participate in or provide information for the facility's admission, programmatic, and discharge-planning meetings when the active treatment needs of an eligible resident are being considered;

(D) a provision allowing the nursing facility staff to participate in or provide information to the MHMR authority case manager during each active resident's treatment planning; and

(E) how conflicts over such issues as time, space, and equipment should be resolved.

(9) The case manager must provide and the nursing facility must maintain, as a separate document in the resident's record, a copy of the original individual active treatment plan developed by the interdisciplinary team, and any subsequent changes.

(10) The case manager must provide to the facility and the facility must document in the interdisciplinary medical-social plan of care the following information from the active treatment plan, the designated provider, the case manager, other written report, and documented telephone contacts:

(A) efforts to resolve the differences between the active treatment plan and the medical-social plan of care;

(B) active treatment objectives;

(C) the resident's adjustment to the active treatment program; and

(D) changes and modification to the plan.

(11) The facility must ensure that all residents who may benefit from active treatment are identified.

(12) All providers of active treatment, including the nursing facility, must meet the relevant portions of TDMHMR's Community Service Standards for the delivery of active treatment services.

(f) Nursing facilities who admit or retain individuals that have not been screened by TDMHMR or who admit or retain individuals for whom nursing facility placement has been found to be inappropriate and who require active treatment will not be reimbursed for that individual as described in §16.3807 of this title (relating

to Limitations on Provider Charges to Patients).

(g) Nursing facilities must provide discharge planning services to all residents who are to be alternately placed as described in §16.6112 of this title (relating to Discharges/Relocations) and provide residents those rights described in §§16.6101-16.6120 of this title (relating to Recipient Rights).

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

Issued in Austin, Texas, on August 21, 1990.

TRD-9008439

Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: September 11, 1990

Proposal publication date: June 5, 1990

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

◆ ◆ ◆



Name: David Ruhlmann

Grade: 8

School: Garner Middle School, Northeast ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Commission on the Arts

Thursday, September 20, 1990, 10 a.m. The Assistance Review Committee of the Texas Commission on the Arts will meet at the Radisson Plaza Hotel, Capital Ballroom, 700 San Jacinto Street, Austin. According to the complete agenda, the committee will introduce guests; conduct a public hearing; approve minutes for June 4, 1990 Assistance Review Committee meeting; selection of peer review panelists; and discuss other business.

Contact: Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: August 22, 1990, 10:37 a.m.

TRD-9008484

Thursday, September 20, 1990, 11:30 a.m. The Texas Commission on the Arts will meet at the Radisson Plaza Hotel, Capital Ballroom, 700 San Jacinto Street, Austin. According to the agenda summary, the commission will introduce guests; conduct a public hearing; review items for commission consent; review items for individual consideration; items for information only; and executive session.

Contact: Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: August 22, 1990, 10:37 a.m.

TRD-9008485

Texas Commission for the Blind

Monday, September 10, 1990, 8:30 a.m. The Policy Committee of the Board of the Texas Commission for the Blind will meet at the Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard, Austin. According to the complete agenda, the committee will conduct a work session prior to agency's business meeting to discuss internal auditing policy and other policies that may be necessary to fulfill agency responsibilities.

Contact: Jean Wakefield, P.O. Box 12866, 4800 North Lamar Boulevard, Austin, Texas 78711, (512) 459-2600.

Filed: August 21, 1990, 1:50 p.m.

TRD-9008442

Monday, September 10, 1990, 10 a.m. The Texas Commission for the Blind will meet at the Criss Cole Rehabilitation Center Auditorium, 4800 North Lamar Boulevard, Austin. According to the complete agenda, the commission will approve minutes of May 14, 1990; executive director's quarterly report on agency activities; discussion of 1992-1993 legislative appropriation requests; hear public comments-the public is invited to comment on the needs of Texans who are blind or visually impaired, to make recommendations on how programs should be expanded to meet those needs, and to make recommendations on what initiatives the agency should take to the Legislature; executive session pursuant to Article 6252-17, Sections 2(e) and 2(g), V.A.C.S. to discuss personnel and pending legal matters; adoption of policy on internal auditing; approval of internal audit plan; adoption of a rule on reimbursing expenses of witnesses; discussion of requests for grants; and approval of year-end capital purchases.

Contact: Jean Wakefield, P.O. Box 12866, 4800 North Lamar Boulevard, Austin, Texas 78711, (512) 459-2600.

Filed: August 21, 1990, 1:50 p.m.

TRD-9008440

Monday, September 10, 1990, 2 p.m. The Legislative Committee of the Board of the Texas Commission for the Blind will meet at the Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard, Austin. According to the complete agenda, the committee will meet at the conclusion of the regular business meeting of the board that begins at 10 a.m. It is estimated that the committee will meet at approximately 2 p.m., although an exact time will be determined by the length of the preceding meeting of the full board. The meeting will be a work session on the agency's upcoming legislative appropriations request.

Contact: Jean Wakefield, P.O. Box 12866, 4800 North Lamar Boulevard, Austin, Texas 78711, (512) 459-2600.

Filed: August 21, 1990, 1:50 p.m.

TRD-9008441

Bond Review Board

Thursday, August 23, 1990, 10 a.m. The Bond Review Board met at the State Capitol, Sergeant's Committee Room, Austin. According to the complete emergency revised agenda, the board approved minutes; considered proposed issues: application of Secretary of State-lease-purchase of computer equipment; other business: presentation on the Texas Higher Education Coordinating Board's issuance of college savings bonds; adoption of rules for the public school facilities funding program; and consideration of proposed changes to Bond Review Board rules. The emergency status was necessary due to notification of application withdrawal by the Texas Public Finance Authority and the Texas Agricultural Finance Authority, and announcement of presentation on college savings bonds issuance.

Contact: Tom K. Pollard, 506 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

Filed: August 21, 1990, 4:53 p.m.

TRD-9008468

Texas Commission for the Deaf

Friday-Saturday, August 24-25, 1990, 7 p.m. and 9 a.m. respectively. The Board for Evaluation of Interpreters (BEI) of the Texas Commission for the Deaf met at the Capitol Marriot, 701 East 11th Street, Austin. The board submitted an emergency revision changing the location of the meeting and the starting time on Friday from 6 p.m. to 7 p.m. The reason for the emergency meeting was that the location changed for work session because of unavailability of government rooms at provisions location; and the start time was changed due to arrival of board members.

Contact: Larry D. Evans, 510 South Congress Avenue, #300, Austin, Texas 78704, (512) 469-9891.

Filed: August 22, 1990, 2:22 p.m.

TRD-9008490

Texas Education Agency

Friday, August 31, 1990, 10 a.m. The Commissioner's Advisory Committee for the Long-Range Plan for Public Education of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 9-147, Austin. According to the complete agenda, the committee will review a report on public hearings; discuss future directions of the Commissioner's Advisory Committee for the Long-Range Plan; and legislative recommendations and revisions of the Long-Range Plan for public education.

Contact: Cynthia Levinson, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9350.

Filed: August 22, 1990, 4:43 p.m.

TRD-9008503

Wednesday, September 19, 1990, 8:45 a.m. The Committee of Practitioners of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-109, Austin. According to the complete agenda, the committee will discuss development of the Chapter 1 regular application and guidelines; participation of neglected or delinquent institutions; and participation of private schools.

Contact: Tommy L. Harris, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9374.

Filed: August 22, 1990, 4:42 p.m.

TRD-9008502

Employees Retirement System of Texas

Thursday, August 30, 1990, 8:30 a.m. The Board of Trustees of the Employees Retirement System of Texas will meet at the Employees Retirement System Building Auditorium, 18th and Brazos Streets, Austin. According to the agenda summary, the board will review and approve minutes; appeals of contested cases; approve transfer from interest account to employee saving account; retirement annuity reserve account; state accumulation account; set interest rates; approve interest amount transferred from interest account to benefit increase reserve account; discuss and act on Rudd and Wisdom, Inc. proposal for continued actuarial services; certify group insurance advisory committee election results and appointments; consider and act on

emergency and proposed trustee rule amendments to §81.7(f)-(i); status report/preliminary budget for deferred compensation program; insurance accounting reconciliation audit; FY-1991 internal audit plan; trustee election of chairman and vice-chairman; acting executive director's report; and set next trustee meeting date.

Contact: William S. Nail, 18th and Brazos Streets, Austin, Texas 78701, (512) 476-6431.

Filed: August 22, 1990, 11:43 a.m.

TRD-9008487

Fire Fighters' Pension Commission

Thursday, September 6, 1990, 9 a.m. The Administrative Division of the Fire Fighters' Pension Commission will meet at Howard Johnson's South Plaza at Woodward and I-35, Austin. According to the complete agenda, the division will review and approve investment policy and for an educational workshop conducted by the plan's consultant.

Contact: Helen L. Campbell, 3910 South I-35, Suite 225, Austin, Texas 78704, (512) 462-0222.

Filed: August 22, 1990, 10:51 a.m.

TRD-9008486

Texas Growth Fund

Wednesday, September 5, 1990, 9 a.m. The Texas Growth Fund will meet at the Teachers Retirement System Building, 1000 Red River Street, Austin. According to the complete agenda, the agency will review report of investment officers; and discuss additional organizational matters.

Contact: Christine Mangiantini, 201 East 14th Street, Suite 203A1, Austin, Texas 78701, (512) 463-1814.

Filed: August 21, 1990, 1:05 p.m.

TRD-9008435

Texas Health and Human Services Coordinating Council

Thursday, August 30, 1990, 10:30 a.m. The Commission on Children, Youth and Family Services Child Abuse Program Evaluation Workgroup of the Texas Health and Human Services Coordinating Council will meet in an emergency meeting at the Sam Houston Building, 14th and San Jacinto Streets, Seventh Floor Conference Room, Austin. According to the complete agenda, the commission will approve minutes; hear reports from Jane Crouch,

Marion Coleman, and Bob Gefner, Ph.D.; commission update; old business and new business. The emergency status was necessary as this was the only available date for members to meet.

Contact: Louis Worley, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: August 23, 1990, 9:57 a.m.

TRD-9008509

State Department of Highways and Public Transportation

Wednesday, August 29, 1990, 9:30 a.m. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation will meet at the Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Room 101-A, First Floor, Austin. According to the agenda summary, the commission will approve minutes; execute contract awards; routine minute orders/resolutions; consider construction cost index; authorize bridge, rehabilitation, and construction projects/programs; travel improvement plan; Texas Safety Improvement Plan; conveyance of disposal site easements to Corps of Engineers; continuation of oil overcharge program; emergency and proposed adoption: 43 TAC §21.601 (amendment); proposed adoption: 43 TAC §§25.901-25.920 (repeal) and 43 TAC §§25.901-25.912 (new); Withdraw contract award, U. S. 59/Sabine River; receive and discuss staff reports, including Atlanta District; review/discuss sign permit fee report from staff and Outdoor Advertisement Association of Texas; executive session to receive advice from legal counsel on litigation and attorney-client matters; real property transactions; and staff conference to receive information.

Contact: Robert E. Shaddock, Dewitt C. Greer Highway Building, Room 203, Austin, Texas 78701, (512) 463-8616.

Filed: August 21, 1990, 2:05 p.m.

TRD-9008450

Interagency Council for Services for the Homeless

Wednesday, September 5, 1990, 9:30 a.m. The Interagency Council for Services for the Homeless will meet at 8317 Cross Park Drive, Room 1-96, Austin. According to the complete agenda, the council will discuss previous business; statewide homeless evaluation agenda; new appointments; report from homeless services survey committee; action plan for report to legislature; and information sharing.

Contact: Eddie Fariss, 8317 Cross Park Drive, Austin, Texas 78754, (512) 834-6022.

Filed: August 22, 1990, 10:05 a.m.

TRD-9008488

◆ ◆ ◆
Department of Information Resources

Thursday, August 30, 1990, 9 a.m. The Automated Information Telecommunications Council and Department of Information Resources Board of the Department of Information Resources will meet at the John H. Reagan Building, Room 106, 105 West 15th Street, Austin. According to the agenda summary, the council and board will take roll call and witness registration; hear executive director's report; discussion on Certification of DIR; Certification of ISD; discussion on adoption of proposed DIR personnel manual; adoption of FY 1991 operating budget; adoption of 1992-1993 LAR; and discussion and public testimony of the strategic plan.

Contact: Molly Yates, 3307 Northland Drive, Suite 300, Austin, Texas 78731, (512) 371-1120.

Filed: August 21, 1990, 3:43 p.m.

TRD-9008459

Thursday, August 30, 1990, 9 a.m. The Automated Information Telecommunications Council and Department of Information Resources Board of the Department of Information Resources will meet at the John H. Reagan Building, Room 106, 105 West 15th Street, Austin. According to the revised agenda summary, the council and board will take roll call and witness registration; hear executive director's report; discussion on Certification of DIR; Certification of ISD; discussion on adoption of proposed DIR personnel manual; adoption of FY 1991 operating budget; adoption of 1992-1993 LAR; and discussion and public testimony of the strategic plan.

Contact: Molly Yates, 3307 Northland Drive, Suite 300, Austin, Texas 78731, (512) 371-1120.

Filed: August 22, 1990, 9:43 a.m.

TRD-9008478

◆ ◆ ◆
State Board of Insurance

Thursday, August 23, 1990, 10 a.m. The State Board of Insurance met at the State Insurance Building, 1110 San Jacinto Street, Room 460, Austin. According to the complete emergency revised agenda, the board considered authorization for publication as a proposal of new rules as 28 TAC §§5. 6601-5.6615, concerning the plan

of operation of the Texas Market Assistance Program for workers' compensation insurance. The emergency status was necessary to comply with provisions of Senate Bill 1, Second Called Session, 71st Legislature, requiring immediate action to establish a market assistance program for workers' compensation insurance.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 22, 1990, 9:55 a.m.

TRD-9008483

◆ ◆ ◆
Texas Commission on Law Enforcement Officer Standards and Education

Tuesday, September 11, 1990, 1:30 p.m. The Texas Commission on Law Enforcement Officer Standards and Education will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the agenda summary, the commission will call the meeting to order and recognize visitors; purpose of work session; academy license application of Texas City Police Department; evaluation reports of South Texas Council of Governments and Nortex Regional Planning Commission; discussion of five proposed amendments to rules; Law Enforcement Management Institute report; Peace Officer Memorial Committee report; status report on achievement awards; report on ancillary test sites; report on fiscal year 1992-1993 budget request; and report on waivers issued-psychological, fingerprint and provisional licenses.

Contact: Johanna McCully-Bonner, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: August 21, 1990, 1:29 p.m.

TRD-9008437

Wednesday, September 12, 1990, 9 a.m. The Texas Commission on Law Enforcement Officer Standards and Education will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the agenda summary, the commission will call the meeting to order and recognize guests; approve minutes of June 12-13, 1990 meetings; consider academy license application of Texas City Police Department; consider proposed amendments to §§211.68, 211.85, 211.100; receive public comments on training and standards for officers, county jailers, or other individuals licensed by the commission as required by statute Chapter 415.009(a) of the Government Code; presentation of Occupant Protection Awards; consider license actions in revocations, suspensions and voluntary surrenders; and staff activities.

Contact: Johanna McCully-Bonner, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: August 21, 1990, 1:29 p.m.

TRD-9008436

◆ ◆ ◆
Texas Parks and Wildlife Department

Wednesday, August 29, 1990, 10 a.m. The Land Acquisition Committee of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters Complex, Building A, 4200 Smith School Road, Austin. According to the agenda summary, the committee will conduct a closed meeting to discuss land acquisition in the following counties: Harris Hidalgo, Potter, Chambers, and Galveston; discuss land exchange in Lubbock County; and exchange of lands in Tarrant and Wise Counties.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 21, 1990, 2:03 p.m.

TRD-9008447

Wednesday, August 29, 1990, 10 a.m. The Land Acquisition Committee of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters Complex, Building A, 4200 Smith School Road, Austin. The committee will discuss land donation from Harris county; donation of nongame wildlife habitat from Hidalgo county; Trinity River State Park briefing; landowner contract program briefing; and endangered prairie chicken habitat agreement in Victoria county.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 21, 1990, 2:03 p.m.

TRD-9008448

Wednesday, August 29, 1990, 2 p.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters Complex, Building B, 4200 Smith School Road, Austin. According to the complete agenda, the commission will conduct an annual public hearing concerning any issue relating to Parks and Wildlife matters.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 21, 1990, 2:02 p.m.

TRD-9008449

Wednesday, August 29, 1990, 7 p.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at Mezzaluna, 310 Colorado Street, Austin. According to the agenda summary, the members of the commission plan to have dinner. Although this function is primarily a social event and no formal action is planned, the commission may dis-

cuss items on the public hearing agenda scheduled for August 30, 1990, 9 a.m.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 21, 1990, 2:03 p.m.

TRD-9008446

Thursday, August 30, 1990, 9 a.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters Complex, Building B, 4200 Smith School Road, Austin. According to the agenda summary, the commission will approve minutes; presentation of retirement certificates and service awards; presentation of Hall of Fame award honoring Darrell Holt; resolutions in memory of William Barry Decker and Bruce Franklin Hill; presentation of Shikar Safari award; local park funding; boat ramp funding; Port Isabel lighthouse; SHP-proposed addition to property and additional development-Cameron county; park repair work-Choke Canyon (Calliham Unit) SP-Live Oak and McMullen counties; concession contract-Lake Mineral Wells, SP-Parker county; naming of nongame tract-Chambers county; land donation-Harris county; donation of nongame wildlife habitat-Hidalgo county; late season migratory gamebird proc.-1990-1991; nontoxic shot implementation schedule; depredating animal control and wildlife management from aircraft proclamation; FY 1991 operating budget and operating plan; hunter education program; renovation of fish hatcheries; land acquisition: Castro and Jeff Davis counties; and exchange of lands-Tarrant and Wise counties.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 21, 1990, 2:03 p.m.

TRD-9008444

Thursday, August 30, 1990, 9 a.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters Complex, Building B, 4200 Smith School Road, Austin. According to the agenda summary, the commission will receive an oil spill briefing from Larry McKinney.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 21, 1990, 2:03 p.m.

TRD-9008443

Thursday, August 30, 1990, noon. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Parks and Wildlife Headquarters Complex, Building B, 4200 Smith School Road, Austin. According to the agenda summary, the commission will conduct a closed meeting to approve May

24, 1990 executive session court reporter minutes; discuss land acquisition of Castro, Jeff Davis, and Brewster counties; exchange of lands-Tarrant and Wise counties.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: August 21, 1990, 2:03 p.m.

TRD-9008445

◆ ◆ ◆

Texas State Board of Public Accountancy

Thursday, August 30, 1990, 9 a.m. The Executive Committee of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the committee will review the board's financial matters; review of the board's financial statement; approval of the FY 1991 operating budget; discussion of applying direct administrative costs to complaints; discussion of Substantive Rule 521.9; certificate fee; review of the status of computer conversion; review of personnel matters; report of the status of the GAO referrals; review of legal matters; Fulcher; requests under the Open Records Act; request for opinion on the release of examination booklets; review of status of sunset legislation; review of NASBA/AICPA matters; publication of disciplinary actions; and other matters.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: August 21, 1990, 2:12 p.m.

TRD-9008453

Thursday, August 30, 1990, 11 a.m. The Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the agenda summary, the board will review minutes of the July 23-24, 1990, board meeting; report of the executive committee; report of the technical standards review committee; behavioral enforcement committee; examination committee; licensing committee; licensee education committee; ad hoc committee on the search for a general counsel; quality review committee; sponsor compliance committee; ratification of board orders, consent orders and proposals for decision; review of certain board communications; and review of future meeting/hearing schedules.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: August 21, 1990, 2:12 p.m.

TRD-9008454

◆ ◆ ◆

Public Utility Commission of Texas

Wednesday, August 29, 1990, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the commission will consider the following dockets: 9427, 8702, 9511, 8900, P8867, 9069, and 6992; rules; Project Number 9078-commission will consider for publication proposed courtesy-phone rulemaking; and Project Number 9687-emergency adoption of amendments of Substantive Rule §23.54.

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

Filed: August 21, 1990, 3:58 p.m.

TRD-9008460

Wednesday, August 29, 1990, 1 p.m. The Administrative Board of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will discuss reports; discussion and action of budget and fiscal matters including a workshop on the FY 1991 operating budget and the 1992-1993 LAR; proposed revision to "Motion to Adopt Policy Directives and Implement Task Force Recommendations"; progress report on dual-party relay service; report on earnings monitoring reports for calendar year 1989 (Project 9814); suspension of deadline for inquiry into Trinity Mine; staff presentation of QF Wheeling Task Force report; scheduling of matters for open meetings and agendas; consideration of comments on FCC rulemaking (RM-6767) concerning operator services; adjournment for executive session to consider litigation and personnel matters; reconvene for discussions and decisions on matters considered in executive session; and set time and place for next meeting.

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

Filed: August 21, 1990, 3:58 p.m.

TRD-9008461

Monday, October 22, 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 9652-application of El Paso Electric Company to declare Palo Verde Nuclear Generating Station Unit Three in service.

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

Filed: August 22, 1990, 3:38 p.m.

TRD-9008496

◆ ◆ ◆

Railroad Commission of Texas

Wednesday, August 22, 1990, 9 a.m. The Railroad Commission of Texas held an emergency meeting at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor Conference Room, Austin. According to the complete agenda, the commission considered Gas Utilities Docket Number 7604; consolidated: appeal of Rio Grande Valley Gas Company from action by cities in its Rio Grande Valley service area and statements of intent for the environs of the cities and rural areas in Hidalgo, Willacy, Cameron, Starr, and Jim Hogg Counties. The emergency status was necessary due to the urgent public necessity that exists since the Gas Utility Regulatory Act provides that an order be entered by August 23, 1990.

Contact: Sandra Boone, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7008.

Filed: August 21, 1990, 2:49 p.m.

TRD-9008458

Monday, August 27, 1990, 9 a.m. The Railroad Commission met at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor Conference Room 12-126, Austin. According to the complete emergency revised agenda, the commission discussed Transportation Docket Number 029528ZZT and 029529ZZT; considered whether the commission should enter an interim order authorizing the establishment of a fuel adjustment charge in Railroad Commission Tariff 52 Series as requested by the Refrigerated Motor Carriers Association, Inc. and in Railroad Commission BMCB Tariff 4 Series as requested by the Building Materials Carriers Bureau. The emergency status was necessary because an urgent public necessity existed due to the recent dramatic fuel cost increases experienced by the motor carriers. Such a reasonably unforeseeable situation required immediate action by the commission.

Contact: Harold Bartz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7104.

Filed: August 22, 1990, 2:57 p.m.

TRD-9008491

Texas Southern University

Monday, August 27, 1990, 11:30 a.m. The Board of Regents of Texas Southern University met at Texas Southern University, University Library, Fifth Floor, Houston. According to the agenda summary, the board considered personnel matters; employee performance evaluations and executive session.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: August 23, 1990, 9:17 a.m.

TRD-9008505

Texas Water Commission

Wednesday, September 5, 1990, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, 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) 463-7898.

Filed: August 21, 1990, 3:57 p.m.

TRD-9008466

Wednesday, September 5, 1990, 2 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, 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) 463-7898.

Filed: August 21, 1990, 4:04 p.m.

TRD-9008463

Wednesday, September 5, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, 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) 463-7898.

Filed: August 21, 1990, 4 p.m.

TRD-9008462

Tuesday, September 11, 1990, 11 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 123, Austin. According to the agenda summary, the

commission will consider the Executive Director's report on agency administration, policy, budget procedures, and personnel matters.

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

Filed: August 21, 1990, 4:05 p.m.

TRD-9008464

Wednesday, September 19, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will conduct a hearing to determine whether an application by Atochem North America, Inc. and Missouri-Pacific Railroad Company for a temporary order should be denied by the commission. The applicants have requested authorization to discharge untreated, arsenic-contaminated water at a volume in excess of 61,830,000 gallons from No Name Lake and Finfeather Lake, which are adjacent to Pennwalt's chemical manufacturing facility at 201 West Dodge Street in Bryan, Brazos County. The applicants propose to discharge the effluent into Old Kazmier Farm Pond; thence to an unnamed creek, thence to Municipal Lake; thence into Burton Creek; thence to Carters Creek; thence to the Navasota River in Segment Number 1209 of the Brazos River Basin. The executive director of the commission is recommending denial of this application.

Contact: Laura Culbertson, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: August 21, 1990, 3:56 p.m.

TRD-9008467

Regional Meetings

Meetings Filed August 21, 1990

The Golden Crescent Regional Planning Commission Board of Directors will meet at the Golden Crescent Regional Planning Commission Board Room, Regional Airport, Building 102, Victoria, August 29, 1990, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Golden Crescent Regional Planning Commission Executive Committee will meet at the Golden Crescent Regional Planning Commission Board Room, Regional Airport, Building 102, Victoria, August 29, 1990, at 6 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Lamar County Appraisal District Regular Board Meeting will be held at the Lamar County Appraisal District, 521

Bonham Street, Paris, August 28, 1990, at 5 p.m. Information may be obtained from J. Welch, 521 Bonham Street, Paris, Texas 75460, (214) 785-7822.

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, August 29, 1990, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

TRD-9008433

◆ ◆ ◆
Meetings Filed August 22,
1990

The Ark-Tex Council of Governments Executive Committee will meet at the Mt. Pleasant Country Club, Mt. Pleasant, August 30, 1990, at 5:30 p.m. Information may be obtained from Susan J. Rice, P.O. Box 5307, Texarkana, Texas 75505, (214) 832-8636.

The Brazos Valley Solid Waste Management Agency Board of Trustees will meet at the City of College Station Council Chambers, 1101 Texas Avenue, College Station, August 30, 1990, at 2 p.m. Information may be obtained from Cathy

Locke, 1101 Texas Avenue, College Station, Texas 77842-0960, (409) 764-3507.

The Central Texas Mental Health and Mental Retardation Center Board of Trustees will meet at 408 Mulberry Drive, Brownwood, August 28, 1990, at 5 p.m. Information may be obtained from Danny Armstrong, P.O. Box 250, Brownwood, Texas 76801, (915) 646-9574, ext. 102.

The Comal Appraisal District Board of Directors met at 430 West Mill Street, New Braunfels, Monday, August 27, 1990, at 7 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597.

The Comal Appraisal District Board of Directors will meet at 430 West Mill Street, New Braunfels, Wednesday, September 5, 1990, at 7 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597.

The Leon County Central Appraisal District Board of Directors met at the Leon County Central Appraisal District Office, Monday, August 27, 1990, at 7:30 p.m. Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833, (214) 536-2252.

The Panhandle Ground Water Conservation District Number 3 Board of Directors met at the Water District Office, 300 South Omohundro Street, White Deer, Monday, August 27, 1990, 7:30 p.m. Information may be obtained from C. E. Williams, Box 637, White Deer, Texas 79097, (806) 883-2501.

The Permian Basin Regional Planning Commission Board of Directors will meet at the Hilton Hotel, Odessa, Wednesday, August 29, 1990, 1 p.m. Information may be obtained from Terri Moore, P.O. Box 6391, Midland, Texas 79711, (915) 563-1061.

TRD-9008469

◆ ◆ ◆
Meetings Filed August 23,
1990

The Bosque Central Appraisal District Appraisal Review Board will meet at the Bosque Central Appraisal District Office, 104 West Morgan Street, Meridian, August 31, 1990, at 9 a.m. Information may be obtained from Billye L. McGehee, P.O. Box 393, 104 West Morgan Street, Meridian, Texas 76665, (817) 435-2304.

TRD-9008499

◆ ◆ ◆

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Community Affairs

Request for Proposals

The Texas Department of Community Affairs (TCDA), administering agency for the Dependent Care Development Grant Program, announces a request for proposals (RFP) for the planning and development of services for activities related to dependent care information and referral systems and activities related to school-age child care services.

Applicants whose proposals are approved will be expected to deliver services in accordance with the Human Services Reauthorization Act of 1984 (42 United States Code, §9871 et seq.). Proposals are solicited for: the planning, development, establishment, expansion, or improvement of information and referral systems concerning the availability, types, costs, and locations of dependent care services; or the planning, development, establishment, expansion, or improvement of programs to furnish school-age child care services before and/or after school in public or private school facilities or in community centers.

Proposals may be submitted for either the dependent care information and referral concept or the school-age child care concept.

The total funding available pursuant to this RFP is approximately \$575,000. Forty percent of the funds must be used for dependent care information and referral activities and 60% for school-age child care activities. TDCA plans to fund projects for the dependent care information and referral concept at a maximum \$25,000 (department share) per project and school-age care concept at a maximum of \$35,000 per project. Each proposal must include a 25% matching share by the applicant. The contract period will be 12 months, from November 1, 1990, to October 31, 1991.

Eligible applicants for these funds include: local governments; regional councils of governments; public or nonprofit educational institutions; and private nonprofit organizations, including community services agencies. Applicants must document their ability to accomplish the proposed services, and their legal authority and eligibility to contract with TDCA. Preference will be given to applicants with demonstrated experience and ability to develop partnerships between the public and private sectors, provide good program management, and operate effective information and referral systems or school age child care program.

Deadline. Proposals must be received by TDCA by 5 p.m., September 30, 1990.

General Information. TDCA reserves the right to accept or reject any or all proposals submitted. TDCA is under no obligation to execute a contract on the basis of the RFP and intends this material only as a means of identifying the various contractor alternatives. TDCA intends to use responses as a basis for further negotiation of specific

program details with potential contractors. If TDCA selects a contractor(s) to provide the services described in this RFP, TDCA will base its choices upon criteria including, but not limited to, the following: proposal order and content according to the RFP packet instructions; description of applicant's background and experience; analysis of needs and priorities; description of service area; proper selection of allowable activities/services; adequacy of measurable activities/units in program narrative; interagency coordination; budgeting and cost effectiveness; description of program operations and staffing responsibilities; description of applicant's reporting capabilities; applicant's coordination with public and private entities; description of evaluation method to determine planned program and client service effectiveness; and applicant's ability to support the project after TDCA funding terminates.

This request does not commit TDCA to pay for any cost incurred prior to the execution of contracts, and is subject to the availability of funds from the United States Department of Health and Human Services. TDCA specifically reserves the right to vary all provisions at any time prior to the execution of a contract(s) if TDCA deems such variances to be in the best interest of the state, and to otherwise act as it determines at its sole discretion.

To obtain an RFP packet or additional information regarding this notice, contact the Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711-3166, (512) 834-6050.

Issued in Austin, Texas on August 20, 1990.

TRD-9008434 Roger A. Coffield
General Counsel
Texas Department of Community Affairs

Filed: August 21, 1990

For further information, please call: (512) 834-6010.

◆ ◆ ◆

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).

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 Articles 1.04, 1.05, 1.11, and 15.02, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1.04, 1.05, 1.11, and 15.02, Vernon's Texas Civil Statutes).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer ⁽³⁾/Agricultural/ Commercial ⁽⁴⁾ thru \$250,000</u>	<u>Commercial ⁽⁴⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	08/27/90-09/02/90	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(1)	08/01/90-08/31/90	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	07/01/90-09/30/90	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11(3)	07/01/90-09/30/90	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d)(3)	07/01/90-09/30/90	15.62%	N.A.
Standard Annual Rate - Art. 1.04(a)(2)(2)	07/01/90-09/30/90	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11(3)	07/01/90-09/30/90	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail and Lender Credit Card Balances with Annual Implementation Dates from:	07/01/90-09/30/90	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	09/01/90-09/30/90	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 August 20, 1990.

TRD-9008456 Al Endsley
Consumer Credit Commissioner

Filed: August 21, 1990

For further information, please call: (512) 479-1280

◆ ◆ ◆

Credit Union Department

Notices of Hearing

The Credit Union Department will conduct a consolidated hearing to determine whether the applications for amendment to the bylaws for expansions of fields of membership by the following credit unions should be approved or disapproved: Community Credit Union, Plano; Dallas Teachers Credit Union, Dallas.

At the prehearing conference held on May 22, 1990, amended applications of four credit unions were severed from the contested case. These four credit unions are: City Employees Credit Union, Dallas; FFE Operators Credit Union, Lancaster; Gifford-Hill Credit Union, Dallas; Texas Industries Employees Credit Union, Arlington.

In addition to those four credit unions, a portion of the geographic area applied for by Community Credit Union has also been severed from the contested case.

Time and Place of Hearing. The hearing will be held on September 17, 1990, at 1 p.m. at the Texas Credit Union Department, 914 East Anderson Lane, Austin.

Authority. Texas Civil Statutes, Articles 6252-13a, 2461-2.06(b), and 2461-12.01 (Vernon Supplement 1990); 7 TAC §93.221.

Names and Addresses of Parties.

Applicants S. E. Hale, President, Dallas Teachers Credit Union, P. O. Box 64728, Dallas, Texas 75206. **Represented by.** Jerry Nugent, Rinehart and Nugent, 1000 MBank Tower, Austin, Texas 78701; Garold (Gary) Base,

President, Community Credit Union, P. O. Box 867119, Plano, Texas 75086. **Represented by.** Duncan C. Norton, Winstead McGuire Sechrest & Minick, 100 Congress Avenue, Suite 800, Austin, Texas 78701;

Credit Union Department. Robert W. Rogers, Deputy Commissioner, 914 East Anderson Lane, Austin, Texas 78752. **Represented by.** Everette Jobe, Assistant Attorney General, P. O. Box 12548, Austin, Texas 78711-2548.

Other Admitted Parties. Pamela L. Stephens, Chief Executive Officer, Security One Federal Credit Union, Box 5583, Arlington, Texas 76011; Harry G. Hall, President, Denton Area Teachers Credit Union, P.O. Box 827, Denton, Texas 76202; Sherry L. O'Bryant, President, Garland Credit Union, 626 Austin, Garland, Texas 75040; Larry R. Cole, Chief Executive Officer, Garland Federal Credit Union, 703 West Avenue D., Garland, Texas 75040-7001; Jo Johnston, Chairman, Las Colinas Federal Credit Union, P.O. Box 152072, Irving, Texas 75015; Leo Edwards, Chairman, Employees Federal Credit Union, 7800 Stemmons, Suite 100, Dallas, Texas 75247; Charles B. Campbell, Jr., Chairman, Fort Worth City Credit Union, P. O. Box 100099, Fort Worth, Texas 76185-0099.

Nature of Hearing. This hearing is a contested case under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. Each applicant must demonstrate the exact geographic boundaries expressed by city, county, or radius from the credit union's principal or branch office; whether its proposed expansion overlaps the field of membership of another credit union; the nature and degree of the overlap; whether the new group proposed to be served by the expansion has requested the expansion; whether any efforts have been taken to resolve the overlap, if any; the applicants' ability to adequately serve the proposed expanded field of membership. Each applicant shall also be required to provide the information requested in the Application to Amend Article of Incorporation or Bylaws filed with the Credit Union Department. The hearing officer shall consider this and other information necessary to comply with the provisions of the Texas Civil Statutes Articles 2461-1.05,

and 2.06(b). The Credit Union Commission may decide not to hold an additional hearing on the application.

Deadline for Requesting to be a Party. At the hearing, only those persons admitted as parties by October 9, 1989, and their witnesses will be allowed to participate. The commissioner made a determination on party status at the prehearing conference held on October 16, 1989. The listing of parties is presented herein. Witnesses for the parties were designated prior to November 3, 1989. The hearing officer cannot grant additional party status unless there is good cause for the request arriving late.

Prehearing Conference. A prehearing conference will be held on September 10, 1990, at 10 a.m. at the Credit Union Department, 914 East Anderson Lane, Austin. The purpose of this conference is to consider recently filed motions by the parties or other motions presented.

Hearing Officer. Mrs. Nancy Ricketts (2003 Cypress Point East, Austin, Texas 78746) was appointed on November 7, 1989, to serve as hearing officer.

Public Attendance and Testimony. Members of the general public may attend any conference or hearing. Those who plan to attend are encouraged to telephone the Credit Union Department Office in Austin at (512) 837-9236, a day or two prior to the hearing date in order to confirm the setting, since continuances are sometimes granted.

Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the Credit Union Department Office at (512) 837-9236, to find out the names and addresses of all admitted parties who may be contacted about the possibility of presenting testimony.

Information About the Application. Information about the applications is available at the Credit Union Department Office located 914 East Anderson Lane, Austin, Texas 78752, or from Hearing Officer Nancy Ricketts, (512) 327-3360.

Issued in Austin, Texas, on August 20, 1990.

TRD-9008451 Nancy Ricketts
Hearing Officer
Credit Union Department

Filed: August 21, 1990

For further information, please call: (512) 837-9236.



The Credit Union Department will conduct the following consolidated hearings to determine whether the applications for amendment to the bylaws for expansions of fields of membership by the following credit unions should be approved or disapproved: Community Credit Union, Plano; Dallas Teachers Credit Union, Dallas.

The hearing will involve only the portion of the Community Credit Union application that was severed from Cause Number 89-001 and described as follows:

Persons who work or reside in that area of the city of Dallas having these boundaries: Loop 635 on the north, Central Expressway on the east, Northwest Highway on the south, and the city limits on the west, but excluding those persons eligible for primary membership in any occupation- or association-based credit union that has an office in Rockwall, Collin, Denton, Tarrant, or Dallas County at the time such membership is sought.

And, the application of Dallas Teachers Credit Union of July 17, 1990, requesting substantially the same geographic area as follows:

Persons living or working within a geographical area located in Dallas County, Texas, bounded by Loop 12 on the south, highway 635 on the north and west and Central Expressway on the east including any business or organization within the boundaries, but excluding employees of companies served by occupational or associational based credit unions of the employer located in Dallas, Collin and Rockwall County.

Time and Place of Hearing. The hearing will be held on September 17, 1990, at 10 a.m. at the Texas Credit Union Department, 914 East Anderson Lane, Austin.

Authority. Texas Revised Civil Statutes, Articles 6252-13a, 2461-2.06(b), and 2461-12.01 (Vernon Supplement 1990); 7 TAC §93.221.

Names and Addresses of Parties. Applicants S. E. Hale, President, Dallas Teachers Credit Union, P.O. Box 64728, Dallas, Texas 75206.

Represented by. Jerry Nugent, Rinehart & Nugent, 1000 MBank Tower, Austin, Texas 78701; Garold (Gary) Base, President, Community Credit Union, P. O. Box 867119, Plano, Texas 75086. **Represented by.** Duncan C. Norton, Winstead McGuire Sechrest & Minick, 100 Congress Avenue, Suite 800, Austin, Texas 78701. **Credit Union Department** Robert W. Rogers, Deputy Commissioner, 914 East Anderson Lane, Austin, Texas 78752. **Represented by** Everette Jobe, Assistant Attorney General, P.O. Box 12548, Austin, Texas 78711-2448. **Other Admitted Parties.** Pamela L. Stephens, Chief Executive Officer, Security One Federal Credit Union, Box 5583, Arlington, Texas 76011; Harry G. Hall, President, Denton Area Teachers Credit Union, P.O. Box 827, Denton, Texas 76202; Sherry L. O'Bryant, President, Garland Credit Union, 626 Austin, Garland, Texas 75040; Larry R. Cole, Chief Executive Officer, Garland Federal Credit Union, 703 W. Avenue D, Garland, Texas 75040-7001; Jo Johnston, Chairman, Las Colinas Federal Credit Union, P.O. Box 152072, Irving, Texas 75015; Leo Edwards, Chairman, Employees Federal Credit Union, 7800 Stemmons, Suite 100, Dallas, Texas 75247; Charles B. Campbell, Jr. Chairman, Fort Worth City Credit Union, P.O. Box 100099, Fort Worth, Texas 76185-0099.

Nature of Hearing. This hearing is a contested case under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. Each applicant must demonstrate the exact geographic boundaries expressed by city, county, or radius from the credit union's principal or branch office; whether its proposed expansion overlaps the field of membership of another credit union; the nature and degree of the overlap; whether the new group proposed to be served by the expansion has requested the expansion; whether any efforts have been taken to resolve the overlap, if any; the applicant's ability to adequately serve the proposed expanded field of membership. Each applicant shall also be required to provide the information requested in the Application to Amend Article of Incorporation or Bylaws filed with the Credit Union Department. The hearing officer shall consider this and other information necessary to comply with the provisions of the Texas Civil Statutes Articles 2461-1.05, and 2.06(b). The Credit Union Commission may decide not to hold an additional hearing on the application.

Deadline for Requesting to be a Party. At the hearing, only those persons admitted as parties by October 9, 1989, and their witnesses will be allowed to participate. The commissioner made a determination on party status at the prehearing conference held on October 16, 1989. The listing of parties is presented herein. Witnesses for the parties were designated prior to November 3, 1989. The hearing officer cannot grant additional party status unless

there is good cause for the request arriving late.

Prehearing Conference. A prehearing conference will be held on September 10, 1990, at 10 a.m. at the Credit Union Department, 914 East Anderson Lane, Austin. The purpose of this conference is to consider recently filed motions by the parties or other motions presented.

Hearing Officer. Nancy Ricketts (2003 Cypress Point East, Austin, Texas 78746) was appointed on November 7, 1989, to serve as hearing officer.

Public Attendance and Testimony. Members of the general public may attend any conference or hearing. Those who plan to attend are encouraged to telephone the Credit Union Department Office in Austin at (512) 837-9236, a day or two prior to the hearing date in order to confirm the setting, since continuances are sometimes granted.

Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the Credit Union Department Office at (512) 837-9236, to find out the names and addresses of all admitted parties who may be contacted about the possibility of presenting testimony.

Information About the Application. Information about the applications is available at the Credit Union Department Office located 914 East Anderson Lane, Austin, Texas 78752 or from Hearing Officer Nancy Ricketts (512) 327-3360.

Issued in Austin, Texas, on August 20, 1990.

TRD-9008452 Nancy Ricketts
Hearing Officer
Credit Union Department

Filed: August 21, 1990

For further information, please call: (512) 837-9236

◆ ◆ ◆

Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Houston	Lyndon B. Johnson General Hospital	L04412	Houston	0	08/10/90
Throughout Texas	Itex Enterprizes, Inc.	L04414	Dallas	0	07/26/90

AMENDMENTS TO EXISTING LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Aransas Pass	Coastal Bend Hospital	L03446	Aransas Pass	9	08/09/90
Austin	Robert A. Laibovitz, M.D.	L02246	Austin	5	08/06/90
Austin	St. David's Community Hospital	L00740	Austin	45	08/10/90
Austin	Austin Radiological Association	L00545	Austin	56	08/10/90
Beaumont	North Star Steel Texas	L02122	Beaumont	14	08/14/90
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	26	08/10/90
Dallas	Baylor College of Dentistry	L00323	Dallas	20	08/03/90
Dallas	Presbyterian Hospital of Dallas	L04288	Dallas	2	08/08/90
Dallas	Mallinckrodt, Inc.	L03580	Dallas	9	08/10/90
Fort Worth	William C. Conner Research Center	L01281	Fort Worth	24	07/25/90
Friendswood	Indo-Medix, Inc.	L03714	Friendswood	2	08/03/90
Houston	Ben Taub General Hospital	L01303	Houston	17	07/27/90
Houston	Syncor International Corporation	L01911	Houston	75	08/06/90
Houston	Spring Branch Memorial Hospital	L02473	Houston	16	08/10/90
Kingsville	URI, Inc.	L03653	Dallas	8	08/02/90
La Porte	E. I. du Pont de Nemours & Company	L00314	La Porte	55	08/03/90
Nassau Bay	St. John Hospital	L03291	Nassau Bay	9	08/06/90
Palestine	Memorial Hospital Foundation Palestine, Inc.	L02728	Palestine	17	07/31/90
Port Arthur	St. Mary Hospital of Port Arthur	L01212	Port Arthur	39	08/14/90
San Antonio	St. Luke's Lutheran Hospital	L03309	San Antonio	15	08/01/90
San Antonio	Baptist Memorial Hospital	L00469	San Antonio	22	08/02/90
San Antonio	The University of Texas at San Antonio	L01962	San Antonio	22	07/27/90
San Antonio	Baptist Hospital System	L00455	San Antonio	47	08/10/90
The Woodlands	BETZ Laboratories	L03377	The Woodlands	5	08/14/90
Throughout Texas	Kooney X-Ray, Inc.	L01074	Barker	49	07/30/90
Throughout Texas	GCT Inspection, Inc.	L02378	South Houston	31	07/26/90

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Throughout Texas	GCT Inspection, Inc.	L02378	South Houston	30	07/24/90
Throughout Texas	Century Inspection, Inc.	L00062	Dallas	51	07/24/90
Throughout Texas	Reinhart and Associates, Inc.	L03189	Austin	12	07/24/90

Throughout Texas	Dowell Schlumberger Incorporated	L00764	Tulsa, Oklahoma	54	07/24/90
Throughout Texas	Jack H. Holt & Associates, Inc.	L02752	Austin	6	07/31
Throughout Texas	Computalog Wireline Services, Inc.	L04286	Houston	3	07/31,
Throughout Texas	P & S Perforators	L02396	Victoria	12	07/31/90
Throughout Texas	W.H. Henken Industries, Inc.	L00967	Arlington	23	07/31/90
Throughout Texas	Professional Service Industries, Inc.	L00931	Lombard, Illinois	74	07/26/90
Throughout Texas	Rone Engineers	L01688	Fort Worth	13	07/24/90
Throughout Texas	Del Rio Environmental Services	L04300	El Paso	2	07/25/90
Throughout Texas	G & G X-Ray, Inc.	L03326	Corpus Christi	21	08/06/90
Throughout Texas	H & G Inspection Company, Inc.	L02181	Houston	47	08/07/90
Throughout Texas	Ultrasonic Specialists, Inc.	L01774	Houston	46	08/07/90
Throughout Texas	Mississippi X-Ray Services of Texas, Inc.	L03246	Mont Belvieu	26	08/07/90
Throughout Texas	Southwestern Laboratories, Inc.	L00299	Houston	65	08/06/90
Throughout Texas	American Pipe Inspection, Inc.	L02576	Houston	9	08/07/90
Throughout Texas	Service and Compliance Consultants	L03873	Coldspring	4	08/07/90
Throughout Texas	Law Engineering, Inc.	L02453	Houston	13	08/03/90
Throughout Texas	Independent Testing Laboratories, Inc.	L03795	Houston	13	08/10/90
Throughout Texas	Pro-Log	L01828	Denver City	13	08/14/90
Throughout Texas	Computalog Wireline Services, Inc.	L04286	Houston	4	08/10/90
Throughout Texas	Petro/Chem Environmental Services	L04351	Dallas	1	08/09/90
Throughout Texas	Trinity Testing Laboratories, Inc.	L04190	Laredo	2	08/09/90

RENEWALS OF EXISTING LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Kilgore	Woolley Fishing Tool, Inc.	L02915	Kilgore	2	07/31
San Antonio	Immuno D., Inc.	L03796	San Antonio	9	08/10/90

TERMINATIONS OF LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Eules	D-FW Engineering and Testing Inc.	L03366	Eules	3	08/09/90

NEW LICENSES DENIED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Lubbock	Utility Contractors of America		Lubbock	0	07/31/90

AMENDMENTS TO EXISTING LICENSES DENIED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
-----------------	-------------	-----------------	-------------	--------------------------	---------------------------

♦ *In Addition August 28, 1990 15 TexReg 4983*

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on August 20, 1990.

TRD-9008455 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: August 21, 1990

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

◆ ◆ ◆
**State Purchasing and General Services
Commission**

Request for Proposals

Notice is hereby given to all interested parties that pursuant to Texas Civil Statutes, Article 601b, Article 14 and 1 TAC §125.17, the State Purchasing and General Services Commission is soliciting proposals for the provision of rental car services to state employees traveling on official state business.

The request for proposals may be obtained on or after August 24, 1990, from the Travel and Transportation Division of the State Purchasing and General Services Commission, Central Services Building, Room 101, 1711 San Jacinto, Austin, Texas 78711, Attention: Cassie G. Carlson, Director (512) 463-3557.

The closing date and time for receipt of proposals is 5 p.m., September 21, 1990. The commission will hold a pre-proposal conference from 3 p.m.-5 p.m. on August 28, 1990, in Room 1-100 of the William B. Travis Building, 1701 North Congress Avenue, Austin, for the purpose of addressing questions posed by interested vendors.

Proposals submitted will be evaluated and award(s) will be made pursuant to the provisions of 1 TAC §125.17(b).

Issued in Austin, Texas, on August 21, 1990.

TRD-9008432 John R. Neel
General Counsel
State Purchasing and General Services
Commission

Filed: August 21, 1990

For further information, please call: (512) 463-3446

◆ ◆ ◆
The University of Texas System
Request for Proposal

The University of Texas Medical Branch at Galveston (UTMB), solicits to contract with a contractor to develop and conduct for the Department of Human Resources, a feasibility study to build an on-site or near-site child care center.

Project Description. The contractor selected to develop and conduct the feasibility study for UTMB shall determine the following features of a UTMB child care center: location, size, architectural design, cost of building and maintenance, hours of operation, operational structure, type of staff, subsidy requirements, benefits of quality on-site/near-site child care, other features that may become apparent as a result of the feasibility study.

This contract shall be for an approximately 2 1/2 month period, provided the contractor fulfills all contract requirements and provides the quality of work desired. The possibility of an extension exists at the option of the purchaser.

Contract. The complete proposal request may be obtained from Joseph Byers, Director of Purchasing, Room 322, Administration Building, The University of Texas Medical Branch, Galveston, Texas 77550, (409) 761-2567.

Due Date. Proposals will be opened in the offices of the Director of Purchasing, Room 322, Administration Building, UTMB, Galveston, at the time and date specified in the request for proposal. It is the responsibility of the contractor to have proposals in the above stated office at that time. Proposals received late for any reason will be returned unopened.

Evaluation Criteria. Proposals will be evaluated by UTMB, and selection will be based on capabilities and qualifications of contractor which shall include: number of years in business, types of feasibility studies developed and conducted in the last two years, client references, particularly those comparable in size and function to UTMB; prior experience in developing and conducting feasibility studies in academic/health care settings; and qualification, education and experience of personnel to be assigned to this project.

In addition, UTMB will evaluate a Work Statement to be provided by the proposers group outlining the technique for developing and conducting the feasibility study, sequence to be used and methods for managing project, total price for each phase as outlined in the RFP and the proposed timetable in which the project will be completed.

Issued in Austin, Texas, on August 21, 1990.

TRD-9008457 Arthur H. Dilly
Executive Secretary to the Board
The University of Texas System

Filed: August 21, 1990

For further information, please call: (512) 499-4402



Texas Water Commission Notice of Public Hearing

The Texas Water Commission will conduct a public hearing at 9 a.m., September 13, 1990, Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, in order to receive comments concerning proposed new sections and amendments to Chapter 305, concerning consolidated permits, and Chapter 335, concerning indus-

trial solid and municipal waste, which were published in the *Texas Register* on August 21, 1990, (15 TexReg 4753).

The public is encouraged to attend the hearing and to present relevant comments or opinions concerning the preceding proposed new and amended sections. Written comments submitted prior to or during the public hearing will be included in the record. Copies of written comments and questions concerning the public hearing should be addressed to Samita Mehta, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, 1700 North Congress Avenue, Austin, Texas 78711-3087 or call (512) 463-8069.

Issued in Austin, Texas, on August 22, 1990.

TRD-9008482 Jim Haley
Director, Legal Division
Texas Water Commission

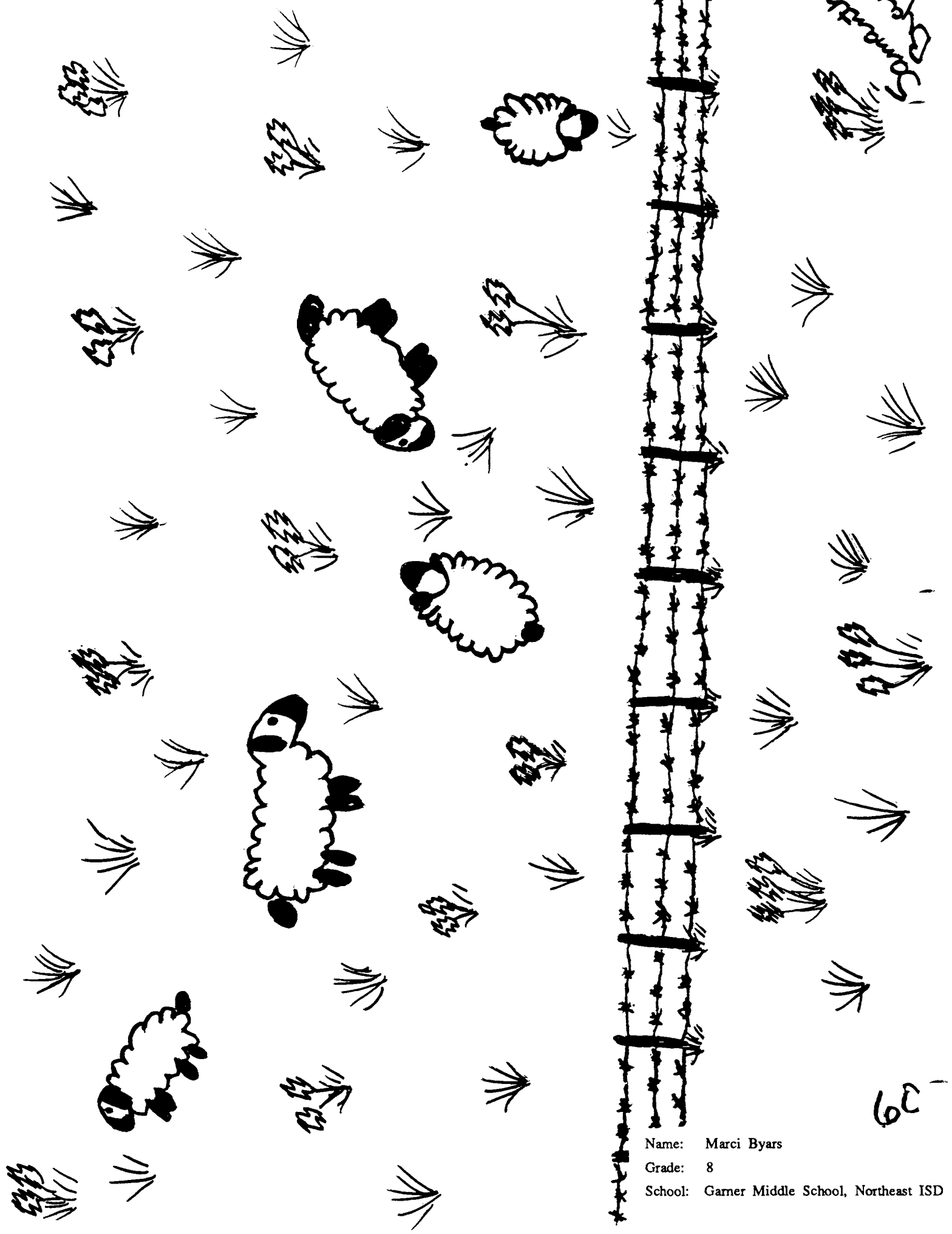
Filed: August 22, 1990

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



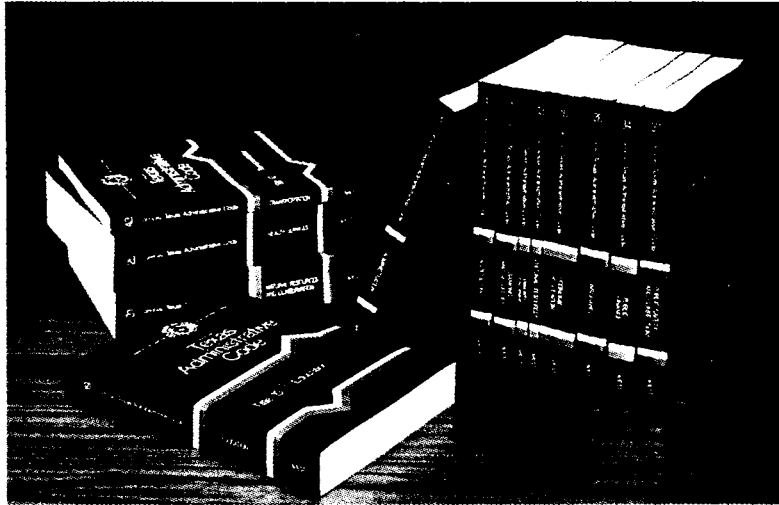
Garner Middle School
Northeast ISD

60'



Name: Marci Byars
Grade: 8
School: Garner Middle School, Northeast ISD

The only COMPLETE, OFFICIAL and UP-TO-DATE
source of administrative rules for Texas!



SAVE 40% ON WEST'S® TEXAS ADMINISTRATIVE CODE

West Publishing Company, official publisher of the *Texas Administrative Code* for 1990, is proud to announce that the complete TAC is now ready—and is being offered to you right now at a full set savings of 40%! Or, choose only those volumes essential to your daily practice.

COMPLETE, FOR RESEARCH CONVENIENCE!

The TAC is your convenient access to the rules and regulations of Texas state agencies. Each title is divided into parts, and each part corresponds to a state agency. The chapters and sections within each part thus contain all permanent rules and regulations for that particular agency in one convenient publication.

DEPENDABLE SUPPLEMENTATION TO KEEP YOU UP-TO-DATE!

West's TAC includes rules and regulations soon after their adoption into Texas law.

You'll find the exact currency dates of the provisions contained within the preface of each volume.

Timely Supplementation! Semi-annual supplements bring subscribers up-to-date with the adoption of new rules and changes in existing rules. The supplementation consists of softbound, cumulative, companion volumes to the 16-volume TAC set. This eliminates the time-consuming need for complicated collation and substitution of pages that was required by the looseleaf format of the previous publisher.

OFFICIAL, FOR YOUR ASSURANCE OF CONFIDENCE!

Only with West's *Texas Administrative Code* do you get absolute assurance that all code provisions appear as finally reviewed and corrected by the Secretary of State's Office.

TITLES INCLUDED IN THIS COMPLETE AND OFFICIAL SET:

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



WEST PUBLISHING CO.

50 W. Kellogg Blvd. • P.O. Box 64526 • St. Paul, MN 55164-0526

SAVE 40% ON YOUR FULL SET PURCHASE! Get complete details from your West representative, or call toll free 1-800-328-9352. (In MN call collect 0-612-688-3600.)

Second Class Postage

PAID

Austin, Texas
and additional entry offices

To order a new subscription, or to indicate a change of address, please use this form. When notifying us of an address change, please attach the mailing label from the back of a current issue. Questions concerning existing subscriptions should also include the subscription number from the mailing label.

For information concerning the Texas Register, please call (512) 463-5561, or write to P.O. Box 13824, Austin, Texas 78711-3824.

You may also use this form to request back issues of the Texas Register. Please specify the exact dates and quantities of the issues requested. Each copy of a back issue is \$4.

Change of Address
(Please attach mailing label)

Back Issues Requested
(Please specify dates)

Please enter my subscription to the Texas Register as indicated below. (I will look for my first issue in about two weeks.)

1 year (100 issues) \$90

Payment enclosed

6 months (50 issues) \$70

Bill me

Name

Organization

Occupation

Telephone

Address

City

State

Zip Code

Please make checks payable to the Secretary of State. Subscription fees are not refundable.

For office use only